

Exhibit A

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE HOWARD H. SHORE

DECISION AND ORDER IMPOSING
SEVERE PUBLIC CENSURE
PURSUANT TO STIPULATION

(Commission Rule 116.5)

This disciplinary matter concerns Judge Howard H. Shore, a judge of the San Diego County Superior Court. Judge Shore and his counsel, Heather L. Rosing and David Majchrzak of Klinedinst PC, have entered into a stipulation with Gregory Dresser, Director-Chief Counsel of the Commission on Judicial Performance, pursuant to commission rule 116.5, to resolve the pending preliminary investigation involving Judge Shore by imposition of a severe public censure. The Stipulation for Discipline by Consent (Stipulation) was approved by the commission on December 6, 2023, pursuant to the following terms and conditions and stipulated facts and legal conclusions. A copy of the Stipulation is attached.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Shore.
2. The commission shall issue a severe public censure, based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission's decision and order imposing a severe public censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.
4. Upon acceptance by the commission, the Stipulation and the commission's decision and order shall be made public.

5. Judge Shore waives any further proceedings and review in this matter, including formal proceedings (Rules of Com. on Jud. Performance, rule 118, et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

STIPULATED FACTS AND LEGAL CONCLUSIONS

This disciplinary matter concerns Judge Howard H. Shore, a judge of the San Diego County Superior Court since 1998, and a judge of the San Diego County Municipal Court from 1990 to 1998. His current term began in January 2021.

1. Dereliction of Duty

In November 2022, San Diego County Superior Court Presiding Judge Michael T. Smyth heard from court staff that Judge Shore had been difficult to engage, due to his frequent absences, and that Judge Shore did not complete Judicial Absence Requests (JARs) in advance of any planned days off. Court staff also informed Judge Smyth that Judge Shore's Court Activity Calendar report showed his status as "Off" nearly every Friday, though Judge Shore had not submitted any JARs for those days.

The San Diego County Superior Court requires each judge to obtain approval from their supervising judge, as well as the presiding judge, before any planned absences.

Because Judge Smyth had not authorized Judge Shore to take leave on Fridays or work from home, he undertook an investigation. Judge Smyth reviewed Judge Shore's proximity card use records, courthouse garage access records, and chambers telephone activity records from 2021 and 2022, and concluded that Judge Shore had been absent from the courthouse at least 155 days, including nearly every Friday, without approval. Judge Smyth further determined that, even if Judge Shore had requested authorization to use vacation time for those days, his absences exceeded the vacation available to him by 87 days.

On December 1, 2022, Judge Smyth and Assistant Presiding Judge Maureen Hallahan met with Judge Shore to discuss Judge Shore's frequent absences from the bench. Judge Shore initially stated that he did not believe that he had taken time off without a leave slip (e.g., a formal request); that he barely took any vacation; and that he did not regularly take Fridays off. Later, Judge Shore agreed that he had not been working on most Fridays. He later explained that he had been traveling to Los Angeles on most of those Fridays to assist with family needs (including health issues), and he could not travel after sunset on Friday, through Saturday, in accordance with Orthodox Jewish religious mandates for the Sabbath. Judge Shore subsequently told Judges Smyth and Hallahan that he had rationalized taking Fridays off regularly because he took work home with him at night, completed his work within the other four workdays, and because he saw other judges leaving early. Judge Shore acknowledged that he was aware judges are not entitled to compensatory time for hours worked outside of normal court hours.

Judge Shore subsequently emailed Judge Smyth on December 1, 2022, copying Judge Hallahan, admitting and explaining his absence on 26 days in 2021 and 33 days in 2022. Judge Shore then sent a second email to Judge Smyth, stating, in part, "The Fridays I didn't come in were Fridays I went to L.A. But the Fridays I didn't go to L.A., I would come to work. Since I didn't need staff on Fridays, there would be no one to verify my attendance. I would work in chambers, and the courtroom would be dark. The problem is, I have no records of when I was in San Diego on a Friday. But it would be inaccurate to say I took every Friday off. If I wasn't going to L.A., there would be nothing else to occupy my time and no reason for me not to come to work." Judge Shore continued, writing that he just wanted to let Judge Smyth know, "I definitely did not take every Friday off."

Over a two-year period in 2021 and 2022, Judge Shore was absent, without approval or authorization, on at least 155 court days. He was not present

in the courthouse on a single Friday between May 28, 2021, and November 18, 2022. Further, Judge Shore's absences exceeded his available vacation time by 87 days. Judge Shore's numerous unauthorized and undocumented absences from the courthouse constituted a dereliction of duty, a persistent failure to perform his judicial duties, and a failure to follow the directives of the presiding judge in matters of court management and administration. Judge Shore also failed to comply with Rules of Court requiring that he request the approval of the presiding judge for any intended absence of one-half day or more within a reasonable time before the intended absence, and limiting vacation time for a judge of his tenure to 30 days annually, absent documentation of extraordinary circumstances and written authorization of the presiding judge. (Cal. Rules of Court, rule 10.608(3), 10.603(c)(2).)

Judge Shore's conduct violated the Code of Judicial Ethics, canons 3 (a judge shall perform the duties of judicial office impartially, competently, and diligently), 3A (a judge shall accord precedence to all of the judicial duties prescribed by law over all other activities), 3B(8) (a judge shall dispose of all judicial matters fairly, promptly, and efficiently, and manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with law), 3C(1) (a judge shall diligently discharge his administrative responsibilities in a manner that promotes public confidence in the integrity of the judiciary), 4A (a judge shall conduct all of his extrajudicial activities so that they do not demean the judicial office or interfere with the proper performance of judicial duties), 2A (a judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), and 1 (a judge shall uphold the integrity of the judiciary).

Judge Shore's conduct constituted, at a minimum, persistent failure to perform judicial duties and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Cal. Const., art. VI, section 18, subd. (d).)

2. Additional Factors Relevant to Discipline.

Judge Shore has no prior history of commission discipline, and several of Judge Shore's colleagues submitted letters attesting to his work ethic, diligence, and legal acumen.

In addition to consenting to discipline on the terms set forth, Judge Shore expressly admits that the foregoing facts are true and that he agrees with the stated legal conclusions.

DISCIPLINE

Prejudicial misconduct is "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (d).) Judge Shore concedes that his routine absences from the courthouse, without authorization or approval, constitutes prejudicial misconduct.

The commission has previously stated, "Public confidence in the integrity of the judiciary is seriously undermined when a judge routinely leaves the courthouse early without approval. Taxpayers of the State of California have a right to expect that judges are available to provide the services for which they are paid." (*Censure of Judge Christopher J. Sheldon* (2009) p. 5.) While Judge Shore rationalized his decision to not request or obtain approval for his Friday absences because he took work home with him at night and completed his work within the other four workdays, judges are not entitled to compensatory time. As stated by Judge Rothman, "The public does not owe judges extra time off, or anything other than what the law allows, in gratitude for the hard work judges must expend." (Rothman et al., *Cal. Judicial Conduct Handbook* (4th ed. 2017) § 6:11, p. 350.) By regularly absenting himself from the courthouse on Fridays over a two-year period, Judge Shore's conduct "demonstrated a flagrant disregard for his obligations to his fellow judges, the public, and the reputation of the judiciary."

(*Censure of Judge Christopher J. Sheldon, supra*, at p. 4.) Judge Shore's conduct seriously undermines public confidence in the integrity of the judiciary and casts disrepute on the judicial office.

In mitigation, Judge Shore has served 33 years as a judicial officer without discipline, expressed contrition, and modified his conduct. Further, Judge Shore cooperated fully and honestly with the commission and has stipulated to the imposition of this severe public censure as the appropriate sanction that is commensurate with his admitted serious wrongdoing.

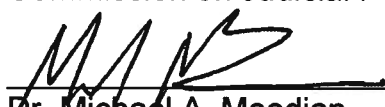
Based on the foregoing analysis and appraisal of Judge Shore's misconduct, the commission concludes that the purpose of judicial discipline, as enunciated in *Broadman*—protection of the public, enforcement of rigorous standards of judicial conduct, and maintenance of public confidence in the integrity and independence of the judicial system—can be accomplished through a severe public censure. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112 (*Broadman*), citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912.)

Accordingly, the commission hereby imposes this severe public censure of Judge Shore.

Commission members Dr. Michael A. Moodian; Hon. Lisa B. Lench; Hon. William S. Dato; Hon. Michael B. Harper; Ms. Kay Cooperman Jue; Mani Sheik, Esq.; Mr. Richard Simpson; and Ms. Beatriz E. Tapia voted to accept the Stipulation and to issue this severe public censure. Commission members Mr. Eduardo De La Riva; Rickey Ivie, Esq.; and Ms. Sarah Kruer Jager did not participate.

Date: December 13, 2023

On behalf of the
Commission on Judicial Performance,



Dr. Michael A. Moodian
Chairperson

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE HOWARD H. SHORE**

**STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)**

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Howard H. Shore of the San Diego County Superior Court, represented by his counsel, Heather L. Rosing and David Majchrzak of Klinedinst PC, and commission counsel (the “parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letter, dated April 14, 2023. The parties request that the commission resolve this matter by imposition of a severe public censure. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Shore because, among other reasons, in light of the stipulated facts and legal conclusions, a severe public censure adequately protects the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission’s pending preliminary investigation involving Judge Shore.
2. The commission shall issue a severe public censure, based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission’s decision and order imposing a severe public censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

4. Upon acceptance by the commission, this stipulation and the commission's decision and order shall be made public.

5. Judge Shore waives any further proceedings and review in this matter, including formal proceedings (Rules of Com. on Jud. Performance, rule 118, et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

6. Judge Shore agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is appropriate in light of those facts.

7. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted or conceded by either party.

Accordingly, it is hereby stipulated and agreed that the commission shall issue a severe public censure on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions:

STIPULATED FACTS AND LEGAL CONCLUSIONS

This disciplinary matter concerns Judge Howard H. Shore, a judge of the San Diego County Superior Court since 1990. His current term began in January 2021.

1. Dereliction of Duty

In November 2022, San Diego County Superior Court Presiding Judge Michael T. Smyth heard from court staff that Judge Shore had been difficult to engage, due to his frequent absences, and that Judge Shore did not complete Judicial Absence Requests (JARs) in advance of any planned days off. Court staff also informed Judge Smyth that Judge Shore's Court Activity Calendar report showed his status as "Off" nearly every Friday, though Judge Shore had not submitted any JARs for those days.

The San Diego County Superior Court requires each judge to obtain approval from their supervising judge, as well as the presiding judge, before any planned absences. Because Judge Smyth had not authorized Judge Shore to take leave on Fridays or work from home, he undertook an investigation. Judge Smyth reviewed Judge Shore's proximity card use records, courthouse garage access records, and chambers telephone

activity records from 2021 and 2022, and concluded that Judge Shore had been absent from the courthouse at least 155 days, including nearly every Friday, without approval. Judge Smyth further determined that, even if Judge Shore had requested authorization to use vacation time for those days, his absences exceeded the vacation available to him by 87 days.

On December 1, 2022, Judge Smyth and Assistant Presiding Judge Maureen Hallahan met with Judge Shore to discuss Judge Shore's frequent absences from the bench. Judge Shore initially stated that he did not believe that he had taken time off without a leave slip (e.g., a formal request); that he barely took any vacation; and that he did not regularly take Fridays off. Later, Judge Shore agreed that he had not been working on most Fridays. He later explained that he had been traveling to Los Angeles on most of those Fridays to assist with family needs (including health issues), and he could not travel after sunset on Friday, through Saturday, in accordance with Orthodox Jewish religious mandates for the Sabbath. Judge Shore subsequently told Judges Smyth and Hallahan that he had rationalized taking Fridays off regularly because he took work home with him at night, completed his work within the other four workdays, and because he saw other judges leaving early. Judge Shore acknowledged that he was aware judges are not entitled to compensatory time for hours worked outside of normal court hours.

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Judge Shore's conduct violated the Code of Judicial Ethics, canons 3 (a judge shall perform the duties of judicial office impartially, competently, and diligently), 3A (a judge shall accord precedence to all of the judicial duties prescribed by law over all other activities), 3B(8) (a judge shall dispose of all judicial matters fairly, promptly, and efficiently, and manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with law), 3C(1) (a judge shall diligently discharge his administrative responsibilities in a manner that promotes public confidence in the integrity of the judiciary), 4A (a judge shall conduct all of his extrajudicial activities so that they do not demean the judicial office or interfere with the proper performance of judicial duties), 2A (a judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), and 1 (a judge shall uphold the integrity of the judiciary).

Judge Shore's conduct constituted, at a minimum, persistent failure to perform judicial duties and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Cal. Const., art. VI, section 18, subd. (d).)

2. Additional Factors Relevant to Discipline.

Judge Shore has no prior history of commission discipline, and several of Judge Shore's colleagues submitted letters attesting to his work ethic, diligence, and legal acumen.

By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Shore expressly admits that the foregoing facts are true and that he agrees with the stated legal conclusions.

Dated: November 8, 2023.



Judge Howard H. Shore

Dated: November 9, 2023.



Heather L. Rosing, Esq.
Attorney for Judge Howard H. Shore

Dated: Nov. 13, 2023.



Gregory Dresser
Director-Chief Counsel

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE HOWARD H. SHORE

ADDENDUM TO STIPULATION FOR
DISCIPLINE
BY CONSENT (Rule 116.5)

This addendum clarifies that Judge Howard H. Shore was a judge of the San Diego County Municipal Court from 1990 to 1998, and has been a judge of the San Diego County Superior Court since 1998.

Dated: Nov. 14, 2023.



Judge Howard H. Shore

Dated: Nov. 14, 2023.



Heather L. Rosing, Esq.
Attorney for Judge Howard H. Shore

Dated: Nov. 14, 2023.



Gregory Dresser
Director-Chief Counsel

Exhibit B

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
DEPARTMENT NO. 2102 HON. HOWARD H. SHORE

THE PEOPLE,)
)
 PLAINTIFF,)
)
 VS.) CASE NO. SCD284290
)
 SUKARI HARRIS,) 1538.5
)
 DEFENDANT.) **CERTIFIED TRANSCRIPT**
)
 _____)

REPORTER'S TRANSCRIPT

FEBRUARY 6TH, 2020

APPEARANCES:

FOR THE PLAINTIFF: SUMMER STEPHAN
DISTRICT ATTORNEY
BY: ADRIANA F. ROSS
DEPUTY DISTRICT ATTORNEY
330 WEST BROADWAY
SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANT: KATHERINE BRANER, CHIEF DEPUTY
PRIMARY PUBLIC DEFENDER
BY: ABRAM GENSER
DEPUTY PUBLIC DEFENDER
451 A STREET, SUITE 900
SAN DIEGO, CALIFORNIA 92101

REPORTED BY: LEANNE R. TULLER, CSR NO. 12392
OFFICIAL COURT REPORTER
SAN DIEGO, CALIFORNIA

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1 SAN DIEGO, CALIFORNIA, THURSDAY, FEBRUARY 6TH, 2020, 9:00 A.M.

2

3 THE COURT: GOOD MORNING. THIS IS THE CASE OF
4 PEOPLE VERSUS SUKARI HARRIS. COULD I HAVE APPEARANCES OF
5 COUNSEL, PLEASE.

6 MS. ROSS: GOOD MORNING, YOUR HONOR. ADRIANA ROSS
7 ON BEHALF OF THE PEOPLE.

8 MR. GENZER: GOOD MORNING, YOUR HONOR. DEPUTY
9 PUBLIC DEFENDER ABRAM GENZER ON BEHALF OF MS. HARRIS,
10 SHE'S PRESENT BEFORE THE COURT OUT OF CUSTODY.

11 THE COURT: ALL RIGHT. THANK YOU. THIS MATTER HAS
12 BEEN SET FOR A MOTION TO SUPPRESS EVIDENCE PURSUANT TO
13 PENAL CODE SECTION 1538.5. I'VE REVIEWED THE MOTION TO
14 SUPPRESS AUTHORED BY MR. GENZER ON BEHALF OF THE
15 DEFENDANT, FILE STAMPED JANUARY 9TH, 2020, POINTS AND
16 AUTHORITIES IN OPPOSITION TO THE MOTION AUTHORED BY
17 GORDON DAVIS, FILE STAMPED JANUARY 28TH, 2020, AND A
18 RESPONSE TO THE OPPOSITION AUTHORED BY MR. GENSER, FILE
19 STAMPED FEBRUARY 5TH, 2020. I'VE ALSO, AND I'M GOING TO
20 COMMENT ABOUT THIS IN A MOMENT, REVIEWED THE PRELIMINARY
21 HEARING TRANSCRIPT FOR THE HEARING HELD ON DECEMBER 18,
22 2019, WHICH WILL BE INCORPORATED INTO THE RECORD. A
23 COUPLE OF PROCEDURAL MATTERS I WANTED TO ADDRESS. OUR
24 LOCAL RULES OF COURT 3.2.2 INDICATE THAT ANY REPLY BRIEF
25 MUST BE FILED AND PERSONALLY SERVED AT LEAST TWO DAYS
26 BEFORE THE HEARING. THE REPLY BRIEF WAS FILED YESTERDAY
27 IN VIOLATION OF THOSE RULES. AND MY CLERK HAD CONSULTED
28 WITH OUR RESEARCH DEPARTMENT WHO INSTRUCTED HER THAT SHE

1 HAD TO ACCEPT IT. AND I SPOKE WITH THE RESEARCH ATTORNEY
2 WHO TOLD MY CLERK THAT. AND SHE INDICATED SHE MADE A
3 MISTAKE, THAT THAT'S THE CIVIL RULE. BUT THERE'S NO SUCH
4 RULE IN CRIMINAL CASES. SO IT SHOULD NOT HAVE BEEN
5 ACCEPTED FOR FILING. BUT IN THIS PARTICULAR CASE SINCE
6 IT WAS, I HAVE CONSIDERED IT. BUT I WANT TO PLEASE
7 ADVISE, I HAVE TREMENDOUS RESPECT FOR YOU, MR. GENZER,
8 BUT PLEASE LET YOUR COLLEAGUES KNOW THAT I EXPECT THEM TO
9 COMPLY WITH RULES OF COURT.

10 MR. GENZER: YOUR HONOR, I THINK YOU COUNT BOTH THE
11 DAY IT'S FILED AND THE DAY OF THE COURT HEARING, GIVES ME
12 THE TWO DAYS, WHICH IS WHAT I TOLD THE CLERK. AND I
13 BELIEVE THAT'S THE LAW.

14 THE COURT: THAT'S TWO DAYS BEFORE THE HEARING.

15 MR. GENZER: I UNDERSTAND THAT, YOUR HONOR. BUT I
16 THINK WHEN YOU'RE COUNTING TIME, YOU INCLUDE THE DAY OF
17 THE HEARING AND THE DAY OF FILING, WHICH IS TWO DAYS.

18 THE COURT: I DISAGREE WITH THAT. AND THE REASON IS
19 BECAUSE THE OBVIOUS PURPOSE OF IT IS TO GIVE THE JUDGE
20 THE OPPORTUNITY TO RESEARCH THE LAW. AND NO RULE OF
21 COURT WOULD CONSIDER A JUDGE HAVING TO READ AND RESEARCH
22 THE ISSUES THE DAY BEFORE THE HEARING. BUT LET ME JUST
23 CHECK THE EXACT LANGUAGE. IT'S AN INTERESTING
24 INTERPRETATION, I'VE NEVER HEARD THAT BEFORE.

25 MR. GENZER: I THINK -- AND IT'S BEEN A LONG TIME
26 SINCE I'VE LOOKED. MY RECOLLECTION WAS THAT AS PART OF
27 THE CIVIL CODE WHEN YOU'RE CALCULATING TIME FOR THE
28 NUMBER OF DAYS FOR FILING A MOTION, THAT YOU INCLUDE BOTH

1 THE DAY THAT YOU HAVE FILED THE MOTION AND THE DAY OF THE
2 HEARING AS ONE OF THE DAYS. AND SO --

3 THE COURT: OKAY. WELL, I DISAGREE WITH THAT
4 INTERPRETATION HERE BECAUSE THE LANGUAGE READS AS
5 FOLLOWS, AND I'M READING FROM 3.2.2, PARAGRAPH C,
6 SUBSECTION FIVE, SMALL A. THE REPLY BRIEF MUST BE FILED
7 AND PERSONALLY SERVED AT LEAST TWO COURT DAYS PRIOR TO
8 THE HEARING. AND SO TO ME THAT CLEARLY MEANS TWO DAYS
9 BEFORE THE DAY OF THE HEARING. AND IN ANY EVENT, I WILL
10 BE INSTRUCTING THE CLERK NOT TO ACCEPT THE FILING, ANY
11 HEARINGS THAT ARE FILED THE DAY BEFORE THE HEARING. SO
12 JUST LET YOUR COLLEAGUES KNOW THAT. THE OTHER RULE OF
13 COURT THAT WAS NOT COMPLIED WITH IS THE RULE OF COURT AT
14 3.2.2 RELATING TO 1538.5 MOTIONS REQUIRING ATTORNEYS TO
15 INDICATE ON THE FRONT PAGE OF THEIR PLEADING WHETHER OR
16 NOT THEY STIPULATE TO THE PRELIMINARY HEARING TRANSCRIPT.
17 SOME ATTORNEYS DO THAT, SOME DON'T. I DON'T TAKE KINDLY
18 TO IGNORING THE LOCAL RULES OF COURT, WE HAVE THEM FOR A
19 REASON. IN THIS CASE THE PEOPLE DID COMPLY WITH THE
20 RULES, THEY STIPULATE YES ON THE FRONT PAGE OF THEIR
21 PLEADING. THE RULE SAYS THAT IF THERE IS NO INDICATION
22 AS DEEMED TO BE A STIPULATION TO THE TRANSCRIPT. AND
23 THAT'S WHY I'VE INCORPORATED THE TRANSCRIPT INTO THE
24 RECORD OF THIS CASE. AND THE PEOPLE WILL NOT BE REQUIRED
25 TO REPEAT EVERYTHING THAT'S IN THE TRANSCRIPT BECAUSE
26 IT'S PART OF THE RECORD. SO IT'S NOT AS IF WE'RE
27 STARTING FROM SCRATCH. SO I JUST WANT TO MAKE THAT CLEAR
28 TO THE PEOPLE, I DON'T WANT TO HEAR EVERYTHING THAT'S IN

1 THE TRANSCRIPT.

2 MS. ROSS: OKAY. IT WILL BE SOMEWHAT DIFFICULT
3 SINCE I AM PLAYING THE BODY WORN CAMERA.

4 THE COURT: WELL, NO, THAT'S FINE. I MEAN,
5 OBVIOUSLY AT A PRELIMINARY HEARING WHERE THERE'S NO
6 1538.5 RELEVANT QUESTIONS ABOUT THE REASON FOR THE STOP
7 AND THE REASON THAT IS RELATED TO THE FOURTH AMENDMENT IS
8 IRRELEVANT. SO THOSE QUESTIONS ARE NOT ASKED, I
9 UNDERSTAND THAT. I'M JUST SAYING THAT THERE'S A LOT OF
10 BACKGROUND INFORMATION IN THERE THAT YOU DON'T NEED TO
11 REPEAT. SO THAT'S THE PURPOSE OF THE STIPULATION TO THE
12 TRANSCRIPT. AND SOME PEOPLE IN YOUR OFFICE, MR. GENZER,
13 HAVE STRICTLY COMPLIED WITH THOSE RULES AND SOME HAVE
14 NOT. AND THAT'S ANOTHER RULE THAT I WOULD APPRECIATE
15 YOUR GETTING THE WORD AROUND TO COMPLY WITH THAT.

16 MR. GENZER: I'M HAPPY TO DO THAT. I WOULD HAVE
17 STIPULATED HAD IT CROSSED MY MIND.

18 THE COURT: WELL, I'VE ACTUALLY HAD SOME PLEADINGS
19 THAT SAY NO. AND SO THAT'S WHY WE HAVE THE RULE SO THE
20 COURT KNOWS WHETHER OR NOT TO READ THE PRELIMINARY
21 HEARING TRANSCRIPT IN PREPARING FOR THE MOTION. IT'S AN
22 IMPORTANT ISSUE FOR THE JUDGE PRESIDING OVER THE MOTION.
23 ALL RIGHT. NOW THAT WE HAVE GOT THOSE PROCEDURAL MATTERS
24 OUT OF THE WAY, LET ME JUST SHIFT GEARS HERE AND INDICATE
25 THAT I'VE DESCRIBED THE PLEADINGS THAT I'VE CONSIDERED
26 AND ALSO THE PRELIMINARY HEARING TRANSCRIPT. SO MY NEXT
27 QUESTION IS, HAVE I DESCRIBED EVERYTHING I SHOULD HAVE AS
28 FAR AS BOTH SIDES ARE AWARE?

1 MS. ROSS: YES, YOUR HONOR.

2 MR. GENZER: YES, YOUR HONOR. THE ONLY SORT OF
3 PREDICAMENT IS THAT WITH THE PROSECUTION'S MOTION THEY
4 ATTACHED AN EXHIBIT.

5 THE COURT: I DON'T CONSIDER THAT, THAT'S NOT IN
6 EVIDENCE.

7 MR. GENZER: OKAY. I JUST WANT TO MAKE SURE THAT
8 THAT'S THE COURT'S POSITION. THEN I'M PREPARED TO GO
9 FORWARD.

10 THE COURT: THIS IS THE EVIDENTIARY HEARING. WHAT'S
11 SUBMITTED BEFORE IS NOT CONSIDERED AS EVIDENCE. ALL
12 RIGHT. IS IT STIPULATED BY THE PEOPLE THAT THERE WAS NO
13 WARRANT IN THIS CASE?

14 MS. ROSS: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT. THE BURDEN IS THEN ON THE
16 PEOPLE BY A PREPONDERANCE OF THE EVIDENCE. DO YOU WISH
17 TO PRESENT ANY EVIDENCE AT THIS TIME?

18 MS. ROSS: YES, I DO, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MS. ROSS: THE PEOPLE WOULD LIKE TO CALL WITNESS
21 OFFICER ROBERT NELSON.

22

23

ROBERT NELSON

24 CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN FIRST DULY
25 SWORN, TESTIFIED AS FOLLOWS:

26

27 THE CLERK: THANK YOU. PLEASE TAKE A SEAT AT THE
28 WITNESS STAND.

1 THE COURT: MADAM PROSECUTOR, SINCE YOUR NAME IS NOT
2 ON THE PLEADINGS, I DON'T HAVE ANYTHING WITH YOUR NAME ON
3 IT. CAN YOU GIVE IT TO ME AGAIN?

4 MS. ROSS: YES, YOUR HONOR. FIRST NAME,
5 A-D-R-I-A-N-A, LAST NAME, ROSS, R-O-S-S.

6 THE COURT: THANK YOU.

7 MS. ROSS: MAY I INQUIRE OF THE WITNESS, YOUR HONOR?

8 THE COURT: YES.

9

10 DIRECT EXAMINATION

11 BY MS. ROSS:

12 Q CAN YOU PLEASE STATE YOUR FULL NAME, FOR THE
13 RECORD, AND SPELL YOUR FIRST AND LAST NAME.

14 A ROBERT NELSON, R-O-B-E-R-T, N-E-L-S-O-N.

15 Q MR. NELSON, ARE YOU A SAN DIEGO POLICE
16 DEPARTMENT POLICE OFFICER?

17 A I AM.

18 Q AND HOW LONG HAVE YOU BEEN A POLICE OFFICER
19 WITH SAN DIEGO?

20 A FOUR YEARS.

21 Q DO YOU HAVE ANY PRIOR LAW ENFORCEMENT
22 EXPERIENCE PRIOR TO THAT?

23 A NO, MA'AM.

24 Q WERE YOU WORKING AS A POLICE OFFICER BACK ON
25 NOVEMBER 29TH OF 2019?

26 A I WAS.

27 Q WERE YOU WORKING ALONE OR WITH A PARTNER?

28 A I HAD A PARTNER THAT NIGHT.

1 Q WHO WAS THAT PARTNER?

2 A OFFICER HUFF.

3 Q AND WERE YOU ON FOOT PATROL OR IN A PATROL
4 VEHICLE?

5 A PATROL VEHICLE, MY CURRENT ASSIGNMENT WHICH IS
6 PART OF THE CENTRAL DIVISION CRIME SUPPRESSION TEAM.

7 Q AND WERE YOU BOTH IN THE SAME PATROL VEHICLE?

8 A WE WERE.

9 Q IS THAT A MARKED BLACK AND WHITE POLICE
10 VEHICLE?

11 A YES.

12 Q AND YOU MENTIONED WHAT YOUR SPECIFIC ASSIGNMENT
13 WAS AT THE TIME. WHAT EXACTLY IS THAT TEAM ASSIGNED TO
14 DO?

15 A IT'S A SPECIALIZED UNIT FROM OUR COMMAND.
16 BASICALLY WE HANDLE COMPLAINTS OR AREAS THAT ARE GETTING
17 A LOT OF COMPLAINTS, WE CONDUCT ENFORCEMENT IN THOSE
18 AREAS.

19 Q AND DID THAT INCLUDE THE 200 BLOCK OF 16TH
20 STREET?

21 A YES.

22 Q AND CAN YOU DESCRIBE FOR THE COURT WHAT THIS
23 AREA IS LIKE, THAT BLOCK?

24 A 200 16TH STREET IN THE EAST VILLAGE, IT'S AN
25 AREA THAT GENERALLY RIGHT NOW IS EITHER HOMELESS SHELTERS
26 OR A COMMERCIAL AREA. WE HAVE A LARGE NARCOTIC ISSUE IN
27 THAT AREA, PEOPLE SELLING DRUGS, USING DRUGS IN PUBLIC.
28 WE GET MULTIPLE COMPLAINTS ABOUT PEOPLE CAMPING ON THE

1 SIDEWALK. OUR TEAM FOCUSES MAINLY ON THE NARCOTIC USAGE
2 AND SELLING.

3 Q AND YOU MENTIONED THAT THERE ARE HOMELESS
4 SHELTERS THERE. DO YOU MEAN LEGITIMATE SHELTERS OR
5 ENCAMPMENTS?

6 A AT 200 16TH STREET, IT'S ENCAMPMENTS. TO THE
7 SOUTH AND A LITTLE BIT FURTHER TO THE NORTH, THERE ARE
8 ACTUAL SHELTERS.

9 Q AND ARE YOU AWARE OF WHETHER OR NOT ENCAMPING
10 IN THAT PARTICULAR BLOCK OF 16TH STREET IS PERMITTED?

11 A IT'S NOT.

12 Q TO YOUR KNOWLEDGE, WHAT PROHIBITS ENCAMPMENTS
13 THERE?

14 A IT'S SAN DIEGO MUNICIPAL CODE 54.0110, WHICH IS
15 ENCROACHMENT. IT'S ANY ERECTED STRUCTURE, TENT, PROPERTY
16 OR ANYTHING BLOCKING THE PUBLIC SIDEWALK FOR PEDESTRIAN
17 WALKING.

18 Q IS THERE IN FACT A PEDESTRIAN SIDEWALK ON THE
19 200 BLOCK OF 16TH STREET?

20 A ON THE EAST AND WEST SIDE.

21 Q DID YOU CONTACT SOMEBODY THAT DAY NAMED SUKARI
22 HARRIS?

23 A I DID.

24 Q AND PRIOR TO THAT CONTACT IN NOVEMBER, DID YOU
25 KNOW MS. HARRIS?

26 A ONLY HER NAME.

27 Q AND HOW DID YOU KNOW HER NAME?

28 A I'VE HAD A COUPLE OF ENFORCEMENT CONTACTS WITH

1 HER DAUGHTERS. AND THEN DOING BACKGROUND CHECKS AND
2 RECORDS CHECKS ON HER DAUGHTERS, I HAD COME ACROSS HER
3 NAME, BUT I HAD NEVER MET HER IN PERSON.

4 Q AND DO YOU SEE MS. HARRIS IN COURT TODAY?

5 A I DO.

6 Q CAN YOU DESCRIBE FOR THE COURT WHERE SHE IS
7 SITTING AND SOMETHING SHE IS WEARING?

8 A TO MY FAR LEFT AND SHE'S WEARING A RED SWEATER.

9 MS. ROSS: MAY THE RECORD REFLECT THAT THE WITNESS
10 IDENTIFIED THE DEFENDANT MS. HARRIS?

11 THE COURT: YES, THE RECORD WILL SO REFLECT.

12 MS. ROSS: THANK YOU, YOUR HONOR.

13 BY MS. ROSS:

14 Q AND YOU SEE MS. HARRIS IN COURT TODAY. DOES
15 HER APPEARANCE TODAY LOOK DIFFERENT THAN IT DID WHEN YOU
16 CONTACTED HER BACK ON NOVEMBER 29TH?

17 A YES.

18 Q HOW SO?

19 A HAIR IS DIFFERENT.

20 Q WHAT IS DIFFERENT ABOUT HER HAIR TODAY FROM
21 NOVEMBER 29TH?

22 A WHEN WE CONTACTED HER, SHE HAD A LIGHT BROWN
23 COLORED HAIR, A LITTLE BIT LONGER. I BELIEVE IT WAS FAKE
24 AT THE TIME.

25 Q AND TODAY WOULD YOU AGREE WITH ME THAT HER HAIR
26 IS QUITE SHORT AND DARKER, ALMOST BLACK IN COLOR?

27 A YES.

28 Q AND WHEN YOU FIRST SAW MS. HARRIS, WERE YOU

1 INSIDE OR OUTSIDE OF YOUR PATROL VEHICLE?

2 A INSIDE.

3 Q AND WHO WAS DRIVING, WAS IT YOU OR OFFICER
4 HUFF?

5 A MY PARTNER OFFICER HUFF.

6 Q AND WERE YOU WEARING YOUR BODY WORN CAMERAS
7 THAT DAY?

8 A YES.

9 Q BOTH OF YOU WERE WEARING THEM?

10 A YES.

11 Q AND CAN YOU DESCRIBE JUST BRIEFLY FOR THE
12 RECORD WHAT BODY WORN CAMERAS ARE?

13 A BODY WORN CAMERA OR BWC IS BASICALLY A CAMERA
14 THAT SITS ON MY CHEST, WHICH IS WHERE I HAVE IT MOUNTED,
15 IT'S GOT A LARGE BUTTON AND A SCREEN OR A LENS. AND I
16 USE, YOU KNOW, THE LARGE BUTTON ACTIVATED. SO WE
17 ACTIVATE IT WHENEVER WE'RE ABOUT TO MAKE AN ENFORCEMENT
18 CONTACT OR GO TO A RADIO CALL FOR POSSIBILITY OF
19 ENFORCEMENT.

20 Q AND DOES ALL THAT INFORMATION, DOES THAT APPLY
21 TO OFFICER HUFF'S BODY WORN CAMERA AS WELL?

22 A YES.

23 Q WHEN YOU FIRST SAW HIS MS. HARRIS THAT DAY FROM
24 YOUR PATROL VEHICLE, WHAT WAS SHE DOING?

25 A SHE WAS ON THE EAST SIDE OF 200 16TH STREET,
26 THERE WAS MULTIPLE TENTS, SHE WAS RIGHT NEXT TO A TENT
27 AND A BUNCH OF PROPERTY WITH ANOTHER MALE.

28 Q AND WAS SHE SITTING, STANDING, SOMETHING

1 DIFFERENT?

2 A STANDING.

3 Q AND ABOUT HOW CLOSE WAS SHE TO THE TENT THAT
4 YOU DESCRIBED?

5 A WITHIN A COUPLE FEET, LIKE DIRECTLY NEXT TO IT
6 IS HOW I PUT IT.

7 Q AND AROUND WHAT TIME OF DAY WAS THIS?

8 A I BELIEVE IT WAS AROUND 1830, 1800, SO TOWARDS
9 THE NIGHTTIME.

10 Q WAS IT DARK OUTSIDE?

11 A IT WAS.

12 Q AND WHAT DID YOU NOTICE ABOUT MS. HARRIS THAT
13 CAUGHT YOUR ATTENTION?

14 A THE COLOR OF HER HAIR, LENGTH.

15 Q OKAY. AND WHAT SPECIFICALLY ABOUT THAT, WHY
16 WAS THAT NOTABLE TO YOU?

17 MR. GENZER: I'M GOING TO OBJECT, HEARSAY,
18 HARVEY-MADDEN.

19 THE COURT: WELL, LET ME HEAR THE ANSWER, OVERRULED.

20 THE WITNESS: IT CAUGHT MY ATTENTION BECAUSE IT WAS
21 SIMILAR TO A BOL FLYER THAT I RECEIVED FROM MY DEPARTMENT
22 EMAIL FROM A DETECTIVE AT OUR DIVISION. IT WAS RELATED
23 TO A CARJACKING THAT HAD OCCURRED THE PREVIOUS DAY AT
24 2100 IMPERIAL.

25 MR. GENZER: AND I RENEW MY OBJECTION. IT'S HEARSAY
26 AND HARVEY-MADDEN.

27 THE COURT: WELL, I'M REQUIRED TO CONSIDER THE
28 INFORMATION THE OFFICER HAD TO DETERMINE JUSTIFICATION.

1 YOU CAN CROSS-EXAMINE BOTH THE SOURCE OF THAT INFORMATION
2 AND I'LL CONSIDER WHAT THE ANSWERS ARE. BUT WITH REGARD
3 TO HIM BEING ABLE TO STATE THE INFORMATION HE HAD AT THE
4 TIME, WHETHER IT'S ACCURATE OR NOT, THE OBJECTION IS
5 OVERRULED. I'M NOT CONSIDERING IT FOR THE TRUTH OTHER
6 THAN WHAT HE BELIEVED AT THE TIME.

7 MR. GENZER: I JUST WANT TO MAKE SURE THAT I HAVE
8 THE COURT'S RULING CORRECT IN MY MIND. SO HARVEY-MADDEN
9 REQUIRES THAT IN ORDER FOR THE OFFICER, THE TESTIFYING
10 WITNESS TO RELY ON HEARSAY FOR HIS REASONABLE SUSPICION,
11 THE ORIGINAL PERSON MUST TESTIFY ABOUT THAT HEARSAY
12 STATEMENT.

13 THE COURT: ALL RIGHT. SO THAT'S SOMETHING YOU CAN
14 BRING UP IN ARGUMENT IF THEY DON'T COMPLY WITH
15 HARVEY-MADDEN.

16 MR. GENZER: I JUST WANT TO MAKE SURE WE'RE ALL ON
17 THE SAME PAGE.

18 THE COURT: I'LL MAKE SURE TO RESEARCH THAT ISSUE
19 BEFORE I RULE.

20 MR. GENZER: AND JUST FOR THE RECORD, I PUT A
21 HARVEY-MADDEN OBJECTION IN MY ORIGINAL FILINGS TO
22 PRESERVE THE ISSUE.

23 THE COURT: ALL RIGHT. LET'S PROCEED.

24 MS. ROSS: THANK YOU, YOUR HONOR.

25 BY MS. ROSS:

26 Q SO YOU MENTIONED SHE MATCHED THE DESCRIPTION
27 OF, AS YOU CALLED IT, A BOL. IS THAT A BE ON THE
28 LOOKOUT?

1 A YES.

2 Q OKAY. AND IS THAT SOME SORT OF NOTIFICATION SO
3 THAT OFFICERS CAN COMMUNICATE WITH EACH OTHER ABOUT
4 SUSPECTS THEY'RE TRYING TO LOCATE?

5 MR. GENZER: AND I'M SORRY, YOUR HONOR. CAN I HAVE
6 A CONTINUING HEARSAY HARVEY-MADDEN OBJECTION SO I CAN
7 STOP INTERRUPTING?

8 THE COURT: YES, AND IT'S OVERRULED FOR NOW.

9 BY MS. ROSS:

10 Q YOU CAN ANSWER.

11 A YES, IT'S A FLYER OR FLYER TYPE OF NOTIFICATION
12 SENT OUT TO PATROL OFFICERS USUALLY FROM INVESTIGATORS.

13 Q AND IN ADDITION TO THAT BE ON THE LOOKOUT, WERE
14 YOU CONSIDERING AT THIS POINT ANYTHING TO DO WITH MS.
15 HARRIS' PROXIMITY TO THE ENCAMPMENT ON THE SIDEWALK?

16 A YES.

17 Q AND WHAT WAS THAT CONSIDERATION?

18 A THE ENCROACHMENT VIOLATION WHICH WAS BEING IN
19 OR AROUND THAT LARGE TENT WHICH WAS BLOCKING THE
20 SIDEWALK.

21 MS. ROSS: AND, YOUR HONOR, I WOULD LIKE TO MARK AT
22 THIS TIME A SINGLE PAGE AS PEOPLE'S EXHIBIT 1.

23 THE COURT: ALL RIGHT. A ONE PAGE DOCUMENT WILL BE
24 PEOPLE'S 1 FOR IDENTIFICATION.

25 MR. GENZER: YOUR HONOR, I WOULD OBJECT TO THIS
26 DOCUMENT AS HEARSAY.

27 THE COURT: WELL, IT'S NOT BEING OFFERED YET, IT'S
28 ONLY BEING MARKED, IT'S PREMATURE. OVERRULED FOR NOW.

1 (PEOPLE'S EXHIBIT NUMBER 1 WAS MARKED FOR
2 IDENTIFICATION)

3

4 MS. ROSS: AND I HAVE MARKED A SINGLE PAGE AS
5 PEOPLE'S EXHIBIT 1 FOR IDENTIFICATION. MAY I APPROACH
6 THE WITNESS, YOUR HONOR?

7 THE COURT: YES.

8 BY MS. ROSS:

9 Q OFFICER NELSON, DO YOU RECOGNIZE WHAT'S BEEN
10 PREMARKED FOR IDENTIFICATION --

11 THE COURT: IT'S NOT PREMARKED, IT'S FORMALLY
12 MARKED.

13 BY MS. ROSS:

14 Q FORMALLY MARKED. YES, YOUR HONOR. IT'S BEEN
15 PREVIOUSLY SHOWN TO DEFENSE COUNSEL AS PEOPLE'S EXHIBIT
16 1.

17 A YES?

18 Q WHAT IS THAT?

19 A THIS IS A COPY OF THE FLYER THAT I WAS SENT BY
20 DETECTIVE DOUGH IN RELATION TO THAT CARJACKING.

21 Q SO THIS IS THAT BE ON THE LOOKOUT FLYER THAT
22 YOU WERE REFERRING TO EARLIER?

23 A YES, MA'AM.

24 Q AND CAN YOU DESCRIBE FOR US GENERALLY WHAT'S
25 CONTAINED IN THE FLYER THAT YOU WERE RELYING ON?

26 MR. GENZER: OBJECTION, HEARSAY.

27 THE COURT: AGAIN, I'LL RECEIVE IT NOT FOR ITS
28 TRUTH, BUT TO VERIFY WHAT THE OFFICER RELIED ON AT THE

1 TIME.

2 MR. GENZER: AND EVEN THOUGH I DID NOT SAY IT, MY
3 OBJECTION IS ALSO UNDER HARVEY-MADDEN.

4 THE COURT: OKAY.

5 BY MS. ROSS:

6 Q SO CAN YOU DESCRIBE FOR US GENERALLY THE
7 INFORMATION CONTAINED IN THAT FLYER THAT YOU WERE RELYING
8 ON OR THINKING OF WHEN YOU FIRST SAW MS. HARRIS?

9 A IT WAS MAINLY THE PHOTOGRAPHS THAT ARE ON HERE,
10 THERE'S TWO PHOTOGRAPHS. HOWEVER, THESE ARE -- IT'S A
11 DARKER COPY, SO IT'S VERY HARD TO MAKE OUT THE PEOPLE WHO
12 ARE ON IT. BUT I BELIEVE IT'S THE FEMALE IN THE LOWER
13 RIGHT CORNER OF THE LEFT PHOTOGRAPH THAT HAD THE LIGHT
14 BROWN COLORED HAIR.

15 Q AND IS THAT PERSON FURTHER DESCRIBED IN
16 ADDITION TO THE PHOTO IN AN ACTUAL NARRATIVE ON THE
17 FLYER?

18 A IT IS.

19 Q AND WHAT IS THAT DESCRIPTION?

20 A IN ESSENCE, ALL SUSPECTS ARE BLACK FEMALES
21 BETWEEN THE AGES OF 20, 25 YEARS OLD. AND THEN IT HAS A
22 DESCRIPTION, INCLUDING LONG BROWN HAIR, PURPLE PAJAMA
23 PANTS, AND CONTINUES ON.

24 Q AND THIS WAS FROM A SUSPECTED CARJACKING FROM
25 THE DAY PRIOR TO CONTACTING MS. HARRIS; IS THAT RIGHT?

26 A CORRECT.

27 Q AND THAT CARJACKING WAS SUSPECTED TO HAVE
28 OCCURRED YOU SAID OFF IMPERIAL?

1 A CORRECT, BY THE WALMART, 2100 IMPERIAL IS THE
2 GENERAL AREA.

3 Q AND ABOUT HOW FAR AWAY IS THAT AREA FROM WHERE
4 YOU WERE CONTACTING MS. HARRIS ON NOVEMBER 29TH?

5 A IT'S ABOUT SIX BLOCKS.

6 Q AND YOU MENTIONED THAT MS. HARRIS FIT THIS
7 DESCRIPTION, AND YOU ALSO POINTED OUT THE LIGHT BROWN
8 HAIR IN PARTICULAR; IS THAT CORRECT?

9 A IN PARTICULAR, CORRECT.

10 Q DID YOU ACTIVATE YOUR BODY WORN CAMERA WHEN YOU
11 FIRST CONTACTED MS. HARRIS?

12 A YES.

13 Q AND DID YOUR PARTNER ACTIVATE IT AS WELL?

14 A I BELIEVE HE DID.

15 Q HAVE YOU SEEN HIS BODY WORN CAMERA BEFORE COURT
16 TODAY?

17 A I HAVE NOT.

18 Q HAVE YOU WATCHED YOUR BODY WORN CAMERA?

19 A I HAVE.

20 Q AND WERE YOU AND YOUR PARTNER TOGETHER
21 THROUGHOUT THIS ENTIRE CONTACT?

22 A YES.

23 Q WHEN YOU APPROACHED MS. HARRIS, DID YOU PULL
24 YOUR PATROL VEHICLE UP TO THE SIDEWALK?

25 A MY PARTNER WAS DRIVING. I'M NOT SURE IF HE
26 PULLED IT, I THINK, INTO THE CENTER LIKE TURN LANE.
27 THERE'S A SINGLE NORTHBOUND LANE, A SINGLE SOUTHBOUND
28 LANE, AND THEN THERE'S A TWO-WAY TURN LANE IN THE CENTER

1 OF THAT STREET. I BELIEVE HE PULLED IN THERE.

2 Q. AND WHERE DID HE PULL IN IN REGARDS TO WHERE
3 MS. HARRIS WAS ON THE SIDEWALK?

4 A WE WERE DIRECTLY ACROSS HER. SO WHERE WE HAD
5 PARKED OUR CAR, IF I WERE TO GET OUT AND GO EAST, SHE WAS
6 DIRECTLY ACROSS FROM WHERE WE WERE.

7 Q AND DID YOUR PARTNER ACTIVATE THE LIGHTS AND
8 SIRENS ON THE VEHICLE?

9 A NO.

10 Q DID YOU THEN BOTH EXIT YOUR VEHICLE AND CONTACT
11 MS. HARRIS?

12 A YES.

13 MS. ROSS: YOUR HONOR, I WOULD NOW LIKE TO MARK A
14 SINGLE DISK AS PEOPLE'S EXHIBIT 2, AS WELL AS THE
15 TRANSCRIPT THAT GOES ALONG WITH THAT DISK AS PEOPLE'S
16 EXHIBIT 3.

17 THE COURT: ALL RIGHT. THE DISK IS IN AN ENVELOPE?

18 MS. ROSS: CORRECT, YOUR HONOR.

19 THE COURT: ALL RIGHT. THE ENVELOPE AND DISK WILL
20 BE PEOPLE'S 2 FOR IDENTIFICATION. AND HOW MANY PAGE
21 DOCUMENT IS THE TRANSCRIPT?

22 MS. ROSS: THE TRANSCRIPT IS 20 PAGES.

23 THE COURT: ALL RIGHT. A 20 PAGE DOCUMENT WILL BE
24 PEOPLE'S 3 FOR IDENTIFICATION.

25

26 (PEOPLE'S EXHIBIT NUMBERS 2 AND 3 WERE MARKED FOR
27 IDENTIFICATION)

28

1 MS. ROSS: AND MAY I HAVE THE COURT'S PERMISSION TO
2 DISPLAY PEOPLE'S EXHIBIT 2 ON THE SCREEN?

3 THE COURT: ARE YOU GOING TO BE PROVIDING A COPY OF
4 THE TRANSCRIPT TO THE COURT AND COUNSEL?

5 MS. ROSS: YES, YOUR HONOR. I'VE ALREADY PROVIDED
6 IT TO COUNSEL AND I HAVE YOUR HONOR'S COPY HERE.

7 MR. GENZER: AND, YOUR HONOR, JUST TO CONTINUE TO
8 PRESERVE MY OBJECTION, THERE ARE SOME PARTS OF THIS THAT
9 CONTAIN INFORMATION RELATED TO THE HEARSAY HARVEY-MADDEN
10 OBJECTION THAT I HAVE.

11 THE COURT: I UNDERSTAND.

12 MR. GENZER: JUST MAKING SURE.

13 THE COURT: YEAH. AND I'LL INDICATE I'M FAMILIAR
14 WITH THE CASE LAW RELATING TO HARVEY-MADDEN. THERE'S NOT
15 AN ABSOLUTE REQUIREMENT. WE CAN ARGUE THIS LATER. BUT
16 THERE'S NOT AN ABSOLUTE REQUIREMENT THAT THE SOURCE OF
17 WITNESSES BE CALLED IF THERE IS OTHER CORROBORATING
18 CIRCUMSTANTIAL EVIDENCE. BUT I'M NOT MAKING ANY
19 JUDGMENTS ABOUT THAT ISSUE NOW. I'M AWARE THERE ARE A
20 NUMBER OF DIFFERENT CASES INVOLVING JUSTIFICATION FOR
21 HARVEY-MADDEN. SO WITHOUT PREJUDICE TO THE DEFENSE, I
22 WILL HOLD MY RULINGS IN ABEYANCE UNTIL I HEAR THE REST OF
23 THE EVIDENCE.

24 MS. ROSS: YOUR HONOR, MAY I APPROACH THE WITNESS TO
25 PROVIDE A COPY OF THE TRANSCRIPT AS WELL?

26 THE COURT: YES.

27 MS. ROSS: THANK YOU.

28 BY MS. ROSS:

1 Q OFFICER NELSON, YOU CAN FOLLOW ALONG.

2 A THANK YOU, MA'AM.

3 THE COURT: HAS SOMEBODY REVIEWED THIS FOR ACCURACY?

4 USUALLY THE WITNESS TESTIFIES HE'S LISTENED TO IT AND
5 REVIEWED IT AND THE TRANSCRIPT IS ACCURATE IN ORDER TO
6 LAY THE FOUNDATION FOR THE RECEIPT OF THE DOCUMENT.

7 MS. ROSS: YES, YOUR HONOR. OFFICER NELSON DID
8 RECEIVE THIS I BELIEVE TWO DAYS AGO.

9 THE COURT: WELL, I DON'T NEED YOU TO TESTIFY. YOU
10 CAN JUST ASK HIM WHATEVER QUESTIONS ARE NECESSARY TO
11 VERIFY.

12 MS. ROSS: YES, OF COURSE, YOUR HONOR. I THOUGHT
13 YOUR HONOR WAS ASKING ME SPECIFICALLY.

14 BY MS. ROSS:

15 Q OFFICER NELSON, YOU HAVE IN FRONT OF YOU A 20
16 PAGE DOCUMENT, WHICH HAS BEEN MARKED AS PEOPLE'S EXHIBIT
17 3 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT DOCUMENT?

18 A I DO.

19 Q AND HAVE YOU PREVIOUSLY SEEN THAT TRANSCRIPT
20 BEFORE?

21 A YES.

22 Q AND DID YOU IN FACT INFORM OUR OFFICE OF
23 CORRECTIONS THAT NEEDED TO BE MADE TO THE TRANSCRIPT
24 PRIOR TO TODAY?

25 A I DID.

26 Q AND FOR THE RECORD, I AM DISPLAYING ON THE
27 SCREEN FOR THE COURT WHAT HAS PREVIOUSLY BEEN MARKED AS
28 PEOPLE'S EXHIBIT 2.

1 THE COURT: ARE YOU PLANNING ON TALKING WHILE THIS
2 IS PLAYING BECAUSE I NEED TO INSTRUCT THE REPORTER.
3 GENERALLY, I GET A STIPULATION FROM COUNSEL THAT THE
4 REPORTER NEED NOT REPORT WHILE THE VIDEO IS PLAYING. ARE
5 YOU PLANNING ON STARTING AND STOPPING IT?

6 MS. ROSS: I'M PLANNING ON STARTING AND STOPPING IT,
7 YOUR HONOR. I HAVE PROVIDED A COPY OF THE TRANSCRIPT TO
8 THE COURT REPORTER.

9 THE COURT: OKAY. BUT GENERALLY, THE REPORTER IS
10 NOT REQUIRED TO TAKE DOWN WHAT'S BEING PLAYED. SO DO YOU
11 STIPULATE THAT THE REPORTER NEED NOT REPORT WHILE THE
12 VIDEO IS BEING PLAYED UNTIL SUCH TIME AS YOU INDICATE
13 YOU'RE STOPPING IT AND YOU WANT TO QUESTION THE WITNESS?

14 MS. ROSS: YES, YOUR HONOR.

15 MR. GENZER: YES, YOUR HONOR, SO STIPULATED.

16 THE COURT: ALL RIGHT.

17 BY MS. ROSS:

18 Q SO AGAIN, ON THE SCREEN IS WHAT HAS ALREADY
19 BEEN MARKED AS PEOPLE'S EXHIBIT 2. OFFICER NELSON, DO
20 YOU RECOGNIZE THIS, IT'S STOPPED AT 00, DO YOU RECOGNIZE
21 THIS STILL SHOT UP ON THE SCREEN?

22 A IT APPEARS TO BE OFFICER HUFF'S BODY WORN
23 CAMERA.

24 Q AND IT HAS THE LITTLE LOGO FOR THE AXON BODY
25 WORN CAMERA, WHICH TYPICALLY APPEARED ON ALL BODY WORN
26 CAMERA VIDEOS; IS THAT RIGHT?

27 A CORRECT.

28 Q AND FOR THE RECORD, WHEN DOES THE AUDIO USUALLY

1 START ON THE VIDEO?

2 A THERE'S A TWO MINUTE BUFFERING PERIOD. SO ONCE
3 THE CAMERA IS TURNED ON AND A FULL TWO MINUTES HAS
4 ELAPSED, THEN IT CONTINUOUSLY KEEPS THAT TWO MINUTES. IF
5 THE HARD ON OR THE FOR ON SWITCH IS TURNED ON AND THE
6 CAMERA IS ACTIVATED BEFORE THAT TWO MINUTES HAS ELAPSED,
7 THEN IT JUST CAPTURES HOWEVER LONG IT'S BEEN. SO
8 GENERALLY, IT'S TWO MINUTES.

9 BY MS. ROSS:

10 Q I'M NOW GOING TO PLAY PEOPLE'S EXHIBIT 2 FROM
11 00.

12

13 (PLAYING VIDEO)

14 BY MS. ROSS:

15 Q I'M ACTUALLY GOING TO STOP THE VIDEO AT ONE
16 MINUTE AND 52 SECONDS. IT APPEARS THAT WE JUST SAW
17 OFFICER HUFF WITH IT LOOKS LIKE A CELL PHONE IN HIS HAND
18 WITH A PHOTO DEPICTED ON IT. DO YOU RECALL THAT
19 OCCURRING?

20 A YES.

21 Q AND WHAT WERE YOU AND OFFICER HUFF LOOKING AT?

22 A THEY WERE PHOTOS FROM THAT FLYER.

23 Q THE SAME FLYER THAT'S MARKED AS PEOPLE'S
24 EXHIBIT 1?

25 A CORRECT.

26 Q I WILL CONTINUE PLAYING FROM ONE MINUTE AND 52
27 SECONDS.

28

1 (PLAYING VIDEO)

2 BY MS. ROSS:

3 Q I'M GOING TO STOP PLAYING THAT AT TWO MINUTES
4 AND 25 SECONDS. IS THAT YOURSELF ON THE LEFT-HAND SIDE
5 OF THE SCREEN?

6 A IT IS.

7 Q AND IT APPEARS THAT YOU ARE NOW PULLING OUT A
8 CELL PHONE; IS THAT RIGHT?

9 A CORRECT.

10 Q WHAT ARE YOU DOING AT THAT POINT AT TWO MINUTES
11 AND 25 SECONDS WITH THAT PHONE?

12 A THAT'S A DEPARTMENT ISSUED PHONE. I CAN
13 CONDUCT RECORDS CHECKS USING THAT PHONE. SO AT THAT
14 POINT, I'M BEGINNING A RECORDS CHECK.

15 Q THANK YOU. I WILL CONTINUE PLAYING FROM TWO
16 MINUTES AND 25 SECONDS.

17

18 (PLAYING VIDEO)

19 BY MS. ROSS:

20 Q I'M GOING TO STOP PLAYING AT FOUR MINUTES AND
21 THREE SECONDS. WE JUST WATCHED AS YOU HAD MS. HARRIS
22 STEP OFF OF THE SIDEWALK AND OVER BY THE PATROL VEHICLE.
23 CAN YOU DESCRIBE FOR THE COURT WHY YOU HAD HER DO THAT?

24 A SO THE DEPARTMENT PHONE THAT I CARRY THAT WAS
25 ISSUED TO ME, BASICALLY IT CONDUCTS A RECORDS CHECK,
26 SHOWS ALL FELONY CONVICTIONS, FELONY PROBATION STATUS.
27 AT THAT POINT I HAD ALREADY RECEIVED A NOTIFICATION THAT
28 SHE WAS AN ACTIVE 290 REGISTRANT, SEX OFFENDER. I WAS

1 ABLE TO SEE HER PRIOR ARRESTS AND HER PRIOR BOOKINGS. SO
2 AT THAT POINT, I HAD TO CONFIRM USING MY ACTUAL LAPTOP IF
3 SHE WAS IN COMPLIANCE AND IF SHE HAD ANY ADDITIONAL
4 SUMMARY OR MISDEMEANOR PROBATION, WHICH IT DOESN'T SHOW
5 UP ON THAT PHONE.

6 Q SO AFTER SHE GAVE YOU HER NAME AND DATE OF
7 BIRTH, YOU RAN IT INTO THE RECORDS CHECK IN THE CELL
8 PHONE; IS THAT RIGHT?

9 A AS SOON AS SHE GAVE ME THE NAME, I HAD A
10 RECORDS CHECK ALREADY STARTED.

11 Q YOU SAID YOU SAW SHE WAS A 290 AND THAT SHE
12 ALSO HAD SOME PRIOR CONVICTIONS. WERE ANY OF THOSE PRIOR
13 CONVICTIONS, DID THEY STAND OUT TO YOU AT ALL?

14 A I'M SORRY, PRIOR ARRESTS. IT SHOWS ME THE
15 ARREST REPORTS AND THE BOOKINGS. AND MOST OF THEM WERE
16 FOR POSSESSION OF CONTROLLED SUBSTANCE, THAT'S WHAT STUCK
17 OUT TO ME.

18 Q AND DO YOU RECALL HOW RECENT THOSE ARRESTS
19 WERE?

20 A I DON'T RECALL EXACT DATES.

21 Q AND YOU SAID YOU HAD TO GO AND CHECK THE LAPTOP
22 BECAUSE YOUR PHONE WOULD NOT SHOW ANY SUMMARY PROBATION,
23 FOURTH WAIVERS; IS THAT RIGHT?

24 A THAT'S CORRECT.

25 Q SO YOUR CELL PHONE ONLY HAS LIMITED
26 INFORMATION; IS THAT CORRECT?

27 A YES.

28 Q AND AT THIS POINT AT FOUR MINUTES AND THREE

1 SECONDS, IS MS. HARRIS STILL SUSPECTED TO BE POTENTIALLY
2 ONE OF THE PEOPLE IN THE BE ON THE LOOKOUT FLYER?

3 A AT THIS POINT, I DIDN'T BELIEVE SO. AT THIS
4 POINT, I WANTED TO GET HER INFORMATION, STILL DO A FIELD
5 INTERVIEW. THAT WAY I COULD AT LEAST DOCUMENT AND TELL
6 THE DETECTIVE IN CASE ANY DIFFERENT.

7 Q AND WHEN YOU SAY TELL THE DETECTIVE, YOU MEAN
8 DOCUMENT THE CONTACT TO TELL THE DETECTIVE FOR THE
9 SUSPECTED CARJACKING; IS THAT RIGHT?

10 A CORRECT, THAT'S OUR STANDARD OPERATING
11 PROCEDURE. AS FAR AS IF WE CONTACT SOMEONE, I'M GOING TO
12 DOCUMENT IT. THAT WAY IF SHE'S CONTACTED AGAIN BY
13 ANOTHER OFFICER, YOU KNOW, IT'S CONTACTED OR IT'S
14 DOCUMENTED WHERE SHE WAS.

15 Q AND YOU SAID THAT AT THIS POINT YOU NO LONGER
16 SUSPECTED HER OF THAT CARJACKING. AT WHAT POINT DID THAT
17 SUSPICION KIND OF LEAVE YOUR MIND THAT SHE WAS ONE OF THE
18 PEOPLE IN THE FLYER?

19 A AFTER LOOKING UP HER DATE OF BIRTH AND
20 EVERYTHING, IT DIDN'T MATCH UP AT LEAST THE AGE AND THEN
21 JUST GETTING A CLOSER LOOK AT HER HAIR, SEEING IT WAS
22 LONGER IN THE PHOTO.

23 Q AND NOW CONTINUING FROM FOUR MINUTES AND THREE
24 SECONDS.

25

26 (PLAYING VIDEO)

27 BY MS. ROSS:

28 Q I'M GOING TO STOP IT AT SIX MINUTES AND EIGHT

1 SECONDS. WE JUST HEARD THAT SHE IS A FOURTH WAIVER; IS
2 THAT RIGHT?

3 A CORRECT.

4 Q SO BETWEEN FOUR MINUTES AND THREE SECONDS AND
5 WHERE I JUST STOPPED IT AT SIX MINUTES AND EIGHT SECONDS,
6 WERE YOU RUNNING A RECORDS CHECK DURING THAT TIME?

7 A CORRECT.

8 Q WERE YOU ALSO DOCUMENTING, AS YOU SAID EARLIER,
9 THE CONTACT FOR THE DETECTIVE RELATED TO THE CARJACKING?

10 A YES.

11 Q HOW DO YOU DOCUMENT SOMETHING LIKE THAT?

12 A NORMALLY IT WOULD BE ON A STANDARD ISSUED FIELD
13 INTERVIEW NOTEPAD. IT'S KEPT AT OUR STATION, IT'S A SAN
14 DIEGO POLICE FORM. HOWEVER, WITH THESE PHONES, I'M ABLE
15 TO JUST TAKE THE INFORMATION I USE FROM PRIOR CONTACTS
16 AND POPULATE A FIELD INTERVIEW. SO AT THIS POINT, I'M
17 STILL JUST GATHERING THE INFORMATION. AND AT THE END OF
18 IT, I WOULD HAVE JUST POPULATED AN FI USING MY PHONE.

19 Q AND ONCE YOU FOUND OUT THAT SHE HAD A FOURTH
20 WAIVER, WHAT DID YOU PLAN ON DOING NEXT?

21 A JUST CONDUCTED A FOURTH WAIVER SEARCH,
22 PROBATION CHECK.

23 Q I'M NOW CONTINUING PLAYING FROM SIX MINUTES AND
24 EIGHT SECONDS.

25

26 (PLAYING VIDEO)

27 BY MS. ROSS:

28 Q I'M NOW GOING TO STOP PLAYING AT SEVEN MINUTES

1 AND 54 SECONDS. YOU JUST TELL MS. HARRIS THAT SHE'S NOW
2 UNDER ARREST AT THIS POINT. WHAT WERE YOU ARRESTING HER
3 FOR?

4 A POSSESSION OF A CONTROLLED SUBSTANCE AND
5 POSSESSION OF NARCOTIC PARAPHERNALIA.

6 Q IT APPEARED ON THE VIDEO THAT YOU WERE
7 SEARCHING HER PERSON, WHAT DID YOU FIND?

8 A SHE HAD TOLD ME SHE HAD A PIPE ON HER IN HER
9 LEFT FRONT BREAST POCKET. IT'S LIKE A FLANNEL SHIRT, IT
10 WAS UNDERNEATH HER ACTUAL JACKET. SO AT THAT POINT, I
11 WENT AND RETRIEVED THE PIPE, RETRIEVED A GREEN PLASTIC
12 CONTAINER THAT HAD SOME MARIJUANA, WHICH I DIDN'T CHARGE
13 HER WITH, AND THE SMALL LIKE PLASTIC RED CONTAINER. AND
14 IT HAD A CRYSTALLINE MATERIAL WHICH I BELIEVED TO BE
15 METHAMPHETAMINE.

16 Q WHAT TYPE OF PIPE DID YOU BELIEVE THE PIPE THAT
17 SHE HAD ON HER TO BE?

18 A METHAMPHETAMINE PIPE OR ONE VERY SIMILAR TO IT.
19 IT'S A STRAIGHT PIPE, IT'S GOT A BULBOUS END, A SMALL
20 PORT AT THE TOP, AND IT HAS BURNT RESIDUE INSIDE AND OUT.

21 MS. ROSS: AND, YOUR HONOR, I JUST WANTED TO INVITE
22 THE COURT'S ATTENTION THAT AT THIS POINT SINCE THERE IS
23 NOW AN ARREST, I CAN CONTINUE PLAYING THE REST OF THE
24 BODY WORN CAMERA, WHICH IS QUITE LENGTHY BECAUSE OF ITS
25 ENTIRETY. I DIDN'T WANT TO REDACT IT WITHOUT THE COURT'S
26 PERMISSION. IF YOUR HONOR WOULD LIKE ME TO CONTINUE
27 PLAYING, I CAN UNLESS YOUR HONOR FEELS THAT AT THIS POINT
28 THE BODY WORN CAMERA BECAUSE WE NOW HAVE PROBABLE CAUSE

1 FOR AN ARREST THAT WE'VE REACHED THE RELEVANT POINT FOR A
2 1538.5 MOTION.

3 THE COURT: WELL, I KNOW THAT THE DEFENSE IS FOCUSED
4 PRIMARILY ON THE DETENTION AND THEY'RE ARGUING THAT IT
5 WAS A PROLONGED DETENTION. I'M NOT SURE WHETHER YOU'RE
6 INTERESTED IN ANYTHING AT THIS POINT FORWARD. I SUPPOSE
7 WHAT WE COULD DO IF YOU FEEL YOU'VE PRESENTED ENOUGH ON
8 DIRECT, WAIT AND SEE HOW MR. GENSER CONDUCTS CROSS. AND
9 IF THE REST OF THE FILM BECOMES RELEVANT, I SUPPOSE WE
10 CAN CONSIDER IT THEN. IT'S REALLY UP TO THE DEFENSE.

11 MR. GENSER: I WILL ASK SOME QUESTIONS ABOUT WHAT
12 HAPPENS AFTER THIS, BUT I DON'T THINK WE NEED TO PLAY THE
13 NEXT 20 MINUTES. ALTHOUGH I'M FINE WITH RECEIVING THE
14 EXHIBIT. AND IF THE COURT FEELS THE NEED TO REVIEW IT
15 ONCE WE START ARGUING, I WOULD BE FINE WITH THE COURT
16 WATCHING THE REMAINDER OF IT.

17 THE COURT: I GENERALLY DON'T RECEIVE EXHIBITS UNTIL
18 THE END OF THE HEARING. BUT YOU CAN STOP NOW AND THEN
19 ASK WHATEVER OTHER QUESTIONS YOU HAVE. WE'LL DO
20 CROSS-EXAMINATION, AND WE'LL TAKE IT FROM THERE. I
21 ASSUME YOU'LL BE PRESENTING INDEPENDENT EVIDENCE OF A
22 FOURTH WAIVER, DOCUMENTARY EVIDENCE?

23 MS. ROSS: NO, YOUR HONOR.

24 THE COURT: YOU'RE NOT?

25 MS. ROSS: I'M NOT.

26 THE COURT: OKAY.

27 MS. ROSS: THE ONLY DOCUMENTARY EVIDENCE THAT WE
28 POSSIBLY COULD HAVE IS I WAS INFORMED THAT THERE WERE

1 ADDITIONAL MISDEMEANOR FILES ATTENDANT WITH OUR FILE.
2 I'M NOT SURE IF THAT EVER HAPPENED OR NOT.

3 THE COURT: I DON'T KNOW. I MEAN, I'M NOT GOING TO
4 TELL YOU HOW TO PUT ON YOUR CASE. IT'S JUST USUALLY IF
5 THERE'S INDEPENDENT CORROBORATION IF ONE OF THE ISSUES
6 WITH A FOURTH WAIVER WHETHER IT WAS ACCURATE OR NOT.

7 MS. ROSS: I CAN INQUIRE FURTHER ABOUT THAT WITH THE
8 COURT'S PERMISSION.

9 THE COURT: ALL RIGHT. GO AHEAD.

10 BY MS. ROSS:

11 Q I'M GOING TO STOP PLAYING, HOWEVER, PEOPLE'S
12 EXHIBIT 2 AT SEVEN MINUTES AND 54 SECONDS. OFFICER
13 NELSON, I WANTED TO TALK MORE ABOUT HOW YOU VERIFIED THE
14 FOURTH WAIVER THAT MS. HARRIS HAD. HOW DID YOU DO THAT?

15 MR. GENZER: OBJECTION, HEARSAY, HARVEY-MADDEN.

16 THE COURT: OVERRULED.

17 THE WITNESS: USING THE COUNTY LOCALS DATABASE THAT
18 WE HAVE ACCESS TO, LAW ENFORCEMENT DATABASE, BASICALLY,
19 RUN NAME, DATE OF BIRTH. IT POPS UP WITH HER RECORD IN
20 COUNTY LOCALS. AND THEN UNDER THAT IT WILL SHOW IF
21 THERE'S A FOURTH WAIVER OR NOT AND THE DATE IT'S VALID
22 TO. AND THERE'S LINKS, YOU KNOW, YOU CAN CHECK OUT EACH
23 CASE THAT SHE HAS A FOURTH WAIVER OR HAD BEEN CHARGED
24 WITH PRIOR IN SAN DIEGO. SO IT'S ONLY A LOCAL DATABASE.

25

26 BY MS. ROSS:

27 Q AND IS THAT CONSIDERED A GOVERNMENT DATABASE?

28 A CORRECT.

1 Q AND DO YOU RECALL WHEN THE FOURTH WAIVER WAS
2 VALID UNTIL WHEN YOU RAN IT ON NOVEMBER 29TH?

3 A I DON'T RECALL THE EXACT DATE. AND JUST FOR
4 THE COURT, I DO WANT TO MENTION, I SAID BEFORE THAT WE
5 HADN'T ACTIVATED THE LIGHTS. AND THIS DID RECOLLECT MY
6 RECOLLECTION THAT WE DID HAVE THE LIGHTS ACTIVATED ON OUR
7 PATROL VEHICLE.

8 Q BUT IT DOESN'T APPEAR YOU ACTIVATED YOUR
9 SIRENS; IS THAT RIGHT?

10 A NO SIREN.

11 Q AND YOU SAID YOU DO NOT RECALL HOW LONG THE
12 FOURTH WAIVER WAS EXTENDED UNTIL. WOULD LOOKING AT A
13 COPY OF YOUR REPORT REFRESH YOUR RECOLLECTION AS TO THAT?

14 A IT WOULD, AND I HAVE A COPY OF MY REPORT,
15 MA'AM.

16 Q OKAY. YOU CAN GO AHEAD AND LOOK AT IT, READ
17 SILENTLY TO YOURSELF, AND THEN PLEASE TURN IT OVER AND
18 LOOK UP WHEN YOUR MEMORY HAS BEEN REFRESHED. HAS YOUR
19 MEMORY BEEN REFRESHED?

20 A IT HAS.

21 Q AND HOW LONG WAS THE FOURTH WAIVER VALID UNTIL?

22 A FROM MY REPORT, IT SAID THREE ACTIVE FOURTH
23 WAIVER CONDITIONS UNTIL YEAR 2022. IT DIDN'T INDICATE A
24 SPECIFIC MONTH.

25 Q AND THIS WAS IN 2019; CORRECT?

26 A YES, MA'AM.

27 MS. ROSS: NO FURTHER QUESTIONS AT THIS TIME.

28 THE COURT: ALL RIGHT. I JUST WANT TO INDICATE WITH

1 REGARD TO MY OVERRULING YOUR OBJECTION. WHEN I OVERRULE
2 AN OBJECTION, IT DOESN'T NECESSARILY MEAN I'M FINDING THE
3 EVIDENCE IS ADEQUATE. THERE'S A DIFFERENCE BETWEEN
4 ADMITTING IT AND THEN EVALUATING IT. SO I JUST WANTED TO
5 MAKE SURE YOU UNDERSTOOD THAT, MR. GENSER.

6 MR. GENZER: THAT WAS MY UNDERSTANDING OF THE
7 COURT'S POSITION.

8 THE COURT: OKAY.

9 MR. GENZER: CAN I JUST HAVE ONE SECOND BEFORE WE
10 START?

11 THE COURT: YES, SURE.

12 MR. GENZER: OKAY. SORRY ABOUT THAT.

13

14 CROSS-EXAMINATION

15 BY MR. GENZER:

16 Q WAS IT JUST YOUR CAR OR WAS THERE ANOTHER CAR
17 WITH YOU?

18 A AT WHAT POINT?

19 Q WHEN YOU FIRST STARTED THIS ENCOUNTER?

20 A IT WAS JUST OUR CAR.

21 Q OKAY. AND SO AS YOU ROLLED UP, YOU SAW
22 MS. HARRIS STANDING THERE; RIGHT?

23 A ON THE EAST SIDE NEXT TO THE TENT, YES.

24 Q OKAY. SHE WAS NOT INSIDE THE TENT?

25 A CORRECT.

26 Q SO SHE'S JUST STANDING OUTSIDE THE TENT; IS
27 THAT RIGHT?

28 A YES.

1 Q WITH TWO OTHER PEOPLE?

2 A I DON'T RECALL THE EXACT NUMBER OF PEOPLE,
3 THERE WAS ANOTHER MALE.

4 Q AND THE STREET IS PRETTY FULL, THERE'S A LOT OF
5 PEOPLE AROUND?

6 A YES, SIR.

7 Q THERE'S A FAIR AMOUNT OF SORT OF LOITERING AND
8 MOVING FROM LOCATION TO LOCATION, SOCIALIZATION, THAT
9 SORT OF STUFF?

10 A IT APPEARS.

11 Q WHERE YOU PARKED YOUR CAR WAS DIRECTLY IN FRONT
12 OF WHERE MS. HARRIS WAS STANDING, IS THAT RIGHT, LIKE
13 PERPENDICULAR I SUPPOSE?

14 A I DIDN'T HAVE MUCH CHOICE WHERE TO PARK, MY
15 PARTNER PARKED. BUT YES, IT APPEARED FROM MY
16 RECOLLECTION IT WAS DIRECTLY ACROSS.

17 Q AND AS YOU'RE SORT OF SITTING THERE, YOU TURN
18 ON YOUR FLASHING LIGHTS?

19 A CORRECT.

20 Q YOU LOOKED AT THE PICTURE ON THE PHONE OF THE
21 BOLO; RIGHT?

22 A YEAH, MY PARTNER SHOWED ME A PHOTO OF IT.

23 Q OKAY. AND THE DESCRIPTION THAT WENT WITH THE
24 BOLO WAS -- LET ME JUST MAKE SURE I HAVE THIS ACCURATELY.
25 OKAY. SO THE SUSPECT THAT YOU WERE LOOKING FOR WAS A
26 BLACK FEMALE; RIGHT?

27 A CORRECT.

28 Q THE PERSON WAS 20 TO 25 YEARS OF AGE?

1 A CORRECT.

2 Q ABOUT 150 POUNDS; RIGHT?

3 A YES.

4 Q LONG BROWN HAIR?

5 A CORRECT.

6 Q WEARING PURPLE PANTS?

7 A CORRECT.

8 Q OKAY. MS. HARRIS IS 45 YEARS OLD; RIGHT?

9 A I BELIEVE SO.

10 Q SHE'S 170 POUNDS; IS THAT RIGHT?

11 A I DON'T KNOW FOR CERTAIN. BUT IF YOU'RE

12 SAYING, YES.

13 Q LET ME SHOW YOU HER BOOKING INFORMATION SO YOU

14 CAN REFRESH YOUR RECOLLECTION ON THAT.

15 A PERFECT. THANK YOU, SIR.

16 Q SO SHE'S APPROXIMATELY 170 POUNDS; RIGHT?

17 A CORRECT.

18 Q AND HER HAIR APPEARED AS IT APPEARED IN THE

19 VIDEO; RIGHT?

20 A YES.

21 Q WHEN YOU GOT OUT OF THE CAR, YOU WERE HOLDING

22 YOUR FLASHLIGHT; IS THAT RIGHT?

23 A YES.

24 Q AND YOU SHINED YOUR FLASHLIGHT DIRECTLY INTO

25 MS. HARRIS' FACE; IS THAT RIGHT?

26 A IN HER HAIR, YEAH. I DON'T SHINE IT RIGHT AT

27 HER FACE.

28 Q AT HER HEAD AND UPPER SHOULDERS?

1 A CORRECT.

2 Q AND WHEN YOU FIRST TALKED TO HER WHAT YOU SAID
3 TO MS. HARRIS WAS, HOLD ON, I'M GOING TO TALK TO YOU FOR
4 A MOMENT; IS THAT TRUE?

5 A CAN I GO BACK ON THE TRANSCRIPT?

6 Q I'M GOING TO SHOW YOU THE TRANSCRIPT FROM YOUR
7 BODY WORN AND SEE IF THAT REFRESHES YOUR RECOLLECTION.

8 THE COURT: IS THAT PEOPLE'S 3?

9 MR. GENZER: NO, YOUR HONOR. THIS HAS NOT BEEN
10 MARKED, ALTHOUGH I'M GOING TO MARK IT. I'LL SHOW IT TO
11 YOU IN JUST A SECOND.

12 BY MR. GENZER:

13 Q TAKE A LOOK AT THAT FIRST LINE THERE.

14 A I SEE IT.

15 Q IS THAT WHAT YOU SAID?

16 A CORRECT.

17 Q OKAY. SO YOU GET OUT OF THE CAR, YOU FLASH THE
18 LIGHT IN HER FACE, HOLD ON, I'M GOING TO TALK TO YOU FOR
19 A SECOND. OKAY. IS THAT RIGHT?

20 A YES.

21 Q AND THEN WHAT YOU DID WAS YOU TOLD HER YOU
22 WANTED HER TO MOVE FROM WHERE SHE WAS STANDING TO A
23 LOCATION A COUPLE OF STEPS AWAY; IS THAT CORRECT?

24 A A COUPLE MINUTES INTO THE CONTACT.

25 Q NO, I MEAN, AT SOME POINT YOU MOVED HER FROM
26 WHERE SHE WAS STANDING ALL THE WAY OVER TO YOUR POLICE
27 CAR; RIGHT?

28 A AT SOME POINT DURING THE CONTACT, YES.

1 Q BUT AS SOON AS YOU CONTACTED HER, YOU HAD HER
2 MOVE FROM WHERE SHE WAS STANDING WITH THE OTHER GUYS TO,
3 YOU KNOW, MAYBE ABOUT THREE OR FOUR FEET AWAY?

4 A I DON'T RECALL WALKING OVER THERE.

5 Q OKAY. AND IN FACT, I THINK AS YOU'RE DOING
6 THAT, YOU SAY CAN YOU COME OVER HERE FOR A SECOND WHEN
7 YOU MOVED HER. DO YOU RECALL SAYING THAT TO HER?

8 A I DON'T RECALL. BUT IF IT'S ON THE TRANSCRIPT,
9 THAT'S WHAT I SAID.

10 Q OKAY. AND ONCE YOU'VE DONE THAT, YOU ASK HER
11 TO REMOVE HER HAT; RIGHT?

12 A CORRECT.

13 Q OKAY. SO WHILE THIS IS GOING ON, YOU HAVE THE
14 FLASHING LIGHTS BEHIND YOU, YOU HAVE A POLICE OFFICER
15 SHINING A LIGHT INTO HER FACE, SAYING CAN YOU COME OVER
16 HERE FOR A SECOND, AND THEN ORDERING HER TO REMOVE HER
17 HAT. IS THAT ACCURATE?

18 A THAT IS ACCURATE.

19 Q OKAY. I'M GOING TO PLAY THAT CONTACT. I'M
20 GOING TO MARK AN ENVELOPE AS DEFENSE A.

21 THE COURT: ENVELOPE WITH A CD?

22 MR. GENZER: IT IS WITH A THUMB DRIVE. THE THUMB
23 DRIVE CONTAINS TWO VIDEOS, THE VIDEO THE PROSECUTION
24 PLAYED AND THEN A SECOND VIDEO FROM OFFICER NELSON'S BODY
25 WORN, AND THEN A TRANSCRIPT DOCUMENT THAT CONTAINS BOTH
26 TRANSCRIPTS.

27 THE COURT: HOLD ON, ONE THING AT A TIME.

28 DEFENDANT'S A IS THE ENVELOPE WITH THE THUMB DRIVE?

1 MR. GENZER: THAT'S CORRECT.

2 THE COURT: OKAY. AND DEFENDANT'S B WILL BE THE
3 TRANSCRIPT?

4 MR. GENZER: DEFENDANT'S B WILL BE THE TRANSCRIPT.
5 DOES THE COURT WANT THESE ON THE BACK OR ON THE FRONT?

6 THE COURT: WHEREVER IT'S NOT IN THE WAY. HOW MANY
7 PAGE DOCUMENT?

8 MR. GENZER: I DO NOT KNOW THE ANSWER TO THAT.

9 THE COURT: WELL, ONE WAY TO FIND OUT WOULD BE TO
10 COUNT.

11 MR. GENZER: OKAY. IT IS AN 18 PAGE DOCUMENT, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT. THANK YOU.

14 MR. GENZER: IT IS FRONT AND BACK. I AM GOING TO
15 GIVE A COPY TO THE COURT.

16 THE COURT: DO THE PEOPLE HAVE A COPY?

17 MS. ROSS: YES, YOUR HONOR. THANK YOU.

18

19 (DEFENSE EXHIBITS A AND B WERE MARKED FOR
20 IDENTIFICATION)

21

22 MR. GENZER: AND IF I COULD GET THE MOVIE SCREEN?

23 THE COURT: ALL RIGHT. AND AGAIN, YOU STIPULATE
24 THAT WHILE IT'S BEING PLAYED, ASSUMING THERE'S SOUND,
25 BECAUSE THERE'S A TRANSCRIPT, THAT THE REPORTER NEED NOT
26 REPORT?

27 MR. GENZER: YES, YOUR HONOR, SO STIPULATED.

28 MS. ROSS: SO STIPULATED.

1 THE COURT: ALL RIGHT.

2

3 (PLAYING VIDEO)

4 BY MR. GENZER:

5 Q EVERYTHING THAT WE JUST SAW IS HOW IT HAPPENED;
6 IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q ONE OTHER THING I WANTED TO POINT OUT WAS AS
9 YOU WERE ASKING QUESTIONS, OFFICER HUFF CAME UP FROM YOUR
10 RIGHT SIDE; RIGHT?

11 A YES.

12 Q AND HE IS SORT OF BLOCKING HER. IF SHE WERE TO
13 RUN, HE WAS BLOCKING HER AVENUE THAT SHE COULD RUN?

14 A I DON'T BELIEVE THAT'S THE PURPOSE THAT HE'S
15 THERE, BUT IT DOES BLOCK HER FROM RUNNING.

16 Q IN THE BACKGROUND WHERE I HAVE THIS STOPPED AT
17 2:25, YOU CAN SEE ANOTHER AFRICAN-AMERICAN MALE; IS THAT
18 TRUE?

19 A YES.

20 Q THAT WAS ONE OF THE PEOPLE THAT SHE WAS TALKING
21 TO AT THE TIME?

22 A CORRECT.

23 Q OKAY. SO THE PERSON THAT YOU STOPPED, THE
24 PERSON YOU WERE LOOKING FOR WAS 20 TO 25 YEARS OF AGE.
25 THAT'S NOT MS. HARRIS, RIGHT, SHE'S NOT 20 TO 25?

26 A CORRECT.

27 Q SHE IS ALSO NOT WEARING PURPLE PAJAMA PANTS,
28 SHE'S WEARING BLACK LEGGINGS?

1 A CORRECT.

2 Q SHE IS NOT 150 POUNDS?

3 A CORRECT.

4 Q AND SHE DOES NOT HAVE LONG BROWN HAIR?

5 A CORRECT.

6 Q OKAY. SO THE ONLY THING THAT MATCHED THE BOLO
7 WAS THAT SHE WAS BLACK; RIGHT?

8 A THE HAIR IN THE PHOTO, THE COLOR VERSUS THE
9 ACTUAL PHOTO TO ME MATCHED THE COLOR OF IT.

10 Q AND YOU'RE LOOKING AT PROSECUTION'S EXHIBIT 1,
11 I BELIEVE IS THE BOLO?

12 A CORRECT.

13 Q AND YOU'RE SAYING THE BOLO MATCHED THIS?

14 A THE HAIR AND THE PHOTO. AND ALSO A BOLO AND A
15 SUSPECT DESCRIPTION IS NOT ALWAYS EXACT.

16 Q AND SO THE REASONABLE SUSPICION THAT YOU HAD
17 WAS THAT ON ANOTHER OCCASION AN AFRICAN-AMERICAN WOMAN
18 WITH BROWN HAIR HAD COMMITTED A CARJACKING. AND IN YOUR
19 MIND, THAT WAS REASONABLE SUSPICION TO STOP MS. HARRIS
20 AND QUESTION HER BECAUSE SHE IS IN FACT AN
21 AFRICAN-AMERICAN WOMAN WITH BROWN HAIR?

22 A WELL, SHE WAS STOPPED FOR ENCROACHMENT AND FOR
23 THE BOLO.

24 Q LET'S TALK ABOUT THE ENCROACHMENT. BEING
25 AROUND AN ENCROACHMENT IS NOT A CRIME; RIGHT?

26 A IF YOU'RE DIRECTLY NEXT TO IT AND A PART OF
27 THAT TENT OR WHAT IT APPEARED TO BE, IT IS.

28 Q NO. THE CRIME IS ERECTING A TENT; ISN'T THAT

1 TRUE?

2 A IT'S THE POSSESSION OR BEING NEXT TO IT. IT'S
3 NOT THE ACT OF ACTUALLY PUTTING IT UP, IT'S JUST BEING
4 NEXT TO THE TENT OR OWNERSHIP OF THAT TENT.

5 Q IS THAT YOUR INTERPRETATION OF THE LAW OR IS
6 THAT WHAT THE LAW SAYS?

7 A THAT'S MY INTERPRETATION OF THE LAW, SIR.

8 Q OKAY.

9 MS. ROSS: ARGUMENTATIVE.

10 THE COURT: I'LL LEAVE THE ANSWER.

11 BY MR. GENZER:

12 Q WHEN YOU ARREST SOMEONE, YOU ARE REQUIRED TO
13 BRING THEIR BELONGINGS WITH THEM; RIGHT?

14 A UNLESS THEY STATE OTHERWISE.

15 Q THEY CAN RELEASE THEIR BELONGINGS AT THE SCENE;
16 RIGHT?

17 A YES.

18 Q AND IN FACT, MS. HARRIS DID THAT?

19 A CORRECT.

20 Q SO AFTER YOU WERE DONE SEARCHING HER, SHE HAD
21 LIKE A WALLET ON HER THAT SHE RELEASED TO HER BOYFRIEND?

22 A CORRECT.

23 Q YOU DID NOT SEIZE AN ENCROACHMENT; RIGHT?

24 A SEIZE, I'M SORRY?

25 Q I MEAN, YOU'RE SAYING THAT THE ENCROACHMENT WAS
26 HERS?

27 A BOTH OF THEIRS.

28 Q HOW DO YOU KNOW?

1 A SHE IDENTIFIED HIM AS HER BOYFRIEND.

2 Q HOW DO YOU KNOW THE STUFF WAS HERS?

3 A BECAUSE SHE WAS IN AND AROUND THAT PROPERTY AND
4 THE UMBRELLA.

5 Q YOU NEVER ASKED; RIGHT?

6 A WHAT'S THAT?

7 Q YOU NEVER ONCE ASKED?

8 A I NEVER ASKED HER.

9 Q OKAY. YOU WROTE A REPORT IN THIS CASE; RIGHT?

10 A I DID.

11 Q IN YOUR REPORT YOU NEVER ONCE CITE THE
12 MUNICIPAL CODE AS PART OF THE REASONING FOR YOUR STOP;
13 RIGHT?

14 A I BELIEVE I DID.

15 Q YOU WROTE TWO REPORTS; RIGHT?

16 A CORRECT.

17 Q SO THE NIGHT OF YOU WROTE A REPORT -- I'M
18 SORRY, ON AUGUST 29TH YOU WROTE A REPORT DETAILING THE
19 SCENE, WHAT HAPPENED, WHAT YOU SAW; RIGHT?

20 A CORRECT.

21 Q AND IN THAT REPORT, YOU DON'T SAY ANYTHING
22 ABOUT AN ENCROACHMENT; RIGHT?

23 A CAN I GO BACK AND LOOK AT MY REPORT, I HAVE A
24 COPY?

25 Q YEAH, SURE. LET ME MAKE SURE I'M LOOKING AT
26 THE SAME ONE YOU'RE LOOKING AT.

27 A THE NIGHT OF THE REPORT IS THE ONE WITH THE
28 MESS TITLES.

1 Q YES, THAT'S WHAT I'M TALKING ABOUT. TAKE A
2 LOOK AT THAT AND SEE IF YOU CITE THE MUNICIPAL CODE IN
3 YOUR REPORT SOMEWHERE.

4 A I DID NOT CITE THE ACTUAL CODE, YOU ARE
5 CORRECT. I JUST INDICATED THAT SHE WAS STANDING NEXT TO
6 THE TENT AND THE LARGE PILE OF PROPERTY ON THE EAST
7 SIDEWALK OF 200 16TH STREET.

8 Q AND AT SOME POINT YOU START GETTING DOWN INTO
9 SORT OF THE MEAT OF YOUR REPORT, YOU START GETTING DOWN
10 TO WHAT CRIME YOU THINK OCCURRED AND WHAT YOU ARRESTED
11 HER FOR; RIGHT? THAT'S ON PAGE FOUR OF YOUR REPORT ABOUT
12 MIDWAY, IT STARTS WITH THE PARAGRAPH "DUE TO HARRIS." DO
13 YOU RECALL THAT?

14 A THAT'S THE CONTROLLED SUBSTANCE CRIME THAT
15 YOU'RE SPEAKING OF; CORRECT?

16 Q YES.

17 A YES, SIR.

18 Q THAT'S WHAT YOU MAKE THE ARREST FOR?

19 A YES, SIR.

20 Q YOU DO NOT MAKE AN ARREST FOR ENCROACHMENT?

21 A I DO NOT.

22 Q YOU ALSO NOTE IN YOUR REPORT THAT THE 11364.1,
23 PARAPHERNALIA, WAS ONE OF THE CRIMES THAT YOU WERE
24 CONSIDERING; RIGHT?

25 A CORRECT.

26 Q AND THAT'S SORT OF JUST LIKE A MISDEMEANOR TYPE
27 CHARGE?

28 A IT'S A MISDEMEANOR CHARGE, YES.

1 Q YOU DO NOT NOTE IN HERE THERE'S AN ENCROACHMENT
2 VIOLATION?

3 A I DID NOT CHARGE HER WITH IT.

4 Q AND YOU DID NOT QUESTION HER ABOUT IT?

5 A I DID NOT CHARGE HER WITH IT.

6 Q AND YOU DID NOT QUESTION HER ABOUT IT; IS THAT
7 CORRECT?

8 A CORRECT. I DIDN'T QUESTION HER ABOUT IT AND I
9 DID NOT CHARGE HER WITH IT.

10 Q AND WHEN YOU ARRESTED HER, YOU DID NOT TAKE HER
11 BELONGINGS WITH HER?

12 A AT HER REQUEST, I LEFT ALL OF HER BELONGINGS
13 WITH MR. WISEMAN.

14 Q DID YOU ASK HER WHETHER OR NOT SHE WANTED TO
15 LEAVE HER ENCROACHMENT THERE?

16 A I NEVER ASKED HER.

17 Q WHEN SHE WAS RELINQUISHING HER PROPERTY, SHE
18 TOOK OUT SORT OF LIKE HER WALLET AND SHE HAD A BUNCH OF
19 SORT OF STUFF ON HER, INDIVIDUAL PERSONAL THINGS; RIGHT?

20 A FROM THE FANNY PACK?

21 Q YES.

22 A YES.

23 Q AND YOU GAVE THOSE ITEMS TO HER BOYFRIEND?

24 A CORRECT.

25 Q THERE WAS NEVER A MOMENT WHERE YOU SAID WHAT DO
26 YOU WANT TO DO WITH YOUR HOUSE, YOUR STRUCTURE, YOUR
27 BELONGINGS, THAT NEVER OCCURRED?

28 A I NEVER ASKED HER WHAT SHE WANTED TO DO WITH

1 HER HOUSE.

2 Q PART OF THE REASON YOU NEVER ASKED HER THAT WAS
3 BECAUSE AT THE TIME YOU WERE NOT THINKING ABOUT AN
4 ENCROACHMENT?

5 A THAT IS FALSE.

6 Q OKAY. IT WASN'T UNTIL THE NEXT DAY YOU WROTE A
7 SUPPLEMENTAL REPORT; RIGHT?

8 A CORRECT.

9 Q AND IN THE SUPPLEMENTAL REPORT, ALL OF A
10 SUDDEN, WE SEE THIS ENCROACHMENT THING POP UP, I WAS ALSO
11 CONSIDERING THAT?

12 A CAN I CLARIFY WHAT A SUPPLEMENTAL REPORT IS FOR
13 THE COURT?

14 Q NO. IN YOUR SUPPLEMENTAL REPORT YOU -- IS THE
15 FIRST TIME THAT WE SEE I WAS CONSIDERING AN ENCROACHMENT;
16 IS THAT CORRECT?

17 A I THINK THE PROPER TERM IS A FOLLOW-UP REPORT,
18 AN INVESTIGATOR FOLLOW-UP REPORT, AND THAT IS THE FIRST
19 TIME I CITED THE ACTUAL SECTION IN THAT REPORT.

20 Q YOU CAN TALK ABOUT A CRIME WITHOUT ACTUALLY
21 CITING THE SECTION; RIGHT?

22 A YES.

23 Q SO FOR EXAMPLE, YOU MIGHT SAY I ARRESTED THIS
24 GUY FOR DRUGS?

25 A CORRECT.

26 Q NOW, YOU DON'T NECESSARILY HAVE TO SAY IT WAS
27 AN 11377. BUT ANOTHER OFFICER OR YOURSELF REVIEWING THE
28 REPORT WOULD UNDERSTAND WHAT WAS GOING ON; RIGHT?

1 A CORRECT.

2 Q THERE IS NEVER A MOMENT IN YOUR INITIAL POLICE
3 REPORT WHERE YOU'RE DETAILING WHAT HAPPENED WHERE YOU
4 TALK ABOUT THE CRIME OF ENCROACHMENT?

5 A THE TENT AND THE PILE OF PROPERTY ON THE
6 SIDEWALK OF 200 16TH STREET IS THE VIOLATION OF
7 ENCROACHMENT, SIR.

8 Q RIGHT. BUT HOW DO YOU KNOW THAT'S HERS VERSUS
9 HER BOYFRIEND?

10 A BECAUSE AT THE TIME SHE WAS CONTACTED NEXT TO
11 IT. I BELIEVED THAT IT BELONGED TO HER AND HER BOYFRIEND
12 WHO DURING THE CONTACT WAS IN AND OUT OF THAT TENT
13 MANIPULATING PROPERTY.

14 Q SO THE BOYFRIEND WAS IN AND OUT OF THE TENT
15 MANIPULATING PROPERTY?

16 A DURING THE TIME THAT I WAS TALKING TO HER, YES.

17 Q WHEN YOU ARRESTED MS. HARRIS AND DROVE OFF, DID
18 YOU TAKE THE PROPERTY DOWN, THE ENCROACHMENT?

19 A I DID NOT.

20 Q DID ANYONE?

21 A I DON'T BELIEVE SO.

22 Q IS IT STILL THERE NOW?

23 A I HAVE NO IDEA.

24 Q AT SOME POINT DID ADDITIONAL OFFICERS SHOW UP?

25 A A FEMALE OFFICER SHOWED UP TO CONDUCT A FULL
26 SEARCH ON MS. HARRIS.

27 Q AT THE TIME THAT YOU GOT OUT OF YOUR CAR AND
28 SHINED THE FLASHLIGHT IN MS. HARRIS' FACE, YOU DID NOT

1 KNOW SHE HAD A FOURTH WAIVER?

2 A CORRECT.

3 Q AND WHEN YOU ORDERED MS. HARRIS TO MOVE FROM
4 WHERE SHE WAS ORIGINALLY STANDING TO A FEW FEET AWAY, YOU
5 DID NOT KNOW SHE HAD A FOURTH WAIVER?

6 A CORRECT.

7 Q AND WHEN YOU TOLD HER TO REMOVE HER HAT, YOU
8 DID NOT KNOW SHE HAD A FOURTH WAIVER?

9 A ALSO CORRECT.

10 MR. GENZER: THAT'S ALL I'VE GOT. THANK YOU.

11 THE COURT: REDIRECT?

12 MS. ROSS: YES, YOUR HONOR. THANK YOU.

13

14 REDIRECT EXAMINATION

15 BY MS. ROSS:

16 Q OFFICER NELSON, HOW OFTEN DO YOU COME INTO
17 CONTACT WITH TRANSIENT ENCAMPMENTS LET'S SAY ON A WEEKLY
18 BASIS AT YOUR JOB?

19 A EVERY SINGLE DAY.

20 Q AND HAVE YOU PREVIOUSLY BEFORE ENCOUNTERING
21 MS. HARRIS ARRESTED PEOPLE WHO ARE TRANSIENT WHO HAD
22 ENCAMPMENTS PRESENT WHEN YOU ARRESTED THEM?

23 A CORRECT, I HAVE.

24 Q IN THOSE PRIOR ARRESTS, IS IT YOUR COMMON
25 PRACTICE TO THEN IMPOUND THE ENTIRE ENCAMPMENT ALONG WHEN
26 YOU ARREST THAT PERSON?

27 A NO.

28 Q WHY NOT?

1 A BECAUSE AT THAT POINT IF I HAVE A CHARGE THAT'S
2 OTHER THAN ENCROACHMENT, I DON'T FEEL THE NEED TO IMPOUND
3 THEIR HOUSE AND ALL THEIR BELONGINGS TAKEN ON THE STREET.
4 WE DO HAVE TEAMS THAT ARE SPECIFICALLY TASKED FOR THAT,
5 BUT THAT'S A CHOICE OF MINE. AT THE TIME I'LL EITHER
6 RELEASE IT OR IT WILL BE IMPOUNDED IF THEY REQUEST THAT
7 IT IS BECAUSE IT'S AT THE REQUEST OF THAT PERSON. BUT IF
8 I'M CHARGING WITH ENCROACHMENT, I WILL IMPOUND THAT
9 THOUGH BECAUSE AT THAT POINT IT'S ESSENTIALLY EVIDENCE.

10 Q AND IS THERE ANYTHING THAT YOU'RE AWARE OF
11 UNDER YOUR POLICY OR PROCEDURE THAT REQUIRES YOU TO
12 ARREST SOMEONE FOR ONE MISDEMEANOR OFFENSE OVER ANOTHER?

13 A NO.

14 Q AND IF THIS CONTACT DID NOT MORPH INTO FINDING
15 CONTROLLED SUBSTANCE, WOULD YOU HAVE BEEN ABLE TO CITE
16 MS. HARRIS FOR THE ENCROACHMENT VIOLATION?

17 A I WOULD HAVE HAD TO GO FURTHER INTO HER
18 RECORDS. OUR POLICY ON THAT IS BASICALLY AN ASK, TELL,
19 MAKE. AND IN THE SHORTEST OF TERM WHERE I WILL CONDUCT A
20 FIELD INTERVIEW HAVING FOUND NO PRIOR WARNINGS ON
21 DOCUMENTED FIELD INTERVIEWS, IF I FIND THOSE FIELD
22 INTERVIEWS, THEN I'LL ISSUE A CITATION FOR THAT. AND
23 THEN IF THERE'S ANOTHER CITATION OR A HISTORY OF
24 CITATIONS, THEN IT WOULD BE A CUSTODIAL ARREST. BUT I
25 DID NOT CONDUCT THAT FURTHER RECORDS CHECK BECAUSE IT
26 USUALLY PRECEDES DOING THE CITATION.

27 Q AND WHY DIDN'T YOU CONDUCT THAT FURTHER RECORDS
28 CHECK ON THIS OCCASION?

1 A BECAUSE ONCE I FOUND THE FOURTH WAIVER, I
2 FIGURED THE BEST THING TO DO WAS JUST CONDUCT A FOURTH
3 WAIVER SEARCH. AND IF THERE WAS NO ADDITIONAL CHARGES,
4 THEN I WOULD CONDUCT WHATEVER ENFORCEMENT I FELT
5 NECESSARY.

6 Q WOULD IT HAVE MADE THE PERIOD OF DETENTION
7 LONGER IF YOU HAD DONE THAT FURTHER FOLLOW UP INTO HER
8 RECORD AT THE SAME TIME YOU WERE LOOKING INTO HER FOURTH
9 WAIVER?

10 A YES.

11 Q AND YOU SAID MS. HARRIS' BOYFRIEND WAS ALSO ON
12 THE SCENE; IS THAT RIGHT?

13 A CORRECT.

14 Q AND IT APPEARED THE TWO OF THEM WERE SHARING
15 THAT ENCAMPMENT; IS THAT RIGHT?

16 MR. GENZER: OBJECTION, LEADING, FACTS NOT IN
17 EVIDENCE.

18 THE COURT: IT IS LEADING, SUSTAINED.
19 BY MS. ROSS:

20 Q YOU DISCUSSED ON DIRECT OR EXCUSE ME ON
21 CROSS-EXAMINATION ABOUT WHO APPEARED TO BE ASSOCIATED
22 WITH THAT ENCAMPMENT; IS THAT RIGHT?

23 A YES.

24 Q AND WHO DID YOU BELIEVE WAS ASSOCIATED WITH
25 THAT ENCAMPMENT DURING THIS ENCOUNTER?

26 A MS. HARRIS AND HER BOYFRIEND, WE IDENTIFIED HIM
27 AS ANTHONY WISEMAN.

28 Q CAN YOU SPELL THAT FOR THE RECORD?

1 A W-I-S-E-M-A-N, ANTHONY IS COMMON SPELLING.

2 Q AND GOING BACK TO THE ACTUAL VERIFYING THE
3 FOURTH WAIVER, WHAT EXACTLY IS THE SCREEN THAT YOU LOOK
4 AT ON YOUR LAPTOP THAT TELLS YOU THE FOURTH WAIVER IS
5 ACTIVE?

6 A IT'S ESSENTIALLY THE COURT READOUT OR PRINTOUT.
7 SO IT WILL SAY THE COURT CASE NUMBER, IT WILL HAVE ALL OF
8 THE DEFENDANT'S INFO, CI NUMBER, FBI NUMBER, DATE OF THE
9 OFFENSE, LOCATION OF THE OFFENSE. AND THEN IT WILL SHOW
10 COURT DATES, YOU KNOW, PRELIM, READINESS, TRIAL. AND
11 THEN AT THE BOTTOM IT WILL HAVE A DISPOSITION. SO IF
12 THAT CASE HAS BEEN DISPOED, IT WILL SAY, YOU KNOW, PG OR
13 PLED GUILTY, MISDEMEANOR PROBATION OR, YOU KNOW, FOUND
14 GUILTY. AND THEN IT WILL HAVE ANOTHER LINE THAT WILL SAY
15 WHAT KIND OF PROBATION, SO AN S FOR SUMMARY, F FOR FORMAL
16 FELONY PROBATION. AND THEN IT WILL HAVE WHATEVER
17 CONDITIONS. SO THREE YEARS FORMAL PROBATION, REMAIN IN
18 CUSTODY 180 DAYS. I BELIEVE IT'S SIMILAR OR THE SAME
19 READOUT THAT IS A NORMAL COURT DOCUMENT HERE.

20 MS. ROSS: AND, YOUR HONOR, MAY I APPROACH WITH A
21 DOCUMENT I HAVE NOT YET MARKED, IF I MAY INQUIRE OF THE
22 WITNESS FURTHER?

23 THE COURT: ALL RIGHT. GO AHEAD.

24 MS. ROSS: MAY I APPROACH?

25 THE COURT: YES.

26 BY MS. ROSS:

27 Q BEFORE I MARK THIS, DOES THAT DOCUMENT LOOK
28 FAMILIAR YOU, THAT READOUT?

1 A YES.

2 MS. ROSS: MAY I HAVE AN EXHIBIT 4 STICKER, MADAM
3 CLERK.

4 THE COURT: ONE PAGE DOCUMENT?

5 MS. ROSS: ONE PAGE DOCUMENT, YOUR HONOR.

6 THE COURT: PEOPLE'S 4, ONE PAGE DOCUMENT.

7

8 (People's Exhibit Number 4 was marked for
9 IDENTIFICATION)

10

11 MS. ROSS: MAY I WALK THROUGH THE WELL?

12 THE COURT: YES.

13 MS. ROSS: THANK YOU. AND MAY I MARK THE DOCUMENT,
14 YOUR HONOR?

15 THE COURT: YES.

16 MS. ROSS: FOR THE RECORD, I'M NOW SHOWING DEFENSE
17 COUNSEL.

18 MR. GENZER: JUST FOR THE RECORD, YOUR HONOR, THIS
19 IS NOT A CERTIFIED DOCUMENT.

20 THE COURT: OKAY.

21 MS. ROSS: MAY I APPROACH AGAIN?

22 THE COURT: YES.

23 BY MS. ROSS:

24 Q OFFICER NELSON, YOU SAID THAT YOU RECOGNIZE
25 WHAT'S NOW BEEN MARKED AS PEOPLE'S EXHIBIT 4 FOR
26 IDENTIFICATION. WHAT IS THAT A PRINTOUT OF?

27 MR. GENZER: OBJECTION, HEARSAY.

28 THE COURT: OVERRULED. YOU CAN ANSWER.

1 THE WITNESS: THAT IS THE SCREEN THAT POPS UP WHEN
2 YOU RUN SOMEONE ON COUNTY LOCALS, SELECT THEIR NAME.
3 THERE'S NUMBERS ATTACHED, AND THIS ONE BEING THE R-I-O TO
4 SUMMARY. SO IT SHOWS A SUMMARY OF ALL THE CASES THE
5 PERSON HAS BEEN CHARGED WITH, AND THEN ALSO HAS THE
6 PROBATION STATUS OFF TO THE RIGHT WITH THE DATES. SO THE
7 LINE AT THE BOTTOM BEING A DATE SAYING FOURTH WAIVER,
8 ONE, TWO, THREE, FOUR, AND THEN A DATE 5/27/2022, WHICH
9 TO ME INDICATES THAT SHE HAS A VALID FOURTH WAIVER UNTIL
10 5/27/2022.

11 BY MS. ROSS:

12 Q AND IS THIS PRINTOUT, TO YOUR KNOWLEDGE, IS
13 THIS FROM A GOVERNMENT DATABASE?

14 A IT IS.

15 Q AND DOES THIS APPEAR TO BE THE PRINTOUT WE'VE
16 BEEN DISCUSSING FOR MS. SUKARI HARRIS?

17 A YES.

18 Q AND DOES THIS ALSO REFLECT THAT SHE HAS A
19 FOURTH WAIVER IN THE UPPER RIGHT-HAND CORNER OF THE
20 DOCUMENT?

21 MR. GENZER: OBJECTION, HEARSAY.

22 THE COURT: OVERRULED.

23 THE WITNESS: IT DOES; HOWEVER, BEST PRACTICE IS TO
24 GO OFF THE DATES THAT ARE LISTED BECAUSE I DON'T TRUST
25 THAT, I DON'T TRUST THE DATES THAT ARE ACTUALLY LISTED.

26 BY MS. ROSS:

27 Q AND THIS ACTUALLY HAS AN ENTRY THAT YOU
28 REFERENCED EARLIER WITH A FOURTH WAIVER THAT EXPIRES

1 5/27/2022; IS THAT RIGHT?

2 A CORRECT.

3 MR. GENZER: OBJECTION, HEARSAY.

4 THE COURT: OVERRULED. I'LL TAKE A LOOK AT IT. I'M
5 TREATING IT AS A GOVERNMENT RECORD PURSUANT TO EVIDENCE
6 CODE SECTION 1280. IT HAS NOT BEEN OFFERED INTO EVIDENCE
7 YET.

8 MR. GENZER: YOUR HONOR, JUST FOR THE COURT'S
9 CONSIDERATION, I THINK THAT THIS NORMALLY WOULD BE
10 ADMISSIBLE UNDER 453.6 AS A GOVERNMENT RECORD, BUT IT HAS
11 TO BE CERTIFIED IN ORDER TO BE ADMISSIBLE AND NOT AND
12 HAVE THE HEARSAY EXCEPTION -- NOT CERTIFIED.

13 THE COURT: WELL, THAT'S A JUDICIAL NOTICE STATUTE.
14 1280 DOESN'T REQUIRE CERTIFICATION.

15 MS. ROSS: AND I WOULD NOTE, FOR THE RECORD, YOUR
16 HONOR, IN RESPONSE TO THE OBJECTION, THAT THAT'S A WAY TO
17 GET IT IN WITHOUT HAVING A WITNESS TO LAY THE FOUNDATION
18 THAT IT IS IN FACT A CERTIFIED GOVERNMENT DOCUMENT. I
19 HAVE OFFICER NELSON WHO'S ABLE TO LAY THE FOUNDATION THAT
20 IT IS A GOVERNMENT DOCUMENT AND THAT IT APPEARS ACCURATE
21 AND THE SAME READING SCREEN THAT HE SAW.

22 MR. GENZER: IF THE COURT IS CONSIDERING 1280, I
23 WOULD ASK THE COURT TO RECONSIDER MY OBJECTIONS AS
24 FOUNDATIONAL ALSO BECAUSE I DON'T BELIEVE THIS PERSON IS
25 THE CUSTODIAN OF RECORDS FOR THE POLICE DEPARTMENT.

26 THE COURT: I DON'T BELIEVE IT IS REQUIRED. BUT IN
27 ANY EVENT, WE'LL DISCUSS THE ARGUMENTS LATER. GO AHEAD.

28 MS. ROSS: THANK YOU, YOUR HONOR.

1 BY MS. ROSS:

2 Q AND ON THIS DOCUMENT, DOES THIS PRINTOUT APPEAR
3 TO BE FROM NOVEMBER 30TH, 2019; IS THAT RIGHT?

4 A CORRECT.

5 Q AND THAT'S THE DAY AFTER YOUR CONTACT WITH
6 MS. HARRIS?

7 A THAT IS CORRECT.

8 Q AND DOES THIS PRINTOUT HERE, THE SCREEN, DOES
9 THIS FAIRLY AND ACCURATELY DEPICT THE SCREEN INFORMATION
10 YOU RELIED ON THAT NIGHT?

11 A IT DOES.

12 Q IS THIS THE SAME THING THAT YOU LOOKED AT,
13 HOWEVER, OBVIOUSLY, IN A DOCUMENT FORM, NOT AN ELECTRONIC
14 ONE?

15 A IT IS.

16 Q AND IS THIS SOMETHING THAT YOU REGULARLY RELY
17 ON AS A SAN DIEGO POLICE DEPARTMENT OFFICER?

18 A YES.

19 THE COURT: AND JUST FOR THE RECORD, THE CASE LAW IS
20 CLEAR. THE DISTINCTION BETWEEN 1271, WHICH IS BUSINESS
21 RECORDS, AND 1280 IS THAT 1271 REQUIRES LIVE WITNESS
22 TESTIMONY REGARDING THE FOUNDATION, 1280 DOES NOT IF
23 THERE IS SUFFICIENT AND RELIABLE INFORMATION TO SHOW THAT
24 IT'S NOT A FABRICATED DOCUMENT.

25 BY MS. ROSS:

26 Q AND TO YOUR KNOWLEDGE, OFFICER NELSON, ONE MORE
27 QUESTION ON PEOPLE'S EXHIBIT 4. HOW IS THIS INFORMATION
28 UPDATED SUCH THAT YOU'RE ABLE TO RECEIVE IT AND LOOK AT

1 IT?

2 A IT'S A COUNTY DATABASE, I BELIEVE IT'S RUN BY
3 THE SAN DIEGO SHERIFF'S OFFICE. THEY WOULD BE THE ONES
4 THAT UPDATE IT AND IT'S USED IN COURT INFORMATION.

5 MS. ROSS: THANK YOU, NO FURTHER QUESTIONS.

6 THE COURT: ANY RECROSS?

7 MR. GENZER: YEAH, BRIEFLY.

8

9 RECROSS-EXAMINATION

10 BY MR. GENZER:

11 Q THIS DOCUMENT THAT WE'VE BEEN TALKING ABOUT,
12 YOU SAID YOU BELIEVED THAT IT'S RUN BY THE SHERIFF'S
13 OFFICE, DO YOU KNOW THAT FOR SURE?

14 A I DO NOT KNOW THE SURE ANSWER.

15 Q DO YOU KNOW WHO UPDATES IT?

16 A I DO NOT KNOW THAT ANSWER.

17 Q DO YOU KNOW HOW THEY GO ABOUT GETTING THESE
18 RECORDS TO UPDATE THEM?

19 A LIKE I SAID, I DO NOT KNOW THE EXACT ANSWER.

20 Q AND PART OF THE REASON FOR THAT IS YOU REALLY
21 DON'T KNOW HOW THIS DOCUMENT WAS CREATED?

22 A IT'S A LAW ENFORCEMENT DATABASE THAT WE ARE
23 GIVEN ACCESS TO ONCE WE BECOME PEACE OFFICERS, AND THAT
24 IS WHAT WE USE TO CHECK ON COURT STATUSES. THAT'S ALL I
25 KNOW.

26 Q I KNOW WHAT IT IS, BUT YOU DON'T KNOW HOW IT
27 WAS CREATED?

28 A HOW?

1 Q HOW THIS DOCUMENT WAS CREATED, CAME INTO BEING?

2 A CAN YOU CLARIFY WHAT YOU MEAN BY THE DOCUMENT,
3 PLEASE?

4 Q YEAH, IT'S MARKED AS EXHIBIT PEOPLE'S 4.

5 A THE PHYSICAL PIECE OF PAPER OR THE --

6 Q NO, THESE --

7 THE COURT: HOLD ON, ONE AT A TIME.

8 BY MR. GENZER:

9 Q YOU DON'T KNOW THESE RECORDS WERE CREATED OR
10 ADDED OR PUT INTO THE COMPUTER SYSTEM BEFORE YOU
11 ULTIMATELY LOOK AT?

12 A CORRECT.

13 Q ONE OTHER THING I WANTED TO TALK ABOUT. I HAD
14 MENTIONED EARLIER THAT DURING YOUR PROCESS, THERE WAS THE
15 LIGHTS, YOU SHINED THE FLASHLIGHT AT MS. HARRIS, THEN YOU
16 ASKED HER TO MOVE A STEP, AND THEN YOU ASKED HER TO
17 REMOVE HER HAT. THERE WAS ONE ADDITIONAL ELEMENT THAT I
18 FORGOT TO MENTION. YOU ALSO TOLD HER THAT THE REASON YOU
19 WERE CONTACTING HER WAS AS A RESULT OF A CARJACKING THAT
20 HAD OCCURRED. IS THAT TRUE?

21 A TRUE.

22 MR. GENZER: THAT'S ALL I'VE GOT. THANK YOU.

23 THE COURT: ALL RIGHT. THANK YOU, YOU MAY STEP
24 DOWN.

25 THE WITNESS: THANK YOU, YOUR HONOR. WOULD YOU LIKE
26 ME TO LEAVE THE TRANSCRIPT HERE?

27 MS. ROSS: SURE. THANK YOU, OFFICER NELSON. THE
28 PEOPLE ARE NOT CALLING ANY FURTHER WITNESSES AT THIS

1 TIME.

2 THE COURT: ARE YOU OFFERING YOUR EXHIBITS?

3 MS. ROSS: YES, YOUR HONOR. PEOPLE'S EXHIBIT 1
4 THROUGH 4.

5 THE COURT: ALL RIGHT. LET ME MAKE SURE I HAVE THEM
6 ALL. I HAVE THREE HERE, 1 IS THE FLYER, 2 IS THE
7 ENVELOPE WITH THE DISK, 3 IS THE TRANSCRIPT, AND 4 IS THE
8 ONE PAGE DOCUMENT. ALL RIGHT. NOW, MR. GENSER, WITH
9 REGARD TO OBJECTIONS.

10 MR. GENSER: YES, YOUR HONOR. I WOULD OBJECT TO 1,
11 WHICH IS THE BOLO. WITH REGARDS TO THE VIDEO AND THE
12 TRANSCRIPT OF THE VIDEO, I WOULD OBJECT TO ANYTHING THAT
13 RELATES TO THE BOLO. AND THEN I WOULD OBJECT TO EXHIBIT
14 4 ALSO. WITH REGARDS TO 2 AND 3, WHICH IS THE VIDEO, I
15 DON'T OBJECT TO THE PLAYING OF THE VIDEO OR THE RECEIPT
16 OF THE VIDEO OR THE TRANSCRIPT FOR THAT NARROW EXCEPTION
17 AND THE EXCEPTION RELATED TO THE FOURTH AMENDMENT.

18 THE COURT: 2 AND 3 ARE RECEIVED. WITH REGARD TO 1
19 AND 4, DO YOU WANT TO MAKE ANY COMMENTS, MADAM
20 PROSECUTOR?

21 MS. ROSS: YES, YOUR HONOR. IN REGARDS TO NUMBER 1,
22 IT IS IN FACT THE DEFENSE WHO CITED HARVEY-MADDEN AND
23 REQUESTED THE PEOPLE ESSENTIALLY TO PUT ON THE EVIDENCE
24 THAT THE OFFICER WAS RELYING ON IN MAKING CONTACT. AND
25 THE PEOPLE HAVE DONE EXACTLY THAT. IT'S ALSO BEEN LAID
26 SUFFICIENT FOUNDATION BY OFFICER NELSON THAT THIS WAS A
27 DOCUMENT THAT IS RELIED UPON, ESSENTIALLY A BUSINESS
28 RECORD.

1 THE COURT: WHERE IS 1?

2 MS. ROSS: I THOUGHT YOU HAD 1, YOUR HONOR.

3 THE COURT: I THOUGHT I HAD IT TOO.

4 MS. ROSS: ESSENTIALLY A BUSINESS RECORD, A
5 DOCUMENTATION, ALTHOUGH YOUR HONOR DID POINT OUT DURING
6 THE HEARING THAT IT'S NOT NECESSARILY USED FOR THE TRUTH.
7 THE PURPOSE OF A HARVEY-MADDEN SHOWING IS JUST TO
8 DEMONSTRATE THAT THE POLICE OFFICER IS BEING TRUTHFUL, IN
9 FACT THAT HE DID RELY ON SOME OTHER INFORMATION AND ISN'T
10 FOR LACK OF A BETTER WORD COMPLETELY MAKING UP OR
11 FABRICATING A REASON TO CONTACT SOMEONE THAT DID NOT
12 EXIST. AND THE BOLO DOES EXACTLY THAT.

13 THE COURT: WELL, THE PURPOSE OF HARVEY-MADDEN GOES
14 BEYOND THAT. IT'S TO ENSURE THAT INFORMATION ISN'T
15 SIMPLY FABRICATED TO ALLOW AN OFFICER TO TARGET SOMEBODY.
16 AND SO WHEN I MENTIONED TO MR. GENSER EARLIER THERE'S
17 CASE LAW THAT DOES NOT NECESSARILY REQUIRE THE SOURCE OF
18 THE INFORMATION, THAT'S CASE LAW WHERE THE OFFICERS CAN
19 CORROBORATE WHAT'S IN THE INFORMATION BY WHAT THEY
20 OBSERVE. SO FOR EXAMPLE, THERE WAS ONE CASE, I THINK IT
21 WAS PEOPLE VERSUS JOHNSON AT 189 CAL.APP.3D 1315 WHERE --
22 I'M SORRY, THAT'S THE WRONG CASE. LET'S SEE. NO, PEOPLE
23 VERSUS OROZVO, O-R-O-Z-C-O, 114 CAL.APP.3D 435, WHERE AN
24 ANONYMOUS CALLER CONTACTED THE POLICE TO REPORT PEOPLE
25 WERE SHOOTING FROM A VEHICLE THAT THE CALLER DESCRIBED.
26 AND WHEN THE RESPONDING OFFICERS ARRIVED, THEY SAW THE
27 CAR, THEY DETAINED THE OCCUPANTS, AND THEY SAID THEY
28 FOUND TWO EXPENDED CARTRIDGES NEAR THE CAR. SO THE COURT

1 SAID THAT THAT PROVIDED CORROBORATION FOR THE SOURCE
2 INFORMATION. HERE YOU'VE GOT INFORMATION ABOUT AN
3 ALLEGED CARJACKING, BUT THERE WAS NOTHING THE OFFICERS
4 OBSERVED AT THE SCENE THAT WOULD ALLOW THEM TO
5 CORROBORATE THAT THE CARJACKING HAD IN FACT OCCURRED. SO
6 IT'S A LITTLE BIT DIFFERENT. THE PURPOSE OF
7 HARVEY-MADDEN IS TO ENSURE THAT INFORMATION IS NOT
8 FABRICATED.

9 MS. ROSS: I THINK IN THOSE CASES THEN WHAT NORMALLY
10 IS DONE IS THE 911 CALL IS PRODUCED, AND THEN EITHER THE
11 CALLER OR DISPATCH IS BROUGHT IN TO LAY THE FOUNDATION
12 FOR THAT TO BEGIN. IN THIS CASE THE INFORMATION CAME
13 FROM THE BOLO. AND THAT WAS ESSENTIALLY -- I THINK I'M
14 ALSO CONFLATING TWO ISSUES, WHICH IS THE PURPOSE OF
15 PEOPLE'S 1 AND THE FOUNDATION FOR PEOPLE'S 1. I THINK
16 THERE WAS SUFFICIENT FOUNDATION LAID TO COME UNDER A
17 BUSINESS RECORD EXCEPTION. HOWEVER, I ALSO KNOW THAT
18 IT'S NOT NECESSARILY FOR ITS TRUTH IN THE SENSE OTHER
19 THAN ITS EXISTENCE TO SHOW THAT THE OFFICER WASN'T MAKING
20 UP THIS BOLO. IT'S ALSO CORROBORATED BY THE FACT THAT HE
21 WAS SEEN ON HIS CELL PHONE IN PEOPLE'S 2 ON THE VIDEO
22 ACTUALLY LOOKING AT THAT BOLO FLYER.

23 THE COURT: I THINK WHERE YOU'RE MISSING MY POINT.
24 THERE'S NO QUESTION, I DON'T BELIEVE THE OFFICER IS LYING
25 ABOUT SEEING THIS. I'M JUST SAYING HARVEY-MADDEN RELATES
26 TO THE INFORMATION CONTAINED WITHIN IT AND THE
27 REQUIREMENT THAT THE SOURCE OF THAT INFORMATION HAS TO BE
28 PRODUCED UNLESS THERE'S CIRCUMSTANTIAL EVIDENCE

1 CORROBORATING WHAT'S IN IT. SO WE'RE TALKING ABOUT TWO
2 DIFFERENT THINGS.

3 MS. ROSS: RIGHT, AND I THINK IT'S DISTINGUISHABLE
4 FROM THE CASE YOUR HONOR CITED. THE DIFFERENCE IS AN
5 ANONYMOUS CALLER WHO'S ALLEGEDLY PERCEIVING AN EVENT
6 VERSUS A DETECTIVE WHO'S ALREADY CONDUCTING AN
7 INVESTIGATION AND IS DISSEMINATING THIS INFORMATION TO
8 THE OFFICER. THIS IS THEN GIVING OFFICER NELSON THE GOOD
9 FAITH BELIEF THAT HE IS RELYING ON AN INVESTIGATION THAT
10 HIS POLICE DEPARTMENT IS CONDUCTING AND RELYING ON THAT
11 BOLO. SO FOR EXAMPLE, IF WE DIDN'T HAVE THE BOLO, IT
12 THEN WOULD BE APPROPRIATE TO BRING THE DETECTIVE IN. IF
13 ALTERNATIVELY THIS WAS A DISCUSSION BETWEEN THE DETECTIVE
14 AND OFFICER NELSON OR THE DETECTIVE JUST VERBALLY TOLD
15 HIM, WE WOULD CERTAINLY NEED THE DETECTIVE. BUT WE HAVE
16 THE BOLO AS THE SEPARATE KIND OF GOOD FAITH INFORMATION
17 FROM THE POLICE DEPARTMENT SHOWING THAT OFFICER NELSON
18 WASN'T FABRICATING THIS, WHICH IS THE SPIRIT OF
19 HARVEY-MADDEN.

20 THE COURT: ALL RIGHT. AND WITH REGARD TO PEOPLE'S
21 EXHIBIT 4, THIS IS THE SAN DIEGO SHERIFF'S DEPARTMENT
22 PRINTOUT?

23 MS. ROSS: YES, YOUR HONOR. IN REGARDS TO THAT, I
24 BELIEVE OFFICER NELSON LAID SUFFICIENT FOUNDATION THAT IT
25 IS A GOVERNMENT RECORD, IT'S RELIED ON, AND IT'S EVEN I
26 GUESS A BUSINESS RECORD AS WELL. A LOT OF TIMES EVIDENCE
27 CAN GO UNDER EITHER OR.

28 THE COURT: WELL, IT CAN'T BE HERE BECAUSE HE'S NOT THE

1 CUSTODIAN OF RECORDS. 1271 REQUIRES A CUSTODIAN TO
2 TESTIFY. SO IT CAN'T QUALIFY AS 1271, ONLY UNDER 1280.

3 MS. ROSS: I WOULD SUBMIT ON THAT, YOUR HONOR. AND
4 IN THIS CASE, IT APPEARS TO BE A GOVERNMENT DOCUMENT
5 THAT'S RELIED ON BY OFFICERS. HE TESTIFIED IT'S THE SAME
6 PRINTOUT, ALBEIT A PHYSICAL PRINTOUT WITH THE SAME SCREEN
7 HE SAW THAT NIGHT, THAT THEY GET THE INFORMATION THROUGH
8 THE COURTS AND THE SHERIFF'S DEPARTMENT AND RELY ON THAT
9 REGULARLY AS POLICE OFFICERS WHO --

10 THE COURT: ALL RIGHT. I WILL RECEIVE PEOPLE'S 4,
11 I'M NOT GOING TO RECEIVE PEOPLE'S 1. THE PEOPLE REST?

12

13 (PEOPLE'S EXHIBIT NUMBER 4 WAS RECEIVED INTO
14 EVIDENCE)

15

16 MS. ROSS: THE PEOPLE REST, YOUR HONOR.

17 THE COURT: ALL RIGHT. ANY DEFENSE EVIDENCE OTHER
18 THAN YOUR EXHIBITS?

19 MR. GENSER: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 MR. GENSER: I WOULD ASK THE COURT TO RECEIVE
22 EXHIBITS A AND B, SAVE FOR MY HARVEY-MADDEN OBJECTION.

23 THE COURT: ANY OBJECTION TO A AND B?

24 MS. ROSS: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. DEFENDANT'S A AND B ARE
26 RECEIVED.

27

28

1 (DEFENDANT'S EXHIBITS A AND B WERE RECEIVED INTO
2 EVIDENCE)

3
4 THE COURT: ALTHOUGH THE PEOPLE HAVE THE BURDEN OF
5 PROOF, I GENERALLY ALLOW THE MOVING PARTY TO ARGUE FIRST
6 SO THE PEOPLE DON'T HAVE TO MAKE A SHOTGUN ARGUMENT
7 GUESSING AT WHAT YOU'RE GOING TO OBJECT TO, AND IT'S
8 OBVIOUS AT THIS POINT. AND THEN I'LL GIVE YOU ALSO THE
9 OPPORTUNITY TO MAKE ANY REBUTTAL COMMENTS. I WILL TO CUT
10 THINGS A LITTLE BIT SHORTER THAN OTHERWISE MIGHT BE THE
11 CASE, I WILL INDICATE SUBJECT TO THE PEOPLE'S ARGUMENT
12 THAT MY INITIAL CONCLUSION IS THAT THE DEFENDANT WAS
13 DETAINED. THIS WAS NOT A CONSENSUAL ENCOUNTER BECAUSE OF
14 THE WAY THE CONTACT WAS INITIATED. AND AGAIN, THIS IS
15 NOT MY FORMAL RULING. I'M JUST TRYING TO GUIDE COUNSEL.
16 IT'S CLEAR, I'M NOT SURE REALLY HOW WELL THE BOLO IS
17 BECAUSE IT WAS CLEAR PRETTY QUICKLY THAT THE DEFENDANT
18 ACCORDING TO THE OFFICER WAS NOT A SUSPECT IN THE
19 CARJACKING. SO ONE OF THE ISSUES IS WHETHER THERE WAS A
20 RIGHT TO CONDUCT A TEMPORARY INVESTIGATION REGARDING THE
21 HOMELESS ENCAMPMENT PURSUANT TO THE SAN DIEGO MUNICIPAL
22 CODE SECTION 54.0110. AND THEN ASSUMING I FIND VALID THE
23 SEARCH CONDITION, OBVIOUSLY THEY WOULD HAVE HAD A RIGHT
24 TO SEARCH ONCE THEY LEARNED OF THAT CONDITION. SO IT
25 SEEMS TO ME THE PRIMARY ISSUE IS THE LENGTH OF THE
26 DETENTION UP TO THE POINT WHEN THEY LEARNED ABOUT THE
27 SEARCH CONDITION AND WHETHER IT WAS JUSTIFIED OR NOT. SO
28 IT'S NOT A RULING, IT'S A PRELIMINARY COMMENT THAT WILL

1 GUIDE YOU, MR. GENSER.

2 MR. GENSER: THANK YOU, YOUR HONOR. I AGREE. I
3 THINK THAT NOT ONLY SHOULD THE COURT NOT RELY ON THE
4 BOLO, I THINK THE LAW IS THAT THE COURT CAN'T RELY ON THE
5 BOLO. AND PART OF WHAT THEY'RE USING TO ESTABLISH
6 REASONABLE SUSPICION IS THE FACTS IN THE BOLO. I THINK
7 THAT THE OFFICER'S TESTIMONY IS DISINGENUOUS REGARDING
8 THE ENCROACHMENT. AND I THINK AS I ARGUED IN MY PAPERS
9 THAT IT IS AN AFTER THE FACT CONSIDERATION. WHEN ALL OF
10 A SUDDEN THEY REALIZE THAT THIS BOLO LOOKS NOTHING,
11 NOTHING LIKE MS. HARRIS, I MEAN, IT'S NOT EVEN CLOSE.
12 AND ESSENTIALLY WHAT THEY USE THE BOLO FOR IS TO STOP ANY
13 AFRICAN-AMERICAN WOMAN. IT IS ESSENTIALLY THE POLICE
14 OFFICER'S ARGUMENT THAT BECAUSE A 20 YEAR OLD AFRICAN
15 AMERICAN WOMAN COMMITTED A CARJACKING, I AM NOW IN A
16 POSITION TO STOP ANY AFRICAN-AMERICAN WOMAN IN SAN DIEGO,
17 BECAUSE MS. HARRIS LOOKS NOTHING LIKE THE PERSON
18 DESCRIBED IN THE BOLO. AND I KNOW THE OFFICER CAME IN
19 HERE AND SAID, YOU KNOW -- THE DESCRIPTION WAS LIGHT
20 BROWN HAIR. THAT WAS NOT THE DESCRIPTION IN THE BOLO.
21 AND YOU CAN LOOK AT THE PICTURES THAT THE OFFICER WAS
22 RELYING ON IN THE VIDEO. THERE'S NO LIGHT BROWN HAIR.
23 ONCE THERE'S THIS ACCUSATION THAT THE OFFICERS HAVE ACTED
24 WITH A RACIAL BIAS, WHICH IS TO SAY THAT THEY HAVE --
25 WHEN THEY WERE LOOKING FOR A 20 YEAR OLD AFRICAN-AMERICAN
26 WOMAN WITH BROWN HAIR AND THEY USE THAT INFORMATION TO
27 STOP A 45 YEAR OLD AFRICAN-AMERICAN WOMAN WITH BLONDE
28 HAIR THAT ALL OF A SUDDEN NOW THERE IS SOME IMPETUS TO

1 COME UP WITH A REASON WHY IT WAS OKAY. AND THE REASON
2 THEN BECOMES, WELL, THERE WAS AN ENCROACHMENT. AND I
3 THINK THE CASE THAT REALLY TALKS ABOUT THIS IS YBARRA V.
4 ILLINOIS. AND YOU HAVE THIS SORT OF FAR REACHING
5 CONSTITUTIONAL PRINCIPAL AND THE SORT OF OFF QUOTED MERE
6 PROPINQUITY TO A CRIME. AND I THINK THAT'S WHAT YOU HAVE
7 HERE. AND BOTH THE PROSECUTION AND MYSELF WENT BACK WITH
8 THE OFFICER, EXPLAIN TO US YOUR REASONABLE SUSPICION FOR
9 THIS ENCROACHMENT. AND THE REASONABLE SUSPICION WAS SHE
10 WAS STANDING NEXT TO IT WITH OTHER PEOPLE. AND WHAT YOU
11 HAVE THERE IS EXACTLY WHAT YBARRA IS TALKING ABOUT, MERE
12 PROPINQUITY TO A CRIME. AND I THINK IN YBARRA THE
13 OFFICERS GO IN, THEY'RE SORT OF TOSSING THIS BAR FOR
14 DRUGS. THERE WAS A GUY WHO HAPPENED TO BE IN THE BAR,
15 THEY ASSUMED THAT HE'S INVOLVED IN DRUGS AND THEN CONDUCT
16 A SEARCH OF THE GUY IN YBARRA. AND WHAT THEY SAY IS
17 LISTEN, JUST BECAUSE HE'S STANDING NEXT TO OTHER PEOPLE
18 THAT ARE INVOLVED IN DRUGS, DOESN'T MEAN THAT HE WAS
19 INVOLVED IN DRUGS. AND SO THEN YOU HAVE TO LOOK AT JUST
20 TO ASSESS THE REAL VALIDITY OF THE OFFICER'S TESTIMONY,
21 WHAT DID THE OFFICER DO, BECAUSE THERE'S NO WAY TO TELL
22 WHAT THE OFFICER WAS THINKING AT THE TIME. SO THE
23 COURT --

24 THE COURT: WELL, WHAT THE OFFICER IS THINKING IS
25 IRRELEVANT. IT'S OBJECTIVE, NOT SUBJECTIVE. WHAT THEY
26 HAD A RIGHT TO DO BASED ON THE INFORMATION THEY HAD.

27 MR. GENSER: BUT MY ARGUMENT IS THAT THE OFFICER'S
28 TESTIMONY THAT HE WAS THERE FOR AN ENCROACHMENT IS

1 DISINGENUOUS. AND THE REASON IT'S DISINGENUOUS IS BASED
2 NOT ON WHAT HE WAS THINKING OR SAYS HE WAS THINKING, BUT
3 ON WHAT HE ACTUALLY DID. AND THERE WAS NO INVESTIGATION
4 ABOUT AN ENCROACHMENT, ZERO, NOT ONE LINE. THERE WAS NO
5 TIME WHERE HE SAYS IS THIS YOUR STUFF. AND THE OFFICERS
6 ARE REQUIRED TO TAKE PEOPLE'S STUFF WITH THEM WHEN THEY
7 ARE ARRESTED. HE TESTIFIED TO THAT. NOW, HE ALSO SAID
8 LISTEN, I CAN RELEASE THE STUFF. HE NEVER ASKED ANYONE
9 DURING THE WHOLE ENCOUNTER, DO YOU WANT ME TO RELEASE
10 THIS PROPERTY FOR YOU BECAUSE I DON'T WANT TO BREAK DOWN
11 A WHOLE TENT, IT'S NOT MY PRACTICE, I DON'T LIKE TO DO
12 THAT, THERE'S OTHER PEOPLE STANDING THERE. HE NEVER HAD
13 THAT CONVERSATION WITH ANYONE, HE DID NO INVESTIGATION
14 ABOUT AN ENCROACHMENT. AND SO WHAT YOU HAVE HERE IS
15 ESSENTIALLY A WOMAN STANDING NEXT TO PEOPLE THAT ARE
16 ENCROACHING. SHE WAS NEVER ONCE INSIDE THE TENT. THE
17 OFFICER TESTIFIED THAT THE AREA IS CROWDED AND SOCIAL,
18 THAT PEOPLE IN ALL OF THESE VARIOUS TENTS MOVE AROUND AND
19 TALK TO EACH OTHER AND INTERACT WITH EACH OTHER. THERE
20 IS NO EVIDENCE THAT MS. HARRIS STAYS IN THAT TENT. MAYBE
21 SHE DOES, MAYBE THERE IS AN ENCROACHMENT IF MS. HARRIS IS
22 THERE. THAT'S TWO TENTS DOWN. THE OFFICER NEVER
23 INVESTIGATED THAT AND NEVER FOUND THAT OUT. MAYBE THAT
24 IS IN FACT HER TENT, BUT THERE WAS NO INVESTIGATION ABOUT
25 THAT AND THERE ARE NO FACTS THAT THIS COURT CAN RELY ON
26 TO DETERMINE THAT THAT ENCROACHMENT WAS IN FACT HERS.
27 AND IF THE COURT LOOKS AT THE STATUTE, IT DOESN'T SAY
28 LOITERING NEAR AN ENCROACHMENT, IT IS ERECTING,

1 VEGETATION, OR A STRUCTURE.

2 THE COURT: WELL, THERE ARE SEVERAL VERBS, ERECT,
3 PLACE, ALLOWED TO REMAIN, CONSTRUCT, ESTABLISH, PLANT, OR
4 MAINTAIN ANY VEGETATION OR OBJECT ON ANY PUBLIC STREET,
5 ALLEY, SIDEWALK. SO THERE ARE SEVERAL DIFFERENT VERBS.

6 MR. GENSER: YES, THE OFFICER DID NO INVESTIGATION
7 INTO ANY OF THEM. THE COURT HAS NO FACTS TO RELY ON THAT
8 THE PROPERTY THERE WAS MS. HARRIS' EXCEPT FOR THE FACT
9 THAT SHE WAS STANDING NEXT TO IT. THAT'S THE ONLY FACT.
10 AND BOTH OF US ASKED THE OFFICER, WHAT WERE YOU RELYING
11 ON FOR THE ENCROACHMENT? WELL, SHE'S STANDING RIGHT
12 THERE. THAT'S IT. AND SO I THINK THE COURT IS CORRECT
13 TO RULE THAT IT IS A DETENTION, IT SEEMS FAIRLY OBVIOUS
14 TO ME, WITH LIGHTS, MOVING THE PERSON, REMOVING THEIR
15 HAT, TELLING THEM THAT THERE'S A SUSPECTED CARJACKING IF
16 THAT IS IN FACT A DETENTION AND I THINK THE COURT IS
17 CORRECT TO RULE THAT WAY. I THINK BASED ON THE
18 HARVEY-MADDEN RULE SINCE THE PROSECUTION DIDN'T PRODUCE
19 THE DETECTIVE WHO WROTE THE BOLO OR ANY INFORMATION ABOUT
20 THAT, THE COURT CANNOT RELY ON THAT INDEPENDENT EVIDENCE
21 AS PART OF ITS REASONABLE SUSPICION.

22 THE COURT: WELL, IT SEEMS ALMOST IRRELEVANT. I
23 MEAN, THEY CAN WALK UP TO ANYONE THEY WANT AND ONLY
24 WITHIN A MINUTE OR SO OF THEIR INITIAL CONTACT IT BE
25 DETERMINED THAT SHE WAS NOT THE SUSPECT. SO REALLY THE
26 BOLO TO ME DOESN'T HAVE MUCH IMPACT ON THE ANALYSIS
27 BECAUSE THE REST OF IT WASN'T AN INVESTIGATION OF WHETHER
28 SHE COMMITTED A CARJACKING.

1 MR. GENSER: THE THING THAT CONCERNS ME ABOUT THIS,
2 YOUR HONOR -- AND I DON'T DISAGREE WITH THE COURT'S
3 ANALYSIS, THAT THEY DISPELLED THAT FAIRLY QUICKLY. BUT
4 AT THAT POINT, THE CONTACT NEEDS TO TERMINATE.

5 THE COURT: NO, I UNDERSTAND YOUR LEGAL ARGUMENT.
6 I'M JUST SAYING THAT I THINK MORE WEIGHT IS GIVEN TO THE
7 BOLO THAN YOU WANT.

8 MR. GENSER: THE THING THAT CONCERNS ME ABOUT THE
9 BOLO IS THAT IF THE COURT DENIES THIS MOTION, IT'S
10 ESSENTIALLY TELLING THE POLICE OFFICERS THAT THEY WERE
11 JUSTIFIED IN STOPPING ANY BLACK WOMAN THEY WANTED.

12 THE COURT: YOU KNOW, DON'T GO THERE. I DON'T
13 REALLY THINK -- I'M NOT TURNING THIS INTO A RACIAL ISSUE.
14 I DON'T SEE THAT EVIDENCE HERE AT ALL. SO YOU'VE MADE A
15 VERY GOOD ARGUMENT. LET'S HEAR FROM THE PEOPLE, THEN
16 I'LL HEAR YOUR REBUTTAL.

17 MS. ROSS: THE PEOPLE CERTAINLY AGREE THAT THIS IS A
18 DETENTION. THEY RESTRICTED HER MOVEMENT, THEY'RE VERY
19 CLEARLY IMPRESSING THEIR AUTHORITY ON HER THAT SHE NEEDS
20 TO REMAIN THERE WHILE THEY LOOK INTO THINGS FURTHER.

21 THE COURT: OKAY. I MENTIONED THAT ONCE THEY
22 DETERMINED -- I FIND THAT THE PEOPLE'S FORWARD
23 DEMONSTRATES A VALID SEARCH CONDITION. LET'S JUST FOCUS
24 ON WHAT THEY DID IN BETWEEN THE INITIAL CONTACT AND THE
25 TIME THEY LEARNED OF THE SEARCH CONDITION BECAUSE THE LAW
26 IS CLEAR. YOU CAN DETAIN SOMEBODY FOR TWO HOURS AND IT
27 CAN BE LAWFUL IF THERE IS A JUSTIFICATION TO CONTINUE THE
28 INVESTIGATION. AND YOU CAN DETAIN SOMEBODY FOR TWO

1 MINUTES AND IT CAN BE UNLAWFUL IF THERE'S NO BASIS FOR
2 CONDUCTING IT. SO TIME IS ONE FACTOR, HERE THINGS GO
3 RATHER QUICKLY. BUT A LOT OF THE TIME IN BETWEEN THE
4 INITIAL CONTACT, ASSUMING HYPOTHETICALLY THAT THEY HAD
5 THE RIGHT TO INVESTIGATE WHETHER OR NOT THE DEFENDANT WAS
6 ASSOCIATED WITH THIS UNLAWFUL ENCAMPMENT THAT WAS
7 TECHNICALLY IN VIOLATION OF 54.0110, ASSUMING THEY HAD
8 THE RIGHT TO CONTACT HER ABOUT THAT. WHAT ABOUT
9 MR. GENSER'S ARGUMENT THAT THEY DIDN'T REALLY PURSUE
10 THAT, THEY DIDN'T REALLY TAKE ANY STEPS, ASK ANY
11 QUESTIONS. I MEAN, THEY SAW THE BOYFRIEND COMING IN AND
12 OUT OF THE TENT WHICH, YOU KNOW, CLEARLY, I MEAN, TO ME
13 THAT IS CLEARLY REASONABLE SUSPICION THAT WILL PERMIT
14 THEM TO CONTINUE THE INVESTIGATION REGARDING THE UNLAWFUL
15 ENCROACHMENT. BUT THEY DIDN'T CONTINUE THE
16 INVESTIGATION. THEY WERE TALKING TO HER ABOUT HER
17 DAUGHTERS SELLING DRUGS, YOU KNOW, WHICH IS VERY SAD TO
18 ME. BUT IT'S NOT NECESSARILY A BASIS FOR DETAINING
19 SOMEBODY UNLESS THERE'S SOME KIND OF ABUSE SITUATION.
20 LIKE IF THEY FELT SHE WAS RESPONSIBLE OR SHE WAS WORKING
21 WITH HER DAUGHTERS TO SELL DRUGS. I MEAN, THERE'S NO
22 EVIDENCE LIKE THAT IN THE RECORD. SO FOCUS ON THE
23 JUSTIFICATION FOR THAT TIME PERIOD THAT I'M DESCRIBING.

24 MS. ROSS: SO THE TIME PERIOD, THAT TIME PERIOD IS
25 FILLED UP BY OFFICER NELSON CONDUCTING A RECORDS CHECK.
26 HE SAID AT THAT POINT HE WAS NOT CONCERNED ABOUT THE BOLO
27 ANY LONGER, BUT STILL FELT HE HAD JUSTIFICATION FOR THE
28 ENCAMPMENT. AND AGAIN, IT'S JUST REASONABLE SUSPICION

1 THAT SHE'S ASSOCIATED WITH MAINTAINING THAT ENCAMPMENT,
2 BEING A PART OF THAT ENCAMPMENT. IT'S DARK, IT'S ALMOST
3 7:00 AT NIGHT, SHE'S STANDING OUT THERE WITH THE
4 ENCROACHMENT, NOT APPEARING TO HAVE ANY OTHER BUSINESS.
5 SHE'S WITH A ROMANTIC PARTNER WHO'S COMING IN AND OUT OF
6 THERE. HE STATES THAT HE EXPLAINED ON DIRECT OR ON
7 REDIRECT THAT IF HE FINDS THAT SOMEONE HAS A FOURTH
8 WAIVER OR OTHER CONDITION, HE THEN STOPS, DOES NOT
9 CONTINUE TO LOOK THROUGH WHAT WOULD BE A LENGTHIER LOOK
10 THROUGH HER RECORD TO SEE IF SHE'S PREVIOUSLY BEEN WARNED
11 NOT TO BE THERE BEFORE, HAS BEEN TOLD NOT TO BE THERE
12 BEFORE. HE STOPPED AT THAT POINT BECAUSE AT THAT POINT
13 AN ADDITIONAL JUSTIFICATION EVOLVED. AND I THINK THAT
14 JUST TO USE A HYPOTHETICAL SITUATION, IT'S SIMILAR TO
15 LET'S SAY A TRAFFIC STOP. WHEN SOMEBODY RUNS A STOP SIGN
16 OR COMMITS SOME SORT OF INFRACTION, AND THEN ALL OF A
17 SUDDEN SOMETHING EVOLVES TO WHERE A JUSTIFIED SEARCH OF
18 THE CAR HAPPENS AND THE OFFICER FINDS DRUGS OR A GUN OR
19 SOME OTHER TYPE OF CONTRABAND IN THE CAR, THE OFFICER
20 LIKELY PROBABLY WILL NOT CHARGE THE PERSON OR ARREST THE
21 PERSON OR DOCUMENT RUNNING THE STOP SIGN. THEY WILL
22 ARREST FOR THE GUN OR THE DRUGS OR WHATEVER THEY FIND.
23 IF SOMETHING EVOLVES, THERE'S NOTHING UNDER THE LAW OR IN
24 THE POLICY AND PROCEDURE AS STATED BY OFFICER NELSON THAT
25 REQUIRES HIM TO STILL CONTINUE DOWN THAT LINE OF
26 INVESTIGATION. ONCE HE FOUND THE FOURTH WAIVER, HE
27 ABANDONED WHAT WAS A CITATION TO THEN MAKE SURE THAT THIS
28 PROBATIONER WAS COMPLIANT AND DIDN'T HAVE ANY CONTRABAND

1 ON HER PERSON, WHICH IN FACT SHE DID. IT WAS ABOUT TWO
2 MINUTES FROM WHEN HE FIRST GOT HER NAME AND DATE OF
3 BIRTH, WHICH IS WHEN HE SAID HE KIND OF ABANDONED THE
4 BOLO AT THAT POINT BECAUSE ONCE HE HEARD HER DATE OF
5 BIRTH, HE REALIZED SHE WASN'T WITHIN THE CORRECT AGE
6 RANGE OF THE BOLO. BUT NEVERTHELESS, AT THAT POINT, HE
7 STILL HAS JUSTIFICATION BASED ON THE MUNICIPAL CODE
8 UNLAWFUL ENCAMPMENT. HE THEN GOES AND DOES A RECORDS
9 CHECKS, SEES THE FOURTH WAIVER MUCH MORE QUICKLY THAN
10 GOING THROUGH AND SEEING IF SHE'S EVER BEEN TOLD TO LEAVE
11 THIS AREA OR HAS A HISTORY OF ENCAMPMENT THERE, AND THEN
12 GOES DOWN THE AVENUE OF MAKING SURE A PROBATIONER IS IN
13 COMPLIANCE WITH THEIR PROBATION. THERE'S NOTHING UNDER
14 THE LAW OR UNDER THE POLICY OF SDPD, WHICH I ASKED
15 SPECIFICALLY, THAT WOULD REQUIRE THE OFFICER TO CHOOSE
16 ONE OR THE OTHER, ESPECIALLY WHEN A FOURTH WAIVER
17 COMPLIANT SEARCH AND THEN YIELDING METHAMPHETAMINE IS
18 MORE THAN A MUNICIPAL CODE VIOLATION.

19 IN ADDITION TO, AND I THINK THE DEFENSE IS MAKING A
20 CREDIBILITY ARGUMENT ABOUT HOW THEY DIDN'T TRULY BELIEVE,
21 ACCORDING TO THE DEFENSE COUNSEL, THAT SHE WAS ASSOCIATED
22 WITH THIS ENCAMPMENT BECAUSE OF THEIR BEHAVIOR AFTER THE
23 ARREST, WHICH IS THAT THEY DID NOT IMPOUND THE PROPERTY
24 WITH HER. SHE HAD A BOYFRIEND THERE, THAT'S NOT UNUSUAL.
25 AND HE ALSO WASN'T CITING HER FOR THAT ENCAMPMENT, SO IT
26 WASN'T EVIDENCE FOR WHAT HE WAS ACTUALLY CHARGING AND
27 ARRESTING HER FOR. AND SHE HAD HER ROMANTIC PARTNER
28 THERE WHO SEEMED TO BE A PART OF IT AS WELL. THAT'S NOT

1 AT ALL UNUSUAL FOR HIM TO NOT INQUIRE ONCE HE HAD ALREADY
2 FOUND THE METHAMPHETAMINE AND THE ENCOUNTER WAS NO LONGER
3 ABOUT THE ENCROACHMENT. AND ALBEIT MINOR, BUT IT DOES
4 SEEM MORE ENHANCED FINDING METHAMPHETAMINE VERSUS AN
5 ENCROACHMENT VIOLATION. AND IT WAS VERY BRIEF, IT WAS
6 ABOUT TWO MINUTES AFTER HE GOT THE DATE OF BIRTH. I
7 STOPPED ON THE RECORD AT THAT CLOSE POINT SPECIFICALLY
8 FOR THAT REASON FOR THAT TIMING, ABOUT TWO MINUTES FROM
9 WHEN HE GETS THAT INFORMATION FROM HER, BEGINS RUNNING
10 THE CHECK, AND THEN FINDS OUT SHE'S A FOURTH WAIVER.
11 IT'S ABOUT TWO MINUTES, TWO MINUTES AND 15 SECONDS LONG,
12 SOMEWHERE AROUND IN THERE, WHICH IS A SHORT PERIOD OF
13 TIME.

14 THE COURT: THANK YOU. ALL RIGHT. I'LL GIVE YOU
15 THE LAST WORD, MR. GENSER.

16 MR. GENSER: I THINK THE COURT HAS THE FACTS AND THE
17 LAW, YOU KNOW, WELL UNDERSTOOD. IF THERE'S AN ISSUE THE
18 COURT WANTS ME TO ADDRESS, I'LL DO THAT, OTHERWISE I'LL
19 SUBMIT.

20 THE COURT: NO, I MEAN, I'LL BE HONEST WITH YOU,
21 THIS IS A DIFFICULT CASE. THIS IS NOT, YOU KNOW, I THINK
22 BOTH OF YOU KNOW ME, I KNOW MR. GENSER KNOWS ME WELL
23 ENOUGH TO KNOW THAT I DON'T TAKE ANY OF THESE ISSUES
24 LIGHTLY, AND I DO A LOT OF RESEARCH, AND I TAKE ALL THESE
25 CASES SERIOUSLY. AND I'M FAMILIAR WITH THE LAW, THE
26 GENERAL RULE FROM THE UNITED STATES SUPREME COURT IS VERY
27 CLEAR. THE DURATION OF AN INVESTIGATIVE STOP IS
28 IMPORTANT BECAUSE THE BREVITY OF THE INVASION OF THE

1 INDIVIDUAL'S FOURTH AMENDMENT INTEREST IS AN IMPORTANT
2 FACTOR IN DETERMINING WHETHER THE SEIZURE IS SO MINIMALLY
3 INTRUSIVE AS TO BE JUSTIFIABLE ON REASONABLE SUSPICION.
4 ONE CASE THAT HAS THAT QUOTE IS U.S. VERSUS PLACE AT 462
5 U.S. 696 AT PAGE 709. AND U.S. VERSUS SHARPE MAKES THE
6 POINT THAT I'M STRUGGLING WITH HERE. SHARPE IS 470 U.S.
7 675 AT 685, WHICH RECOGNIZES THAT SOME INSTANCES CREATE
8 DIFFICULT LINE DRAWING PROBLEMS. AND THIS IS ONE OF
9 THOSE CASES. I JUST WANT TO INDICATE THAT **IT'S VERY EASY**
10 **TO MAKE RACIAL ACCUSATIONS** AGAINST A POLICE OFFICER. AND
11 IF IN FACT THERE'S CLEAR EVIDENCE THE POLICE ARE DOING
12 SOMETHING BECAUSE OF RACE, THEN I WILL COME DOWN --

13 BUT I DON'T SEE THAT EVIDENCE HERE. I THINK THAT
14 THE POLICE IN GOOD FAITH HAD THIS DOCUMENT THAT DESCRIBED
15 A BLACK WOMAN AND WHEN THEY FIRST APPROACHED SAID THERE
16 WAS SOME SIMILARITIES, THEY QUICKLY DISPELLED THOSE
17 SIMILARITIES. **I DON'T SENSE THAT THERE WAS ANY RACIAL**
18 **ANIMUS INVOLVED** HERE THAT THEY FELT THEY COULD HAVE
19 STOPPED ANY BLACK WOMAN. I'M NOT GOING TO GO THERE. I
20 DON'T FIND THAT THAT'S ON THE FENCE HERE. BUT MORE
21 IMPORTANTLY IS WHAT HAPPENED AND WHAT THE POLICE DID AND
22 WHY THEY DID IT. I MENTIONED TO MR. GENSER WHEN HE WAS
23 ARGUING THAT THE TEST IS AN OBJECTIVE ONE. THERE ARE
24 CASES THAT SAY AN OFFICER CAN CITE THE WRONG SECTION WHEN
25 HE DETAINS SOMEBODY. BUT IF ASIDE FROM WHAT THE OFFICER
26 WAS THINKING IT BEING WRONG, THERE WAS OBJECTIVE EVIDENCE
27 THAT WOULD ALLOW A REASONABLE OFFICER TO DO WHAT THE
28 OFFICER DID. IT'S IRRELEVANT WHAT THE OFFICER WAS

1 THINKING. SO THE QUESTION IS COULD THE OFFICERS APPROACH
2 THE DEFENDANT WITH REGARD TO THE ENCROACHMENT ISSUE, AND
3 CLEARLY THEY COULD. I MEAN, THERE'S A WHOLE LINE OF
4 TENTS, AND THEY HAD A RIGHT TO DETERMINE WHO WAS
5 RESPONSIBLE FOR ERECTING AND MAINTAINING A PARTICULAR
6 TENT THAT WAS THERE. THEY SAID THAT THEY CONTINUED THE
7 INVESTIGATION BECAUSE THEY SAW THE BOYFRIEND AND IT WAS
8 REASONABLE FOR THEM TO CONCLUDE THIS WAS THE DEFENDANT'S
9 BOYFRIEND BASED ON THE EVIDENCE THAT WAS PRESENTED, HE
10 WAS GOING IN AND OUT OF THE TENT. SO IT'S REASONABLE TO
11 INVESTIGATE FURTHER TO DETERMINE WHETHER OR NOT THIS
12 DEFENDANT WAS ASSOCIATED WITH THE BOYFRIEND IN
13 MAINTAINING THAT TENT. WHAT TROUBLES ME IS THAT AT SOME
14 POINT THEY RAN A RECORDS CHECK, AND IT'S NOT CLEAR TO ME
15 EXACTLY WHEN THAT RECORDS CHECK BEGAN. I'M NOT SURE THAT
16 THE EVIDENCE -- PERHAPS THE PEOPLE CAN CORRECT ME. DO
17 THE TRANSCRIPTS INDICATE WHEN THE RECORDS CHECK BEGAN?

18 MS. ROSS: IT WAS ACTUALLY A COMBINATION OF MY
19 QUESTIONING AND THE VIDEO. I STOPPED AT ABOUT TWO
20 MINUTES AND EIGHT SECONDS.

21 THE COURT: IS THERE SOMETHING IN THE TRANSCRIPT
22 THAT INDICATES WHEN SOMEBODY STARTED RUNNING A RECORDS
23 CHECK?

24 MS. ROSS: NOT EXPLICITLY. IT'S THE POINT WHERE THE
25 OFFICER SAYS WHERE HE BRINGS HER OVER TO THE PATROL
26 VEHICLE BECAUSE THAT'S WHERE HE SAYS HE NEEDS TO RUN, HE
27 SAW SHE WAS A 290 ON THE CELL PHONE, AND HE ASKED HER TO
28 STEP OVER HERE. IT'S AT THAT POINT AND THEN YOU SEE HIM

1 IN THE VIDEO VISUALLY DOING THAT. AND THEN THROUGH THE
2 TRANSCRIPT, YOU CAN THEN SEE WHEN THE OFFICERS THEN BOTH
3 SAY ALMOST SIMULTANEOUSLY YOU HAVE A FOURTH WAIVER.

4 THE COURT: AND THE 290, LEARNING ABOUT THE 290 FROM
5 THE CELL PHONE, I THINK IS ON PAGE FIVE OF PEOPLE'S
6 EXHIBIT 3, PAGE FIVE LINES -- IT'S FIRST MENTIONED I
7 THINK ON PAGE FOUR AFTER SHE SAYS SHE'S NOT A FOURTH
8 WAIVER.

9 MS. ROSS: AND I ALSO WANTED TO REMIND THE COURT OF
10 ANOTHER SMALL POINT. DURING THE TIME HE WAS RUNNING THE
11 RECORDS CHECK, OFFICER NELSON ALSO SAID HE WAS
12 DOCUMENTING THAT THEY MADE CONTACT WITH MS. HARRIS,
13 ALBEIT THEY DIDN'T THINK SHE WAS THE SUSPECT IN THE BOLO.
14 BUT HE WAS DOCUMENTING THAT AS WELL DURING THAT RECORDS
15 CHECK, LETTING THE DETECTIVE KNOW THAT THEY DID MAKE
16 CONTACT WITH SOMEBODY, BUT DESPITE THEIR SUSPICION
17 ACCORDING TO THEIR POLICY AS REQUIRED.

18 THE COURT: I UNDERSTAND. SO IT LOOKS LIKE THE
19 FIRST MENTION OF 290 IS BY MS. HARRIS ON PAGE FOUR, LINE
20 26, WHICH IS WITHIN A COUPLE MINUTES OF THE INITIAL
21 ENCOUNTER. WELL, IN ANY EVENT, I REVIEWED THE CASES
22 REGARDING THE SCOPE OF THE DETENTION AND THE LENGTH OF
23 THE DETENTION. AND THERE ARE CASES THAT TALK ABOUT A
24 MINIMAL PROLONGING OF A DETENTION TO RUN A WARRANTS CHECK
25 OR A RECORDS CHECK. AND ONE OF THOSE CASES IS PEOPLE
26 VERSUS BROWN AT 62 CAL.APP.4TH, 493. AND ANOTHER ONE IS
27 U.S. VERSUS SIMMONS, WHICH IS 11TH CIRCUIT AND FEDERAL
28 CIRCUIT COURT OPINIONS ARE NOT BINDING BUT THEY CAN BE

1 PERSUASIVE, 172 F.3D 775, 778. AND THAT CASE ESPECIALLY
2 SAID A STOP MAY BE EXTENDED TO AWAIT THE RESULTS OF A
3 WARRANTS CHECK THAT WAS PROPERLY INITIATED AND PURSUED
4 DILIGENTLY, MEANING THE OFFICERS DIDN'T USE THAT AS AN
5 EXCUSE TO UNDULY PROLONG THE DETENTION. AND SO THE
6 OFFICERS HAD THE INFORMATION. I'M NOT RELYING ON THIS,
7 YOU KNOW, PEOPLE'S 1, BECAUSE I DID NOT ADMIT IT. BUT
8 THE OFFICERS HAD AS I INDICATED HAD A RIGHT TO
9 INVESTIGATE THIS ENCAMPMENT ISSUE. THEY LEARN FAIRLY
10 QUICKLY THAT THE DEFENDANT WAS A PC 290 REGISTRANT, WHICH
11 IS NOT A SEARCH CONDITION, BUT OBVIOUSLY IT'S A PIECE OF
12 INFORMATION THAT THEY HAD AT THE TIME THEY RAN THE CHECK.
13 AND THE CHECK FOR RECORDS OCCURRED WITHIN A COUPLE OF
14 MINUTES AFTER THAT. SO BASED ON THE CASE LAW, I DO NOT
15 FIND THAT THE DETENTION WAS UNDULY PROLONGED. I'M GOING
16 TO RESPECTFULLY DENY THE MOTION. BUT I WILL ADMIT IT'S A
17 VERY CLOSE CALL, AND MR. GENSER DID HIS USUAL EXCELLENT
18 JOB. BUT AGAIN, I REJECT ANY RACIAL ANIMUS ON THE PART
19 OF THE OFFICERS. I THINK THAT HAD THEY PROLONGED THIS
20 ANY LONGER THAN THEY DID, I MIGHT HAVE RULED DIFFERENTLY.
21 BUT THIS ALL HAPPENED RELATIVELY QUICKLY. SO COUNSEL IS
22 FREE TO APPEAL MY RULING.

23 MR. GENSER: YOUR HONOR, CAN I JUST ASK THE COURT TO
24 CLARIFY ONE ISSUE?

25 THE COURT: GO AHEAD.

26 MR. GENSER: THE COURT'S FINDING THAT MS. HARRIS WAS
27 DETAINED AND AT THE TIME THAT SHE WAS DETAINED, THERE WAS
28 REASONABLE SUSPICION TO BELIEVE THAT SHE WAS ENCROACHING

1 BECAUSE SHE WAS STANDING NEXT TO THE ENCAMPMENT?

2 THE COURT: RIGHT. REASONABLE SUSPICION TO -- THE
3 PURPOSE OF A DETENTION IS TO INVESTIGATE FURTHER. THE
4 CASES POINT OUT A PERSON MAY BE COMPLETELY INNOCENT OF
5 THE CHARGE THE OFFICERS SUSPECT. ALL THE DETENTION DOES,
6 WHICH IS LESS THAN PROBABLE CAUSE TO ARREST, IS JUST GIVE
7 THE OFFICERS THE RIGHT TO INVESTIGATE FURTHER. SO I FIND
8 THERE WAS A SUFFICIENT BASIS JUST BY VIRTUE OF HER BEING
9 NEAR A TENT AND THEIR DETERMINING HER BOYFRIEND WAS
10 COMING IN AND OUT OF THE TENT FOR THEM TO INVESTIGATE
11 FURTHER. SO THAT'S ABOUT AS CLEAR I CAN MAKE THE RECORD.
12 ALL RIGHT. THE EXHIBITS WILL REMAIN WITH THE COURT. I
13 THINK I HAVE THEM ALL HERE, DEFENDANT'S A, B, PEOPLE'S 1,
14 2, 3, AND 4. OKAY. I GOT THEM ALL. ALL RIGHT. THANK
15 YOU, COUNSEL. BY THE WAY, TODAY WAS THE TRIAL DATE AS
16 WELL. WHAT'S SUPPOSED TO HAPPEN, ARE YOU SUPPOSED TO
17 REPORT DOWN TO 102 AT 1:30?

18 MS. ROSS: YES, JUDGE GROCH INSTRUCTED US.

19 THE COURT: THE DEFENDANT IS ORDERED TO APPEAR AT
20 THAT TIME. ALL RIGHT. THANK YOU, COUNSEL.

21 MS. ROSS: THANK YOU, YOUR HONOR.

22

23 (PROCEEDINGS CONCLUDED)

24

25

26

27

28

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

I, LEANNE R. TULLER, CSR NO. 12392, REPORTER IN
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY:

THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS HAD
IN THE WITHIN CASE, AND THAT THE FOREGOING TRANSCRIPT, DATED
FEBRUARY 6TH, 2020, CONSISTING OF PAGES NUMBERED 1 THROUGH 76,
INCLUSIVE, IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE SAID
PROCEEDINGS.

DATED AT SAN DIEGO, CALIFORNIA, THIS 27TH DAY OF
APRIL 2022.

Leanne R. Tuller

LEANNE R. TULLER, CSR NO. 12392

Exhibit C

1 SAN DIEGO, CALIFORNIA, THURSDAY, FEBRUARY 17, 2022, 9:14
2 A.M.

3 THE COURT: PEOPLE VERSUS SPENCER-SIMMONS.
4 APPEARANCES OF COUNSEL, PLEASE.

5 MR. DOYLE: GOOD MORNING, YOUR HONOR. MARTIN DOYLE ON
6 BEHALF OF THE PEOPLE.

7 MS. BELISLE: GOOD MORNING, YOUR HONOR. KATIE
8 BELISLE, PRIMARY PUBLIC DEFENDER, ON BEHALF OF MS.
9 SPENCER-SIMMONS WHO IS PRESENT BEFORE THE COURT IN
10 CUSTODY.

11 THE COURT: ALL RIGHT. THANK YOU. I HAVE REVIEWED A
12 NOTICE OF MOTION FOR RELEVANT DATA UNDER PENAL CODE
13 SECTION 745 PARENTHESES SMALL (D) AUTHORED BY MS. BELISLE
14 ON BEHALF OF THE DEFENDANT, FILE STAMPED NOVEMBER 30TH,
15 2021; A PEOPLE'S RESPONSE FILE STAMPED DECEMBER 13TH,
16 2021.

17 LET ME JUST INDICATE, PRELIMINARILY, ON THESE
18 MOTIONS BECAUSE THERE IS STILL ISSUES THAT HAVE YET TO BE
19 DECIDED BY THE APPELLATE COURTS, I WOULD LIKE TO ISSUE
20 WRITTEN ORDERS SO THAT WHETHER I AM CORRECT OR INCORRECT,
21 THE APPELLATE COURT KNOWS EXACTLY WHAT MY REASONING WAS IN
22 GRANTING OR DENYING THE MOTION.

23 SO, I WILL NOT BE RULING TODAY, I JUST WANT TO
24 MAKE THAT CLEAR.

25 ALL RIGHT. KEEPING IN MIND, I'VE REVIEWED
26 EVERYTHING. I WILL GIVE THE MOVING PARTY THE OPPORTUNITY
27 TO ADD TO YOUR WRITTEN PLEADINGS AND THE PEOPLE A CHANCE
28 TO RESPOND AND I WILL, AS I USUALLY DO, GIVE THE MOVING

1 PARTY THE LAST WORD.

2 IF THERE'S ANYTHING YOU WOULD LIKE TO ADD TO YOUR
3 PLEADINGS, MS. BELISLE, FEEL FREE. I JUST WANT TO MAKE
4 CLEAR THAT SINCE THIS IS PRETRIAL, IT OBVIOUSLY DOES NOT
5 CONCERN THOSE PORTIONS OF THE ACT THAT RELATE TO TRIAL AND
6 SENTENCING.

7 SO, ANYTHING I DO RULE, WITH REGARD TO THIS
8 REQUEST, WOULD BE WITHOUT PREJUDICE TO BRING A MOTION
9 BASED ON THE OTHER ASPECTS OF THE STATUTE. ALL RIGHT. GO
10 AHEAD.

11 MS. BELISLE: THANK YOU, YOUR HONOR. I WON'T BELABOR
12 POINTS ALREADY MADE IN MY PAPERS. JUST LAYING OUT WHAT
13 THIS REQUEST IS UNDER PENAL CODE SECTION 745 (D). I AM
14 SEEKING EVIDENCE RELATING TO A POTENTIAL VIOLATION OF 745
15 (A) THAT'S IN POSSESSION OF THE STATE. I DID READ
16 MR. DOYLE'S RESPONSE. I THINK HIS ARGUMENT HINGES ON THAT
17 I HAVE NOT SHOWN GOOD CAUSE BASED ON THE DATA THAT I
18 PROVIDED FROM DIFFERENT STATE AGENCIES AND STATE RELEVANT
19 DATA. SO, I DID A CURSORY SEARCH OF CASES IN THIS
20 JURISDICTION PROSECUTED BY MR. DOYLE'S OFFICE AND THERE
21 ARE MANY IN THE NEWS RECENTLY.

22 CURRENTLY, HIS OFFICE IS PROSECUTING A CASE, THE
23 DEFENDANT'S NAME OF DAVID PANGILINAN, WHO DRAGGED A POLICE
24 OFFICER UNDER HIS SUV. THAT INDIVIDUAL LISTS HIS RACE AS
25 PACIFIC ISLANDER, DRAGGED A POLICE OFFICER IN EL CAJON
26 UNDER HIS SUV, BREAKING MULTIPLE BONES, CAUSING THAT
27 OFFICER TO BE IN THE HOSPITAL FOR WEEKS AND THE SAN DIEGO
28 DISTRICT ATTORNEY'S OFFICE ELECTED THE CHARGES OF A 245

1 (C) AND A 245 (A)(4), WHICH IS EXACTLY MY POINT IN MY
2 PAPERS AT THE CHARGING DISPARITIES. THAT CASE ALONE
3 PROVIDES A SHOWING THAT THERE IS A POTENTIAL VIOLATION OF
4 745 (D).

5 BUT IF THAT WAS NOT ENOUGH, THERE WAS BAILEY
6 TENNERY, A 24 YEAR OLD WHITE FEMALE, HIT AND RUN CAUSING
7 DEATH, WAS GIVEN TWO YEARS THIS LAST YEAR. PAUL LISSONA,
8 31 YEAR OLD WHITE MALE, HIT AND RUN CAUSING DEATH, GIVEN
9 FOUR YEARS. CHRISTOPHER NUNEZ --

10 THE COURT: YOU'RE TALKING ABOUT SENTENCES. I'M NOT
11 FOCUSING ON SENTENCES.

12 MS. BELISLE: I APOLOGIZE. CHARGED -- AND THIS IS
13 INFORMATION SOUGHT BECAUSE I CAN ONLY SEE WHAT THEY WERE
14 SENTENCED TO AND WHAT THEIR MAX EXPOSURE WAS.

15 THE COURT: BUT THE FOCUS HERE IS ON DISCRIMINATORY
16 PROSECUTION, NOT SENTENCING.

17 MS. BELISLE: OKAY. THE FIRST CASE I CITED, I GAVE
18 THE CHARGES. THEN I HAVE CHRISTOPHER NUNEZ, WHO HAD A
19 MAXIMUM EXPOSURE OF SIX YEARS, WHICH IS SIGNIFICANTLY LESS
20 THAN THE LIFE SENTENCE THAT MS. SPENCER IS FACING.

21 THE ISSUE, YOUR HONOR, IS THAT I AM REQUESTING THE
22 DOCUMENTS TO SHOW WHAT THE SPECIFIC CHARGES WERE AND I
23 HAVE TO BRING A SHOWING OF GOOD CAUSE, WHICH ACCORDING TO
24 MULTIPLE CASE LAW THAT I DID CITE IN MY PAPER, IS --
25 SHOULD BE INTERPRETED BROADLY IN FAVOR OF DISCLOSURE.

26 THE LEGISLATURE HAS RECOGNIZED THAT THE CRIMINAL
27 JUSTICE SYSTEM IN THIS STATE HAS SYSTEMIC RACISM IN IT AND
28 THIS PENAL CODE SECTION AND THE CLASSIFICATION IS TO

1 ADDRESS THAT.

2 SO, FOR THE PEOPLE TO COME IN HERE AND MAKE IT
3 SEEM LIKE THE SHOWING OF GOOD CAUSE IS EQUIVALENT TO
4 CLIMBING MT. EVEREST IS COMPLETELY OPPOSITE OF WHAT THE
5 INTENTION OF THE LEGISLATURE IS.

6 THE THING ABOUT THE RACIAL JUSTICE ACT AND THE
7 FACT THAT IT WAS SO WIDELY DISCUSSED IS THAT WE KNOW
8 EXACTLY WHAT THE INTENT IS BEHIND IT AND IT IS TO
9 ERADICATE THE SYSTEMIC RACISM THAT'S PRESENT IN THE
10 CRIMINAL JUSTICE SYSTEM.

11 I DO BELIEVE THAT MY BURDEN OF A SHOWING OF GOOD
12 CAUSE IS A LOW THRESHOLD AND THAT THE TERM "GOOD CAUSE"
13 SHOULD BE INTERPRETED BROADLY BY THIS COURT.

14 AND, SO, I AM SEEKING MORE INFORMATION, NOT ONLY
15 IN THESE CASES, BUT IN OTHER SIMILAR CASES. AND, SO, I AM
16 HAMSTRUNG BY THE INFORMATION THAT I CAN ACCESS, WHICH IS
17 THE WHOLE POINT OF THIS MOTION.

18 SO, I DO KNOW THAT THAT INDIVIDUAL HAD A MAXIMUM
19 EXPOSURE OF SIX YEARS. SO, BASED ON THAT, ONE CAN ASSUME
20 THEY WEREN'T CHARGED WITH LIFE COUNTS IF THE MAXIMUM
21 EXPOSURE WAS SIX YEARS.

22 I HAVE ANOTHER INDIVIDUAL, CHRISTOPHER REYES, A
23 HIT AND RUN WITH DEATH, THAT RECEIVED PROBATION, BUT HIS
24 MAXIMUM EXPOSURE WAS FOUR YEARS. AGAIN, MEANING, HE'S NOT
25 CHARGED WITH LIFE COUNTS.

26 ANOTHER INDIVIDUAL, ZAID NAOOM, A HIT AND RUN WITH
27 DEATH, RECEIVED PROBATION. THE MAXIMUM EXPOSURE OF SIX
28 YEARS.

1 DARLA JACKSON, WHITE, RECEIVED SIX YEARS, A
2 MAXIMUM EXPOSURE OF 11 YEARS.

3 I AM SEEKING THE INFORMATION. I ONLY -- I AM
4 REQUESTING THE INFORMATION TO SHOW A POTENTIAL VIOLATION
5 AND THE GOOD CAUSE THRESHOLD THAT I NEED TO PRESENT IN
6 BRINGING TO THIS COURT SPECIFIC CHARGES -- OR, SPECIFIC
7 CASES FILED BY THIS DISTRICT ATTORNEY'S OFFICE IN ADDITION
8 TO THE CALIFORNIA DATA AND THE STUDIES THAT I CITED IN MY
9 MOVING PAPER. RIGHT.

10 WE'RE NOT AT A SITUATION WHERE I AM SAYING
11 "THERE'S FOR SURE RACIAL DISCREPANCY IN THE CHARGING."
12 RIGHT. I'M SEEKING INFORMATION TO SHOW A POTENTIAL AND
13 THE LEGISLATURE USED WORDS THAT CAN BE INTERPRETED TO BE A
14 LOW THRESHOLD.

15 I KNOW MR. DOYLE SAYS IT CAN'T BE A FISHING
16 EXPEDITION AND THAT'S WHY I POINTED TO SPECIFIC CASES. I
17 KNOW I DON'T HAVE THE EXACT CHARGES, BUT THAT IS WHAT I AM
18 SEEKING RELEASE OF FROM THIS COURT.

19 THE COURT: ALL RIGHT.

20 LET ME HEAR FROM THE PEOPLE.

21 MR. DOYLE: YOUR HONOR, THE SAN DIEGO DISTRICT
22 ATTORNEY'S OFFICE IS STRONGLY COMMITTED TO RACIAL JUSTICE
23 AND EQUITY IN PROSECUTION. IT IS NOT OUR INTENT, AT ANY
24 POINT, TO VIOLATE SUBDIVISION (A) OF PENAL CODE SECTION
25 745. THAT DECISION IS OPEN TO QUESTION AND CAN BE
26 REVISITED LATER ON. I THINK THIS MOTION IS SOMEWHAT
27 PREMATURE. WE'RE LOOKING AT SUBDIVISION (D) RIGHT NOW AND
28 I JUST WANT TO POINT OUT HOW CRIPPLING THE DISCOVERY

1 REQUEST IN THIS CASE IS.

2 THIS CASE HAS BEEN CONTINUED A NUMBER OF TIMES TO
3 NO FAULT OF ANYONE, BUT IT WAS ORIGINALLY SCHEDULED TO BE
4 HEARD BACK IN DECEMBER AND, AT THAT TIME, I RAN THE STATS
5 ON WHAT THIS REQUEST WOULD ENTAIL.

6 VIOLATIONS OF PENAL CODE SECTION 245 (A)(1) AND
7 (A)(4), I RAN THEM BOTH BECAUSE, AS EVERYONE IS AWARE,
8 THAT IT WAS RECODIFIED AT SOME POINT DURING THE SEVEN-YEAR
9 REQUEST, WITH A VEHICLE CODE ALLEGATION UNDER 13351.5,
10 WOULD ENCOMPASS 430 CASES ALONE. THE DEFENSE IS
11 REQUESTING POLICE REPORTS FROM 430 CASES.

12 THEN, I ALSO RAN VIOLATIONS OF VEHICLE CODE
13 SECTION 20000 -- SORRY, YES, 20001 SUBDIVISION (A), WHICH
14 IS ALSO PART OF THIS REQUEST. THAT WOULD ENCOMPASS 1,777
15 DEFENDANTS.

16 GOOD CAUSE IS TIED TO THE SCOPE OF THE REQUEST IN
17 ALL OF THE CASE LAW INTERPRETING GOOD CAUSE IN OTHER
18 DISCOVERY PROVISIONS AND THAT'S WHAT WE'RE DEALING WITH.
19 I RECOGNIZE THAT GOOD CAUSE HAS NOT BEEN DEFINED BY THE
20 APPELLATE COURTS FOR PURPOSES OF SUBDIVISION (D) OF PENAL
21 CODE SECTION 745 BECAUSE IT IS A NEW STATUTE.

22 BUT, GOOD CAUSE IS TIED TO THE SCOPE OF THE
23 REQUEST AND IF YOU LOOK AT THE CASE LAW, IT SAYS YOU CAN'T
24 HAVE THIS RIDICULOUSLY LARGE CRIPPLING REQUEST IN YOUR
25 SEARCH FOR GETTING TO THE MERITS, TO GETTING TOWARDS THE
26 TRUTH, AND THAT'S WHY WE'RE OPPOSING THIS DISCOVERY
27 REQUEST.

28 WE DON'T WANT TO RUN A FOUL OF SUBDIVISION (A) OF

1 PENAL CODE SECTION 745, BUT GRANTING THIS DISCOVERY
2 REQUEST WOULD BE CRIPPLING ON THE OPERATIONS OF THE SAN
3 DIEGO DISTRICT ATTORNEY'S OFFICE AND GOOD CAUSE IS
4 SUPPOSED TO BE -- IT'S TIED TO -- I THINK THERE'S A CASE I
5 CITED IN MY PLEADINGS THAT LITIGATION AND DISCOVERY SHOULD
6 BE GEARED TOWARDS THE OBJECT OF THE LITIGATION. IT
7 SHOULDN'T BE CRIPPLING AS A LITIGATION STRATEGY, IN AND OF
8 ITSELF, AND I THINK THAT'S WHAT THIS REQUEST IS TODAY.
9 THAT'S WHY I DON'T THINK THAT GOOD CAUSE HAS BEEN SHOWN
10 FOR IT TO BE GRANTED.

11 THE COURT: ALL RIGHT. I'LL GIVE YOU THE LAST WORD,
12 BRIEFLY, MS. BELISLE.

13 MS. BELISLE: YES, YOUR HONOR. I THINK THAT COULD BE
14 SAID ABOUT ANY REQUEST FOR DISCOVERY TO THE PEOPLE UNDER
15 THIS MOTION, THAT IT WOULD BE CRIPPLING. THAT IS NOT
16 ENOUGH TO CIRCUMVENT THE LEGISLATIVE INTENT TO ERADICATE
17 SYSTEMIC RACISM IN OUR CRIMINAL JUSTICE SYSTEM.

18 I AM REQUESTING FOR THE PAST SEVEN YEARS. THAT IS
19 AFTER THE CHANGE IN THE (A)(1) (A)(4) STATUTE. I BELIEVE
20 THAT CHANGE TOOK PLACE IN 2011, '10, '11, WHICH WOULD BE
21 OVER THE SEVEN-YEAR MARK.

22 SO, I DO UNDERSTAND THAT IT REQUIRES THE DISTRICT
23 ATTORNEY TO DO SOME WORK, BUT IF THEIR OFFICE IS SO
24 COMMITTED TO RACIAL JUSTICE AND THE ERADICATION, THEY
25 SHOULD WANT TO EVALUATE THEIR OWN CHARGING DECISIONS GOING
26 BACK THROUGH THE HISTORY OF THEIR OFFICE.

27 SO, I DON'T THINK -- I DON'T THINK IT'S
28 OVERBURDENSOME, ESPECIALLY IF MR. DOYLE HAS ALREADY DONE A

1 CURSORY SEARCH AND KNOWS WHAT INFORMATION IS SOUGHT.

2 BUT ALLOWING THAT ARGUMENT TO PROHIBIT THE
3 DISCLOSURE OF THE RECORDS WOULD ALLOW THEM TO ESSENTIALLY
4 CIRCUMVENT EVERY REQUEST FOR RECORDS UNDER THE RACIAL
5 JUSTICE ACT.

6 THE COURT: ALL RIGHT. THANK YOU.

7 WELL, OF COURSE I'M BOUND BY THE LANGUAGE OF THE
8 ACT. THE LEGISLATIVE INTENT IS ONLY RELEVANT IF THERE IS
9 SOME AMBIGUITY IN THE WORDING OF THE STATUTE THAT CAN BE
10 RESOLVED AND I SAY THAT BECAUSE THERE'S CERTAINLY A
11 LEGITIMATE ARGUMENT THAT THE LEGISLATURE'S CONCLUSION THAT
12 THERE WAS SYSTEMIC RACISM IS INACCURATE. BUT, I DON'T
13 CARE, I'M BOUND BY THE LANGUAGE OF THE STATUTE.

14 I ASK PEOPLE "IF YOU REALLY BELIEVE THAT, I
15 CHALLENGE YOU TO TAKE A NOTEBOOK AND GO FROM COURTROOM TO
16 COURTROOM AND WATCH THE PROCEEDINGS AND TAKE NOTES OF
17 EVERYTHING THAT YOU THINK IS BEING DONE THAT IS RACIST AND
18 I WOULD LIKE TO KNOW WHAT THE RESULTS ARE." THAT'S JUST A
19 SEPARATE ISSUE.

20 OBVIOUSLY, I HAVE TO ABIDE BY THE STATUTE. AND,
21 AS I MENTIONED WHEN I STARTED, THE REASON I DO WRITTEN
22 ORDERS IS BECAUSE, AS WAS POINTED OUT, THE SUPREME --
23 CALIFORNIA SUPREME COURT AND EVEN THE APPELLATE COURTS
24 HAVE NOT YET DEFINED WHAT GOOD CAUSE IN THE CONTEXT OF
25 THIS STATUTE MEANS.

26 OBVIOUSLY, IT CAN'T BE AN IRRELEVANT PHRASE IF THE
27 LEGISLATURE WANTED THE DISTRICT ATTORNEY TO TURN OVER
28 EVERYTHING ON DEMAND, THEY WOULDN'T HAVE SAID "GOOD

1 CAUSE."

2 NOW, THERE ARE TWO SEPARATE LINES OF CASES THAT
3 ARE POTENTIAL DEFINITIONS OF GOOD CAUSE. ONE RELATES TO
4 THE PITCHESS MOTIONS AND THE OTHER RELATES TO MURGIA
5 MOTIONS.

6 IN THE CONTEXT OF PITCHESS VERSUS SUPERIOR COURT,
7 11 CAL.3D 531, THE DEFENSE SEEKING TO LOOK AT PEACE
8 OFFICER'S PERSONNEL FILES MUST SHOW WHAT THE PITCHESS
9 COURT CALLS GOOD CAUSE AND IN THE CONTEXT OF PITCHESS, IT
10 MEANS GOOD CAUSE TO BELIEVE THAT THE CONDUCT OF THE
11 OFFICER IN THE SPECIFIC CASE RISES TO THE LEVEL REQUIRING
12 AN IN-CAMERA HEARING OF THAT OFFICER'S PERSONNEL RECORDS.

13 SO, IT'S CLEAR, IF PITCHESS IS GOING TO BE THE
14 GUIDELINE, THAT THERE HAS TO BE A SPECIFIC SHOWING THAT
15 THIS PARTICULAR DEFENDANT, WHO IS DISCRIMINATED AGAINST IN
16 TERMS OF THE CHARGING DECISIONS.

17 NOW, IN THE CONTEXT OF MURGIA VERSUS MUNICIPAL
18 COURT AT 15 CAL.3D 286, THAT'S THE CASE THAT DISCUSSES
19 DISCRIMINATORY PROSECUTION AND SELECTIVE CHARGING AND
20 VINDICTIVE PROSECUTION, WHICH IS CLOSER TO WHAT THE ISSUES
21 ARE IN THIS CASE. ALTHOUGH, OBVIOUSLY, THAT CASE DOES NOT
22 CONCERN THE CURRENT RACIAL JUSTICE ACT, BUT MURGIA
23 REQUIRES A THRESHOLD SHOWING OF WHAT THEY REFER TO AS
24 "PLAUSIBLE JUSTIFICATION."

25 AND THAT STANDARD WAS DISCUSSED IN THE CASE OF
26 PEOPLE VERSUS MONTES, A CALIFORNIA SUPREME COURT DIVISION
27 OF 58 CAL.4TH 809, WHICH WAS A DEATH PENALTY CASE, AND THE
28 CALIFORNIA SUPREME COURT DISCUSSED WHAT IS REQUIRED FOR

1 PLAUSIBLE JUSTIFICATION. AND THEY REJECTED THE USE OF
2 GENERAL STATISTICS AS A BASIS FOR PLAUSIBLE JUSTIFICATION
3 FOR RACIALLY MOTIVATED PROSECUTION AND EVEN WHERE THOSE
4 STATISTICS, THE COURT SAID, WERE ANECDOTALLY SUPPORTED AND
5 THOSE STATISTICS DID NOT SHED LIGHT ON WHETHER A SPECIFIC
6 CASE WAS RACIALLY MOTIVATED. AND, SO, THE MONTES CASE IS
7 ONE I'VE REFERRED TO IN PAST DECISIONS BECAUSE IT HAS A
8 LOT OF GOOD GUIDANCE.

9 NOW, IT'S OBVIOUS THE LEGISLATURE DOES NOT HAVE
10 ANY -- AT LEAST THE MEMBERS OF THE LEGISLATURE THAT
11 DRAFTED THIS LAW, I DON'T THINK HAD -- ANYONE HAD A DEGREE
12 IN STATISTICS BECAUSE THERE'S A DIFFERENCE BETWEEN
13 CORRELATION AND CAUSATION. FOR EXAMPLE, ONE STATISTIC
14 FREQUENTLY CITED IS "THERE'S A DISPROPORTION A NUMBER OF
15 MY MINORITIES IN PRISON COMPARED TO MAJORITY." THE
16 QUESTION IS "DISPROPORTIONATE TO WHAT?" AND THEY SAY
17 "WELL, TO THEIR REPRESENTATION IN THE POPULATION." AND
18 THAT'S WITHOUT REGARD TO WHETHER THERE'S ANY EVIDENCE THAT
19 THE PROPORTION OF PERSONS IN AN ETHNICITY COMMITTING A
20 CRIME MUST BE THE SAME AS THE PROPORTION OF THE
21 POPULATION. THERE IS ABSOLUTELY NO EVIDENCE THAT THAT HAS
22 TO BE THE CASE.

23 FOR EXAMPLE, BACK EAST, THE 1920S, WHEN MAFIOSO
24 WERE KILLING EACH OTHER, THERE WAS A DISPROPORTION OF
25 NUMBER OF ITALIANS BEING PROSECUTED. DOES THAT MEAN THEY
26 WERE BEING DISCRIMINATED AGAINST? NO. IT'S JUST THAT
27 THERE WERE A LOT OF ITALIANS COMMITTING CRIMES. SO, A LOT
28 OF THESE STATISTICS ARE USELESS.

1 WHAT IT COMES DOWN TO, WAS THERE SOMETHING DONE IN
2 THIS PARTICULAR CASE THAT INDICATES GOOD CAUSE TO
3 INVESTIGATE FURTHER TO SHOW THAT THERE WAS DISCRIMINATION
4 IN THE CHARGING DECISION AND THAT'S WHAT I HAVE TO FOCUS
5 ON.

6 I APPRECIATE THE HARD WORK BOTH SIDES HAVE PUT
7 INTO THE CASE. I HAVE VARIOUS CASES THAT HAVE EITHER
8 ACCEPTED OR REJECTED SHOWINGS OF GOOD CAUSE FOR PLAUSIBLE
9 JUSTIFICATION.

10 JUST FOR THE BENEFIT OF THE PARTIES, SO YOU
11 UNDERSTAND WHICH CASES I LOOK AT. I MENTIONED MURGIA.
12 ONE CASE WHERE THE DEFENSE WAS SUCCESSFUL, AGAIN, NONE OF
13 THESE CASES HAVE TO DO WITH 745 (D), BUT THERE WERE
14 PARALLELS IN BOTH MURGIA AND PITCHESS CASES TO THE CONCEPT
15 OF GOOD CAUSE.

16 PEOPLE VERSUS SUPERIOR COURT BAEZ, WHICH IS AT 79
17 CAL.APP.4TH 1177. I LIKE TO LOOK AT THAT CASE BECAUSE
18 IT'S AN EXAMPLE OF WHAT THE COURTS DEEM TO BE SUFFICIENT
19 FOR A SHOWING OF GOOD CAUSE. IN BAEZ, THE DEFENSE WAS
20 SUCCESSFUL IN THEIR CLAIM AND THEY SUBMITTED THREE
21 AFFIDAVITS SUPPORTING THE ALLEGATION THAT AS THE EXECUTIVE
22 DIRECTOR OF A MEDICAL MARIJUANA CENTER, THE DEFENDANT HAD
23 BEEN SINGLED OUT FROM SIMILAR LY SITUATED INDIVIDUALS FOR
24 CRIMINAL PROSECUTION RATHER THAN ADMINISTRATIVE
25 PROCEEDINGS. IN OTHER WORDS, THAT CASE SHOWS SPECIFIC
26 EVIDENCE INDICATING THAT THAT PARTICULAR DEFENDANT WAS
27 TREATED DIFFERENTLY FROM OTHERS WHO WERE SIMILARLY
28 SITUATED.

1 OF COURSE, THAT TERM "SIMILARLY SITUATED" IS
2 ANOTHER TERM THE COURTS HAVE YET TO DEFINE. WHAT DOES
3 THAT MEAN? DOES IT INVOLVE CRIMINAL HISTORY? DOES IT
4 INVOLVE ALLEGATIONS? DOES IT -- THERE ARE A LOT OF
5 ASPECTS OF QUOTE "SIMILARLY SITUATED" THAT HAVE YET TO BE
6 DECIDED.

7 SO, THERE ARE A LOT OF -- THIS LEGISLATURE HAS
8 PASSED A LOT OF NEW LAWS THAT, BECAUSE I'M IN THE LAW AND
9 MOTION DEPARTMENT, I HAVE TO INTERPRET. AND I ALWAYS JOKE
10 WITH THE ATTORNEYS THAT I'M PROUD TO BE THE JUDGE WITH THE
11 GREATEST OPPORTUNITY TO COMMIT REVERSIBLE ERROR SINCE I'M
12 THE FIRST ONE DECIDING MANY OF THESE ISSUES.

13 ANOTHER CASE IS PEOPLE V WILLIAMS 46 CAL.APP.4TH
14 1767. THAT WAS A CASE WHERE THE COURT REJECTED THE
15 DEFENSE SHOWING WITH REGARD TO RECORDS OF POLICE OFFICERS
16 WHO COMMITTED BATTERIES, BUT WERE NOT PROSECUTED.

17 US V ARMSTRONG, IT'S A UNITED STATES SUPREME COURT
18 DIVISION, 517 US 456, WHERE THE SUPREME COURT HELD THAT A
19 DEFENSE STUDY, NEWSPAPER ARTICLES AND ANECDOTAL HEARSAY,
20 DID NOT MEET THE DEFENSE BURDEN OF SHOWING DIFFERENT
21 TREATMENT OF SIMILARLY SITUATED INDIVIDUALS.

22 AND I MENTIONED ALREADY PEOPLE VERSUS MONTES.

23 SO, AGAIN, WHEN THERE ARE NO CASES DISCUSSING THE
24 SPECIFIC STATUTE BEFORE US, WE HAVE TO LOOK TO THE CASES
25 THAT COME CLOSE. AND THESE ARE THE CASES I HAVE FOUND
26 THAT I READ AND REREAD EVERY TIME I GET ONE OF THESE
27 MOTIONS. SO, I WILL BE DOING THE SAME THING AGAINST THE
28 CONTEXT OF THE BACKGROUND OF WHAT THE DEFENSE HAS

1 SUBMITTED IN THEIR PLEADINGS AND ALSO ORALLY HERE TODAY
2 AND I WILL --

3 WHAT'S THE NEXT COURT DATE ON THIS CASE?

4 THE CLERK: JUNE 14TH.

5 THE COURT: I HAVE A LITTLE BIT OF TIME.

6 MS. BELISLE: YES, YOUR HONOR. EXCEPT THIS IS JUST
7 THE 745 (D). I AM NOT SAYING THAT A RACIAL DISPARITY HAS
8 HAPPENED. I NEED THE INFORMATION AND THEN THERE WILL BE
9 ANOTHER MOTION. SO, THAT ALL NEEDS TO BE COMPLETED BEFORE
10 THE TRIAL DATE IN JUNE.

11 THE COURT: I UNDERSTAND. I GENERALLY DON'T TAKE MORE
12 THAN A FEW DAYS.

13 MS. BELISLE: OKAY.

14 THE COURT: IF YOU TOLD ME THE TRIAL DATE WAS
15 TOMORROW, THAT WOULD BE DIFFERENT THAN JUNE.

16 MR. DOYLE: YOUR HONOR, I SOMEWHAT DISAGREE. 745 CAN
17 BE RAISED AT MANY POINTS IN TIME, IT'S NOT DEPENDANT ON A
18 TRIAL DATE. I'M NOT SAYING IT NECESSARILY NEEDS TO BE
19 DECIDED IN THIS CASE, BUT YOU CAN BRING A 745 MOTION POST
20 JUDGMENT. YOU CAN EVEN RENEW IT UNDER HABEAS. IT'S
21 REALLY NOT CONTINGENT ON THE TRIAL DATE.

22 THE COURT: IT DOESN'T MATTER TO ME. AS THE LAW AND
23 MOTION JUDGE, MY GOAL IS ALWAYS TO DECIDE CASES AS QUICKLY
24 AS POSSIBLE. I DON'T CARE WHEN THE TRIAL DATE IS. I ONLY
25 ASK, AS I JUST MENTIONED, TO FIND OUT IF THERE WAS
26 SOMETHING GOING ON THIS WEEK OR THE BEGINNING OF NEXT WEEK
27 THAT WOULD PUT AN EXTRA RUSH ON THINGS, BUT EVEN WITHOUT
28 THAT, I GENERALLY TRY AND GET MY RULINGS OUT WITHIN A FEW

1 DAYS AFTER THE HEARING. SO, YOU'RE NOT GOING BE WAITING A
2 MONTH FOR MY DECISION.

3 I'M HOPING THAT SOME TIME NEXT WEEK, I'LL BE
4 ISSUING MY ORDER AND THEN YOU'LL KNOW WHERE YOU STAND IF
5 YOU WANT TO SEEK -- IF EITHER SIDE WANTS TO SEEK APPELLATE
6 REVIEW.

7 I HAVE MADE A NUMBER OF RULINGS WITH REGARD TO
8 MENTAL HEALTH DIVERSION BECAUSE THERE ARE CONFLICTING
9 COURT OF APPEAL DECISIONS. AND LAST WEEK, A COUPLE WEEKS
10 AGO, THERE WAS AN APPELLATE COURT DECISION AND IT WAS
11 ORDERED PUBLISHED ON ONE OF MY RULINGS AND THEN A FEW DAYS
12 LATER, THE CALIFORNIA SUPREME COURT ORDERED IT DEPUBLISHED
13 AND ACCEPTED THE CASE FOR REVIEW BECAUSE IT'S AN ISSUE
14 THAT THEY REALIZE IS STATEWIDE THAT HAS TO BE DECIDED.
15 THE ISSUE IN THAT CASE WAS "WHEN IS MENTAL HEALTH
16 DIVERSION NO LONGER AVAILABLE?" AND THERE ARE THREE
17 CONFLICTING COURT OF APPEAL DECISIONS. ONE SAYS "ONCE A
18 TRIAL BEGINS," WHATEVER THAT MEANS. WE DON'T KNOW IF THAT
19 MEANS BEGINNING OF IN-LIMINE MOTIONS OR THE BEGINNING OF
20 JURY SELECTION. THE SECOND CASE SAID "WHEN A VERDICT IS
21 REACHED." THEN, THE THIRD CASE SAYS "IT'S AVAILABLE UNTIL
22 JUDGMENT." AND I DON'T THINK THAT'S GOING BECOME THE LAW
23 OTHERWISE THE STATUTE WOULDN'T HAVE BE CALLED "PRETRIAL
24 DIVERSION."

25 BUT AS BETWEEN THE OTHER TWO, OUR COURT OF APPEAL
26 DID NOT DECIDE EITHER ONE BECAUSE IT WASN'T NECESSARY. IN
27 MY CASE, THERE WAS A GUILTY PLEA AND I RULED THAT ONCE THE
28 DEFENDANT'S PLED GUILTY, MENTAL HEALTH DIVERSION IS NO

1 LONGER AVAILABLE.

2 I'M JUST TELLING YOU THIS BECAUSE I'M INDICATING
3 THAT THIS LEGISLATURE HAS BEEN ENACTING LAWS WITHOUT
4 NECESSARILY THINKING THROUGH HOW THESE THINGS ARE GOING TO
5 PLAY OUT IN A COURTROOM. THERE WAS A TIME WHEN THE
6 LEGISLATURE HAD MANY, MANY FORMER LAWYERS, THEY DON'T
7 ANYMORE AND THAT PUTS US AT A DISABILITY, BOTH COUNSEL AND
8 THE COURT, BECAUSE THEY DON'T FREQUENTLY FORESEE THE
9 ISSUES THAT ARE GOING TO ARISE IN DEFINING TERMS AND IN
10 HOW THESE THINGS ARE GOING TO PLAY OUT IN A COURTROOM.

11 I WILL DO MY BEST TO ISSUE AS COMPLETE AN ORDER AS
12 SOON AS POSSIBLE SO THAT BOTH SIDES HAVE A COMPLETE RECORD
13 AND THEN WE'LL SEE WHAT HAPPENS. OKAY?

14 MR. DOYLE: THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU, COUNSEL. WHATEVER DATES THAT
16 ARE SET ARE CONFIRMED.

17 (THE PROCEEDINGS WERE CONCLUDED)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO) SS

3
4 PEOPLE VS. TANTRINA SPENCER-SIMMONS,
CASE NO. SCD283133

5
6 I, TERESA D. MENDOZA, OFFICIAL REPORTER FOR THE
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
8 COUNTY OF SAN DIEGO, DO HEREBY CERTIFY:

9 THAT AS SUCH REPORTER, I REPORTED IN MACHINE SHORTHAND
10 THE PROCEEDINGS HELD IN THE FOREGOING CASE;

11 THAT MY NOTES WERE TRANSCRIBED INTO TYPEWRITING UNDER
12 MY DIRECTION AND THE PROCEEDINGS HELD ON FEBRUARY 17,
13 2022, CONTAINED WITHIN PAGES 1 THROUGH 17, ARE A TRUE AND
14 CORRECT TRANSCRIPTION.

15 DATED THIS 3RD DAY OF MARCH, 2022.

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21 TERESA D. MENDOZA
22 CSR NO. 12947
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Exhibit D

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

DEPARTMENT NO.

HON. (JUDGE)

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

LEO BARSHELL,

Defendant

CASE NO. M272759

TRANSCRIPTION OF COURT PROCEEDING

SAN DIEGO, CALIFORNIA

UNKNOWN DATE

1 **JUDGE:** Judge
2 **CRT REPORTER:** Court Reporter
3 **COSGROVE:** Mike Cosgrove, Prosecution
4 **GENSER:** Abram Genser, Defense

5 **JUDGE:** Thank you, Madam Clerk.

6 **CRT REPORTER:** Court reporter.

7 **JUDGE:** (laughs) Thank you, Madam Court Reporter, whatever you are.

8 **CRT REPORTER:** (laughing).

9 **JUDGE:** All right. I think we're ready then. All right. This is the case of People, um,
10 vs. Leo Barshell, B-A-R-S-H-E-L-L. We're- we're recording, rather than
11 having a live court reporter. All right. Let me have appearances of counsel,
12 please.

13 **COSGROVE:** Good morning, Your Honor, Deputy City Attorney Mike Cosgrove for the
14 People.

15 **JUDGE:** Good morning.

16 **GENSER:** Public Defender Abram Genser 977 on behalf of Mr. Barshell.

17 **JUDGE:** All right. Thank you. I have reviewed a Notice of Motion and Motion for
18 Relief Under the Racial Justice Act, pursuant to Penal Code Section 745,
19 subdivision (a)(1), authored by Mr. Genser and Ashkan Kargaran, K-A-R...
20 Let me spell both names. A-S-H-K-A-N, last name, K-A-R-G-A-R-A-N,
21 file stamped June 9, 2022, with, um, a number of exhibits attached, and,
22 um, an Opposition to that Motion authored by Michael Cosgrove, Deputy
23 City Attorney on behalf of the People, filed stamped June 22, 2022, um.

24 I just want to make a couple of preliminary comments before I hear
25 argument, um. As a law and motion judge and given the number of new
26 statutes that have been passed in the last couple of years, I've had a
27 significant number of issues with first impression in this department, which
28 I enjoy. That's a challenge to me, uh. And, I've had I think more cases go up

1 to the Court of Appeal, um, this year than in the rest of my career combined
2 and fortunately, most of them have been affirmed but that's neither here nor
3 there.

4 But, I mention that because, um, these- many of these statutes have very
5 little guidance from the appellate courts because they're so low and so,
6 we're in an area where trial judges have to evaluate what specific terms
7 mean without the guidance of appellate courts. An example, um, uh, of a
8 place where you have much guidance is for example, 352. We have a
9 zillion cases telling judges what- how to weigh prejudice against probative
10 value, uh, when we're- when we're confronted with a 352 motion or
11 objection, um.

12 In this case, uh, an example of- of a situation where the legislature in my
13 opinion has not anticipated some of the issues that could arise while their
14 statutes come before a trial judge is the mental health diversion statute
15 under Penal Code Section 1001.36, which I've had to deal with this year.
16 For example, in that... And, I'll tell you why I'm mentioning that in a
17 moment. But, in that statutory scheme, the legislature says that mental
18 health diversion is available "until adjudication." And, they didn't bother to
19 think about the possibility that different lawyers and judges might interpret
20 the- the phrase until adjudication differently.

21 So, what's the result? We now have three conflicting appellate court
22 opinions. One says until adjudication means, until judgment. Another one
23 says it means, until a verdict is reached. And, a third one says it means,
24 until the trial begins. And, uh, the case I had that resulted in a published
25 opinion, um, I held that it was not available, uh, once the trial had
26 concluded, and the Court of Appeal upheld me without deciding which of
27 the other two cases was valid law. So, I'm just pointing that out because we
28 have in this statutory scheme, we have phrases that are used. For example,

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under 745(d), discovery portion of the statute, we have the phrase, good cause, um.

The issue before the court today, uh, is whether or not there is a sufficient showing for a prima facie case sufficient to trigger an evidentiary hearing, um, and fortunately, the legislature has given a definition of prima facie case, but it raises the issue of what the terms that they use mean, um. They talk about, uh, the concept of substantial, uh, likelihood, um, of, um, the statute being violated and, of course, we are to assume that every term the legislature uses has meaning. In other words, there's no superfluous use of words. So, that- they could have said likelihood, but they said substantial likelihood. And then, they go on to say but that doesn't mean preponderance of the evidence. It doesn't have to appear more likely than not.

So, one issue before me is, what the heck does that phrase mean? And I- and I'm just trying to convey what my questions are about the statute before I hear argument from counsel, um. And then, of course, the other separate issue is, what is the nature of the showing? For example, um, this most recent case which is the only published decision I'm aware of, and I don't know if review is going to be granted or not, but **Young vs. Superior Court of Solano County**, which was just decided a few weeks ago, uh, May 26th, in the Court of Appeal, First District Division Four, uh, involved a decision relating to the discovery portion of the statute 745(d).

And, the- the court had a very thorough discussion of the statute and pointed out that trying to define good cause for the purpose of discovery, they used the adjective, uh, was a daunting task, because good cause means different things in different contexts, uh. And so, there is absolutely no appellate authority yet regarding a prima facie showing and- and what is sufficient, what is insufficient for a prima facie showing. So, I treat this as

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just one more issue of first impression that I've had to deal with this year, um.

So, with that introduction, I'm going to hear argument, um. The only other issue, of course, is the relevance of statistics and I know the defense has been tireless, reviewing all the material and has presented a lot of statistics, and the statute allows for the presentation of statistics. But, sometimes, um, there is, uh, a failure to consider the distinction between the concepts of correlation and causation. And there are many articles that show some of them very far fetched and ridiculous, correlations between two seemingly unrelated attacks. For example, there was a, um, there was a study that showed a correlation in a city where during a heat wave, there was a correlation- almost exact correlation mathematically between the rise in violent crime and the rise of ice cream sales.

But, I don't think anyone as a result of that would claim that, um, the consumption of ice cream leads to violent crime or vice versa, that people who commit violent crimes buy more ice cream. But, I'm just giving that as an example. So, one of the challenges to me is to evaluate what the significance of some of these statistics are. Now, one point I want to, uh, raise before I hear from Mr. Genser, um, in Young, um, it talks about the similarities between a showing for discovery under 745(d) and we realize that's not the issue here today, but it talks about comparing it to a Pitchess motion, where there has to be a declaration showing plausible justification for discovery of the police officer's personnel records.

And, uh, I believe that, um, and the defense has addressed this, that statistics by themselves prove nothing. There has to be some showing that the facts of the particular case before the court create, um, mutual prima facie- a conclusion that a prima facie case has been made regarding the conduct of the specific officer involved in the specific case before the court,

1 um. Because, we can- we can have generalities that apply to many groups
2 of people, but the- the violation under 745 is the particular officer, uh,
3 entertained a racial bias toward the defendant and not, that statistically, it
4 was possible but the evidence shows a substantial likelihood that the officer
5 in this case entertained a particular bias toward the defendant that violates
6 the statute.

7 So, I- I- this isn't meant to be a ruling. I'm just telling you what my thoughts
8 are to assist you and guide you in making your arguments. So, I've talked
9 long enough. So, I'm going to let you argue, Mr. Genser, and as I do with
10 all moving parties, I will give you the last word after the People have
11 argued.

12 GENSER: Thank you, Your Honor, um. I would start- I'd like to start by asking the
13 court to receive Exhibits A through Q for the defense.

14 JUDGE: For the purpose of- of this, uh, hearing, any objection, Mr. Cosgrove?

15 COSGROVE: Yes, Your Honor. Hearsay.

16 JUDGE: Okay. Well, um, the statute provides for the submission of statistical
17 evidence, um, for the purpose of considering whether or not there's a prima
18 facie case, um. It's not unlike the prima facie case material that is submitted
19 for mental health diversion motions and the other general area I've been
20 dealing with. This here is 1170.95, the murder resentencing. So, I'm not
21 sure that the Rules of Evidence apply at this stage to exclude that type of
22 evidence, so.

23 COSGROVE: Well, Your Honor, I- I did put in my moving papers that my- that the
24 People will- would rely on the statistics. And so, to the extent that A
25 through Q contain statistics, the People do not object to the statistics, but to
26 the conclusions or other observations related to those statistics. That then
27 becomes hearsay.

28 And, technically, um, the- I think, one of the... I don't remember which one

1 it is. One of these is a- a Union Tribune article that contains statistics. The
2 Union Tribune article is hearsay, even if the statistics technically aren't.
3 But, uh, they came from something else. The Union Tribune article in and
4 of itself is hearsay. The People will accept, uh, the statistics from the two
5 studies that were provided in this, um, in the moving papers.

6 JUDGE: All right. Let- let me interrupt you for a moment, just to allay your fears. I
7 want to, you know, I'm not going to start processing through, uh, and
8 wasting time talking about which portions are admissible or inadmissible.
9 Obviously, I'm free to disregard any opinions expressed in this material, uh.
10 That's different from admitting them, um.

11 And, I just want to say, obviously, because there's no law requir- or rule of
12 court requiring at issue with rulings. But, when I get a case like this, as with
13 mental health diversion or murder resentencing under 1170.95, because the
14 issues are important and- and recent, um, I like to write in the rulings so
15 that if an appellate court wants- if either side is unhappy with my ruling, at
16 least an appellate court knows, whether rightly or wrongly, what my
17 reasoning was. And so, I have no intention of ruling today. I just want to
18 make that clear to the parties, um.

19 I want to issue a thorough written ruling explaining my reasoning so that
20 both sides, um, have a basis for appealing if- if they don't like my decision,
21 um. But, as far as the material goes, in a... Another reason why I wouldn't
22 make a ruling today is because I have read all this material, but it may have
23 a different meaning to me after I hear argument, and there may be certain
24 things that I want to go back and look at as a result of the argument. So, I- I
25 plan to take all the time I need to resolve this issue, uh, in a fair way to both
26 sides. So, when is the trial date in this case?

27 COSGROVE: Uh, trial is July 20.

28 JUDGE: Okay. Now, I'm going to be out of town next week, but, um, I hope to have

1 a ruling at the beginning of the following week. So, I- I'm looking to take a
2 month to decide this case, but I just wanted to let both parties know, I don't
3 plan to decide this today. I want to take the time to review it and to write a
4 thoughtful, uh, appealing explaining what my reasoning is. In any event,
5 uh, to make a long story short, I will receive all the exhibits at this time. All
6 right. Go ahead, Mr. Genser.

7 GENSER: Thank you. Next, I'd like to turn to the court's, uh, issue of the standard for
8 reviewing this, uh, preliminary part of this. I think it stems from Baxton v.
9 Kentucky, uh, 476 US, specifically at page 96. In that, the Supreme Court
10 discusses raising an inference as the standard, um. From there, the
11 counseling at courts have taken that and interpreted it. Uh, specifically, in
12 People v. Wheeler, W-H-E-E-L-E-R, 22 Cal.3d at page 280, um, there they
13 talk about a showing of a strong likelihood or a substantial likelihood as the
14 court, uh, mentioned, um.

15 And then, further analysis from the case of People v. Box (2000) 23
16 Cal.4th, 1153, at 1188, footnote seven, notes that a strong likelihood in
17 California means a reasonable inference. And, the courts have mentioned
18 the difference between, you know, the varying standards, preponderance
19 versus whatever, and I think it- it makes more sense to use the language
20 from People v. Box, uh, which means that the defense has to show that a
21 reasonable inference is that bias ran when this occurred, um. I think that
22 that is a pretty low burden, um.

23 So, the question then becomes, what is- what have we shown, um, with
24 what we've provided the court? Um, I want to start by talking about
25 something that I think that the prosecution, um, both the City Attorney's
26 Office and in- in filing a motion soon after this, at the District Attorney's
27 Office, is that the prosecution seems to misunderstand that- that there was
28 implicit bias as well as explicit bias, um. We don't have to show that this

1 particular officer intended to act with explicit bias. Like, he thought to
2 himself, "Here is a Black man. I am going to stop him." That's not the
3 showing.

4 All the showing has to be is that his action toward a Black person was
5 different than an action towards a white person. That's what implicit bias is.
6 It means- implicit means that it's not a conscious decision, but instead, a
7 decision based upon life experience. And, that's where the studies that I
8 provided the court come into fact which is what it shows is that by and
9 large, the police's implicit bias towards African Americans is incredibly
10 exaggerated, um. And, it leads to unfair and unconscionable results. That's
11 why this law exists, um.

12 So, what evidence do we have? When we're talking about implicit bias,
13 language matters, because what we're looking for is something that- that
14 shows you that this officer is acting differently towards an African
15 American person than they are towards a white person. And, I think the
16 most specific thing is the officer said he was casing the neighborhood.
17 Now, the officer could have said, "I've met a guy out here who seems to be
18 working for Door Dash and is delivering food. I've got a guy out here who's
19 an independent contractor with Amazon, and he was delivering packages
20 through Amazon."

21 He could have said, "This is a guy who's lost. I don't know that- he doesn't
22 know where he's going, he seems to be roaming around." But, instead of
23 that, what he shows is an implicit bias that when he sees this car, operated
24 by an African American, that he is casing the neighborhood. Now, casing
25 specifically means, looking to burgle, looking to commit a crime, looking
26 to, you know, do some sort of evil. There is no evidence, none, that this
27 person was casing. And so, what you have is an instant negative inference
28 connected to an officer's behavior for which there is no evidence to support

1 the negative inference.

2 JUDGE: Can I ask you two questions, um?

3 GENSER: Sure.

4 JUDGE: If- so I don't lose train of thought. Number one, um, I want to know
5 whether you believe the facts, um, indicate whether or not the officer knew
6 the race of the person who was driving?

7 GENSER: I believe he did.

8 JUDGE: I mean, I- what specific evidence, because I'm going to be reviewing all the
9 evidence after I hear arguments, so.

10 GENSER: There's no way to tell when the officer learned that.

11 JUDGE: Okay.

12 GENSER: Um.

13 JUDGE: I appreciate that. Okay. Th- that's fine. Uh, the- the other question I have is,
14 um, isn't the term casing, couldn't that be used with a person of any race, if
15 an officer sees a vehicle in any neighborhood, operated by any eth- ethnic
16 group and sees it driving slowly? Couldn't the officer entertain a suspicion
17 that that person is casing without it being tied to a specific ethnic group?

18 GENSER: Yes, but the point that I'm driving at is that the officer made a decision that
19 this person was casing without any evidence when, the fact of the matter is,
20 is if it had been a white Del Mar driver in a Mercedes Benz, cruising
21 through Del Mar, his response might have been, "This guy's driving home."
22 His response might have been, "Here's somebody who is- seems confused
23 about where they're going." But, the fact that this officer believed it was
24 casing, shows- it highlights his implied bias.

25 Now, here's the difficult part is that- that because implied bias is valid, that
26 is- that is bias under the statute, there will never be a situation where the
27 officer says, "I stopped this guy because he's Black." Even if it is explicit
28 bias. There- the police are never going to admit that they are acting on their

1 explicit bias. But, the State of California acknowledges that that's not
2 required. And, I- I know the courts have mentioned, uh... I don't want to say
3 flippantly, but sort of in passing that statistics mean nothing.

4 JUDGE: No, no, I- I said, sometimes.

5 GENSER: Oh right. And, I- and I- I want to- I want to go back to that idea, because I
6 think what this specific statute does is it acknowledges that it is impossible
7 to have a situation where officers either- but when you're going to prove
8 even explicit bias. And, what the statute does is it is a term demand to cases
9 like McClusky and in cases like Wren. And- and, I think, what- the reason
10 it was put in here that this can be proved by statistical evidence and by
11 advocate data, puts this court in a position to say, "That is enough by itself.
12 Statistical evidence and aggregate data is enough by itself for the court to
13 say there is implied malice in this stop."

14 Now, this case is particularly interesting because there's more. It's not
15 simply the statistics. But, on top of that, we have what looks to be like an
16 implied malice action, where the officer sa- without any evidence, says this
17 person is casing, when there's nothing to support that. Then, on top of that,
18 you have the officer relying on a particularly subjective statute, um. And,
19 it's- it's... So, I'm going to talk about the lic- the- the- the taillight or the
20 license plate light situation. There's no evidence in this case about what the
21 license plate looked like except for what I've provided to the court.

22 Now, the prosecution has aptly pointed out that the police officers parked
23 behind him and shining his light directly at the license plate, and the license
24 plates are designed to glow when the officer shines at them. But, the reason
25 I provided the picture is I- I do believe in the picture you can see the
26 illuminated light, that it comes through as a different color. And- and, the
27 reason I provided that is because, in part of the officer's reports, he says that
28 the light was- appeared to be burned out and in other places, he says, "No,

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the light was dim."
Now, I recognize that a dim light can in fact be a traffic violation. But, you would expect, if that's the real basis for the stop, that they would preserve evidence of that, that there would be something that the officer did list that says, "I observed this light from more than 50 yards away and when I observed it, I could not clearly see the license plate. My vision is 20/20. I have been specifically trained to," and lay a foundation for why he believes this light- this is... Here's the- the- the reason I mention this, is that at some point, we have to be able to- to subject- to- to figure out whether or not this has- this has been subjectively applied in a racial manner, or whether there's objective proof of a violation of a statute.
And, the fact of the matter is, there is no evidence of a dim light except for the officer saying, "I thought it was dim." And, you've got on top of that, this study after study, after study showing that Africa- African American people are stopped with either explicit or implicit bias and treated differently once they have been stopped. So, then, the next step [inaudible 00:23:20] a stop based on a complaint, casing, for which there's absolutely no evidence, then, based on clear and subjective statute for which there is no evidence, and then, you have your- your turn across a- a solid white line, which is not a crime, um.
And, I- I figured the- the prosecution concedes that that is not a crime because they didn't argue that in the motion, um. And, I- I can understand why the officer... I- I'm not going to guess at what he was thinking. His job is to know the law, he's wrong, um. There is no rule saying you can't cross a solid white line. And, if he just thinks from common experience, any time you pull up to, you know... You think of Mission Valley for example, where you have seven lanes across this- a road, you know, across Salas Road.

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As you pull into each lane, there is a solid white line dividing each lane, but as you pull up, you realize you're in the wrong lane. You are allowed to cross into the lane you want to be in, even though it's over a solid white line. And, the police officer, whose job it is to know the traffic laws, who is enforcing traffic laws, hopefully without bias, should know that the so-crossing the solid white line is not a crime, um. The prosecution went further on that and sort of talked about how there is a- a failure to signal. There's no evidence of that, um. The police officer did not stop him for a failure to signal. He doesn't record that in his police report that that was a basis for the stop.

I provided the court with a ticket. It is not listed on a ticket, um. There is no evidence that Mr. Barshell failed to signal. There's simply no evidence of that, um. What this turns into for the court is using traffic laws which essentially, they're using laws to stop a car which don't exist. And, I'm sure that on top of the statistical- the statistical evidence that the court has, this is indicative of bias. And, I think, once the court has that, where the court is able to make a decision, based on statistics and aggregate data alone, that bias occurred.

But, on top of that, you have a police officer giving at least three examples of implicit bias occurring during the course of this stop, I think that that is enough. And, I think the court is- is- is confronted with- with a sort of- sort of the- the flip side of that argument, that if that's not enough, then what is? How can this motion ever... We know because this law was passed, that there must be a way to prove it, right?

The legislature is not going to pass a law for which there is no possibility that it could ever be proved. And so, then, if the court is going to say, "Mr. Genser, you've put on a good case here but that's not it." The court needs to also tell us what is it? Because if this isn't evidence of imp- of implied bias,

1 how could it ever be proved? And, the fact of the matter is- is that if the
2 court is going to require some evidence that- that Officer Darby approached
3 this and said, "Mr. Barshell, I stopped you for, uh, your light's wrong and
4 you turned wrong, and you're a Black man. I just don't like you to be in this
5 neighborhood." How is that different from McClusky? How is that different
6 from Wren?

7 And, I think that this statute tells us that now, McClusky's not the law.
8 Wren is not the law when it comes to this. I understand Fourth Amendment
9 wise, Wren still holds, but this law is a direct countermand to the behaviors
10 that we have observed in cases like Wren. And, it's a direct action for this
11 court to not tolerate it any more. And, I think what the court needs to do is
12 now shift to the prosecution and say, "Listen, we've got a lot of evidence of
13 implied bias on this case, is there evidence that shows that there isn't bias?
14 Is there evidence that dispels implied bias?" There isn't.

15 I cited in my brief an article by Charles Blow from the New York Times.
16 It's Exhibit C, I believe, in my brief, um. And, what he says is that, "Racism
17 has evolved to become less blunt but not become less effective, uh. Now,
18 systems do the work that once required the other actions of massives of
19 individual races- racists." It's the systems that we are concerned with and
20 the problem is the prosecution's office has become one of those systems. I
21 have never met the City Attorney before. [inaudible 00:28:50].

22 I don't think that he is here to defend racism. But, I do think that the system,
23 the way that we have built this system, that racism and the su- the support
24 of race supremacy is so built into our system that this law is necessary.
25 And, the thing that makes me more nervous than the prosecution, because
26 the prosecution's- they deal- they oppose my motions... They always do,
27 right? It's the court becoming part of the system of oppression that scares
28 me. The prosecution's going to do their job. I understand that.

1 I don't like it, right? I would love to have gotten one up on this. But, I
2 understand that that's not the world that we're in. But, what concerns me is
3 when a person who is weighing the scales of justice becomes part of the
4 system of oppression, that things have gone terribly awry. And, the reason
5 that this statute has passed is because, not simply prosecuting agencies, the
6 courts have not been doing enough to make sure that racism has not
7 occurred. I understand that this is a motion that takes courage to grant, and I
8 think the court should grant it. I'll submit on that.

9 JUDGE: All right. Let me ask you a couple of questions, uh. Number one, I assume
10 you know that by bringing this motion in pretrial, the remedies are more
11 limited than when it's brought post-judgment because under, uh, 745(e)(1),
12 uh, the remedy is before a judgment has been entered, the court may
13 impose any of the following remedies, uh, two of which are irrelevant:
14 declare a mistrial, I'm not at that point; discharge the jury, we're not at that
15 point.

16 And then (c) is the only one that would apply. "If the court determines that
17 it would be in the interest of justice, dismiss enhancements, special
18 circumstances, or special allegations, or reduce one or more charges." So,
19 there's no authority for dismissing the underlying charge, only
20 enhancements.

21 GENSER: I think if you'll look at subsection (4), um, it can be more specific for any
22 record, (e)(4) says, "... remedies available under this section do not
23 foreclose any other remedies available under the United States Constitution,
24 the California Constitution," and, best of all, "any other law." I know that
25 includes 1385, um. Obviously, the court is free to- to craft any remedy that
26 it sees fit, but my request will be that the court dismiss the 14601
27 allegations and remove the 12500 allegation.

28 And, I understand that on the one hand, the court does not want to- the

1 court wants to show that it's not willing to tolerate bias, whether it be
2 explicit or implicit. But, on the other hand, the court does not want to
3 excuse a violation of law, um, especially in a case where there isn't explicit
4 bias, uh, ex- explicit bias, uh. And, so, I think that that ser- that balance
5 serves the court's purpose, that the court can use "any other law,"
6 specifically, 1385, dismiss the 14601 allegations, but leave Mr. Barshell
7 charged with the 12500 for driving without a license as he was in fact doing
8 based upon, uh, the facts given to us by Officer Darby, um. Now,
9 obviously, the court is free to craft any remedy it chooses, that is my
10 suggestion.

11 JUDGE: Okay. I appreciate that. Well, I think that comment and your reference to
12 (e)(4) is one demonstration of what I remarked when I opened the motion
13 which is how the legislature doesn't necessarily think through the issues
14 they're creating for trial judges and lawyers by having provisions that
15 sometimes are in apparent conflict with each other. For example, (e)(4),
16 um, appears to be much broader than (e)(1)(C).

17 So, the question is, why do they have both of those provisions where one is
18 specifically referred to as a before judgment remedy and then, go on to say
19 you can do basically anything you want under the California Constitution,
20 US Constitution, or as you say, any other law? So, that's just one resolution.
21 I'm not resolving it here. I'm just saying, what does that mean?

22 GENSER: So, to respond to the court's question, I think- I think the drafters of this
23 knew that it would be difficult to grant these motions, and the drafters
24 wanted to give the court clear guidance in whatever we do by and large
25 circumstances. Now, as it turns out the by and large circumstances are not
26 applicable to this case. The court is right. There is no mistrial here. There's
27 no jury here to discharge. There are no enhancements, um.

28 JUDGE: Well, I think this is an enhancement, isn't there? For prior?

1 COSGROVE: Actually, there are for, uh, 214601, um, .2, and then, uh, 14601, uh, .5.
2 They have an enhancement for having a prior.

3 JUDGE: Oh, so those could be dismissed?

4 GENSER: So, those can be dismissed. But, I think what they also do is they say, listen,
5 then, after judgment, here's some remedies the court may/should perhaps
6 consider. And then, finally, they give you a catch all. It's not even set. You
7 are free to use any statute valid under the United States Constitution,
8 California Constitution, or any other law.

9 JUDGE: Yeah. All right. One other question before I hear from Mr. Cosgrove, um.
10 And, I don't mean this as a trick question, but I'm really curious, do you
11 believe... Uh, you have presented statistics and it sounds like implicitly
12 you're agreeing that statistics by themselves, even the most powerful
13 statistics, are insufficient without some reference to the facts of the
14 particular case, which you've done. I mean, you've- you've focused on
15 specific facts of the case, um. My question is this. Do you think the race of
16 the officer is relevant?

17 GENSER: No.

18 JUDGE: Okay.

19 GENSER: Um, a- and, l- let me tell you why, um. I want to articulate this in the right
20 way.

21 JUDGE: Okay.

22 GENSER: The question that the court asked is a offshoot of the, I Have a Black Friend
23 argument. And, often you'll hear people that have been accused of racism
24 say, "How could I be racist, I have a Black friend?" And, the problem is, is
25 those two things, as the court pointed out between ice cream and violent
26 crime, are not logically connected. Simply because you have a Black friend
27 does not mean that you cannot be biased in some way, even to Black
28 people.

1 I think it also doesn't mean that- that simply because you are Black, doesn't
2 mean you can't be biased against Black people. Simply because you are
3 Hispanic, doesn't mean that you are not biased against Hispanic people. Or,
4 if you are Hispanic, you can be biased against Black people. And, I think
5 this is particularly highlighted with the idea of what's known as a sort of- of
6 shade or colorism within race. People- African American people that are
7 darker in color tend to be treated worse than the African American people
8 of a lighter skin color.

9 Similarly, you have people within the country of Mexico. You have your
10 Tijuana Mexican people. They tend to be darker Mexican and then you
11 have your Guadalajara Mexican people that have blond hair and blue eyes.
12 And, if you watch for example any Mexican television, there is almost no
13 representation of the Tijuana type of Mexican. It's all blond-haired, blue-
14 eyed, very light-skinned Mexican people. And, you have a very clear
15 cultural highlight of how racism can exist between one race and when... I
16 say race, but I should say ethnicity, because what I'm really talking about
17 there is- is a racism that occurs within an ethnicity.

18 And so, to answer the court's question. I don't know the race of Officer
19 Darby, but it doesn't matter.

20 JUDGE: Okay.

21 GENSER: Black people can be racist against other Black people. Hispanic people can
22 be racist against other Hispanic people. And, the statute does not require
23 that.

24 JUDGE: Yeah, I- I didn't mean it to go just one way. I mean, you inferred something
25 from my question that... My question is, is it one factor to consider? Let's
26 say... I'll give you a hypothetical that we don't have in this case. But, let's
27 say, you have a Black officer, in the neighborhood he grew up in. And, he's
28 "casing" a car and says, "Hey, I grew up here. I know what that guy's up

1 to." Wouldn't that be a factor to consider in support of a prima facie
2 showing?

3 GENSER: The fact that the officer is Black has no bearing. The court provided
4 additional evidence that is everything, right? If he grew up in the
5 neighborhood, then he knows the guy. He knows what casing in that
6 neighborhood looks like. And, he knows the behaviors of the criminals in
7 that neighborhood, yes. All of that's strong, valid evidence.

8 JUDGE: Okay. If that were the case, I'd be able to consider it.

9 GENSER: Yeah, of course. Now, what the court can't consider is the fact that the
10 officer is Black. That has no relevance. That has no bearing on anything.
11 And, obviously, if- if a motion like this is brought, you would assume that
12 the person is- is part of the protected class of your ethnicity or race.

13 JUDGE: Recognizable group. Yeah.

14 GENSER: Yes.

15 JUDGE: I understand. Okay. Thank you. I appreciate your comments. Let me hear
16 from you, Mr. Cosgrove. I know you've been waiting there patiently.

17 COSGROVE: Thank you, Your Honor. First off, the People are not here to defend the
18 system or defend this officer and their opposition wasn't meant for that. Our
19 opposition is no different than what happens every day in this courtroom
20 wh- when there's a jury trial, and defense counsel defends or insures that
21 the People meet their burden before their client is found guilty.

22 And, so, my role here is not to defend Officer Darby. It's not to defend the
23 San Diego Police Department. It's not to defend the San Diego Superior
24 Court system. It is and the basis of my motion was nothing more than to
25 hold defense counsel to a burden that is in Penal Code Section 745. And,
26 we start with what is the first burden?

27 The burden is they have to provide evidence of a prima facie case just to
28 get to a hearing for a court to rule whether a violation of 745 has occurred.

1 And, as I pointed out in moving papers, this court has handled this similar
2 to the definition of prima facie, but it says substantial likelihood, I mean, it
3 gives these words, "Waving the mere possibility by- of more than- likely
4 than not."

5 So, I took that a step further. What does mere possibility mean? Mere- mere
6 possibility is speculation. So, we could get over this speculation that there
7 was implicit bias in this case and again, I disagree with defense counsel on
8 this. I think there may be ways to have these motions heard and even
9 possibly granted and in that process, be able to show implicit bias. And,
10 that's where for this case, where People make their point that there isn't a
11 sufficient showing to show that there is speculation. What evidence do we
12 have here?

13 We do have statistics that show that African American individuals and
14 Hispanics are stopped at a higher rate than whites in San Diego. But, they
15 also have some statistics that show whites are stopped for a different reason
16 more than these other- other classes. We also have statistics that Asian
17 Americans are stopped at a different rate than all of them. But, what do
18 they- what does this evidence show? This evidence is something that
19 appears to be a real possibility? Is it speculative that the San Diego Police
20 Department as a whole has some implicit bias against individuals?

21 I was trying to parcel out, uh, some other studies with respect to a
22 neighborhood I would have liked to have seen underneath it. But, what's
23 also at play in- into this is, is there implicit bias in one neighborhood versus
24 another? What else do we have in this- evidence in this case? We have an
25 officer who stopped an individual and he wrote a report. The individual he
26 stopped was an African American. Is there implicit bias in what the officer
27 did to stop the individual? Defense counsel points to the word casing.

28 As I pointed out in my brief, we're- this is December and this is at night.

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What happens in December? It's the Christmas season. People stealing packages. It is well known, prevalent that there are porch pirates, people who go around, looking for packages on people's doorsteps, and then they take them. Night times are a great time to do that. So, when an officer just sees a car driving slowly through the neighborhood, they could be Door Dashing. They could be Ubering. They could be doing any number of things. But, as we know from case law, innocent facts do apply to the Fourth Amendment. They can look like something that is a violation.

And, so, you have a car, driving slowly through a neighborhood. Yeah, that car may be looking like case law, but what is the other fact? The officer says, "I lost sight of the vehicle." In other words, the officer sees this car, he loses sight of him. Doesn't think anything about it. Then, he sees the car later on. Does the fact that he called what he saw casing implying an implicit bias? What there any inference of implicit bias? Well, the answer is not that I'm aware.

And, that's what's missing here, is the not that I'm aware. And, the officer sees other things that provide him the opportunity to stop this car. I show that a car jumping out... I go again to what the officer says. "The vehicle continued across the bridge, over the freeway, appearing as if it was continuing straight. But, the individual driving the car turned around in the streets," and the officer would never have written that.

So, that is why I made that argument that you had a car that had seemed to slow to go to one lane onto the freeway, but then, continued straight, and all of a sudden, makes this left-hand turn. Is that indicative of some wrongdoing? It may be indicative of- of anything or maybe of some things. It can also be indicative of what the officer said. This person may be intoxicated. And, if he didn't use his turn signal, then that's an obvious, um, violation. But, officers don't have to put every single foundational fact in

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the police report. It is there- it is there when you seek. This is not a 1538.
All of these things related to the stop. They are ripe for a- for a suppression
motion. Bring in the off- Make- make the People bring in the officer to
justify the stop itself. And, if he can't, then, uh, we'll suppress everything
after that. But, that's not what we're here for. We're here because under
these circumstances, did the officer exhibit implicit bias? And, as this
court- court pointed out at the beginning, we don't have to look at the
specific officer for the specific case.
This occurred at night. This occurred from a distance, because the officer's
saying, "I saw the light. It was dim, out- outside the distance that it's
supposed to be." Well, there is no indication that Officer Darby knew the
race of Mr. Barshell. There is none. If this- if this case occurred during the
day, I might losing this argument but the fact that it occurred at night, and
there's nothing to show that Officer Darby saw Mr. Barshell, there is- we
still don't have more fact.
And, to help the defense- to help the defense because I think the answer
that to get over the prima facie case is likely. It can be made, but it can't be
made in this case right now. The answer is found in Young. Young is about
discovery. What discovery do we have related to Officer Darby? Are- are
there statistics showing that Officer Darby stops African Americans and
Hispanics way more than he does whites in specific neighborhoods?
Defense counsel would have a great prima facie case to get to the
evidentiary hearing.
But, we're not there. All we have is the stop occurred at night of a African
American individual. That's all we have. We cannot impute the statistics of
the San Diego Police Department to Officer Darby. And, it's not like
Officer Darby treated this individual any different after he stopped Mr.
Barshell. You know what I mean? He could have left him on the side of the

1 road after impounding his car. But, they took him to a gas station. That kind
2 of implies- there's got to be some inference for that, but instead of Mr.
3 Barshell said nothing to the officers 'cause they treated him like a human.
4 So, the People for the purposes of this hearing, if I'm hearing the court,
5 there's- for the People there are two steps for a prima facie case to get to a
6 hearing. And, I believe that's where we're at right now. Do we get- does
7 defense counsel get a hearing to put on true evidence? And so, from the
8 People's point of view, we don't have a prima facie case and so, this court
9 should just deny the motion at this juncture.

10 We- and even if the court believes that there is enough to get to the hearing,
11 based on what is before the court, it's definitely not to the preponderance of
12 the evidence that Officer Darby acted with any implicit bias. And, uh, the
13 People understand defense counsel's argument with respect to, um, reform
14 under the [inaudible 00:49:23] the... It will be interesting to see how that
15 plays out with respect to 1385, 'cause as defense counsel pointed out, the- a
16 crime was committed here. Does he get out of that crime? And, when you
17 look at the writings that are provided by the legislature is- in reading this, is
18 we want to mitigate some things that happen to African Americans.

19 This is definitely not a murder case. So, like, life without parole, uh, the
20 death penalty, and the amount of play. But, you can see what the legislature
21 is trying to do with the the remedies is to try to get those who are treated
22 differently back to being treated the same. And, so, the People don't believe
23 dismissal of this case is proper. Dismissal of the counts are proper.

24 JUDGE: Well, that's not before me right now.

25 COSGROVE: Right. Right. And- and, so-

26 JUDGE: The- the issue that Mr. Genser raised w- with regard to the relationship
27 between (e)(1)(C) which are the remedies before trial, versus (e)(4) will
28 only be ruled upon by a court when some judge does something that's not

1 authorized by (e)(1)(C) before trial, and uses (e)(4) as the justification.
2 And, that's when it will get to a higher court but that's neither here nor there
3 today so.

4 COSGROVE: And, so, with that, Your Honor, I will submit to this court, uh, that it's the
5 People's position a prima facie case has not been met.

6 JUDGE: I have a procedural question for you before I hear from Mr. Genser again,
7 um. And, this is, again, another ambiguity I think will have to be ruled on at
8 some point in the future, but. 745(a)(1) sets forth, I think, the only basis for,
9 um, the justification today for the defense motion which is 745(a)(1) gives
10 us a reason: "The judge, an attorney in the case, a law enforcement officer
11 involved in the case, an expert witness, or juror exhibited bias or animus
12 towards the defendant because of the defendant's race, ethnicity, or national
13 origin." I assume that's the provision defense is relying on 'cause that's the
14 only one that mentions law enforcement officer.

15 But, it follows the preliminary statement under 745(a): "The state shall not
16 seek or obtain a criminal conviction or seek, obtain, or impose a sentence
17 on the basis of race, ethnicity, or national origin." So, the question is, um,
18 and I don't know the answer, does what an officer does before the state
19 seeks to file charges have any relevance to the violation that's described in
20 745(a), or does the bias by the law enforcement officer have to occur after
21 the charges are filed?

22 In other words, what's the relationship between the first statement, "The
23 state shall not seek or obtain a criminal conviction or seek, obtain, or
24 impose a sentence on the basis of race, ethnicity, or national origin?" Is
25 what the officer did in the field relevant to determining whether the state is
26 seeking a criminal conviction based on- on bias? So, that's- that's just a- a
27 question I don't have the answer to. But, that's an issue that will have to be
28 resolved in the future. All right. Let me hear from you. I promised I'd give

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DECLARATION OF COLUMBA SILVA

I, Columba Silva, declare:

The preceding transcription is a true and correct transcription of Court proceeding on unknown date, in reference to People v. LEO BARSHELL, Case No.: M272759, to the best of my ability.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of July 2022, at San Diego, California.

Columba Silva
Declarant

Exhibit E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

DEPARTMENT 2102 HON. HOWARD H. SHORE, JUDGE

_____)	CERTIFIED TRANSCRIPT
THE PEOPLE,)	
)	
PLAINTIFF,)	CT NO. M280282
)	
VS.)	
)	
TOMMY BONDS,)	
)	
DEFENDANT.)	
_____)	

REPORTER'S TRANSCRIPT
AUGUST 2, 2022
PAGES 1 THROUGH 40

APPEARANCES:

FOR THE PLAINTIFF: SAN DIEGO CITY ATTORNEY'S OFFICE
 BY: TAYLOR HEARNSBERGER
 DEPUTY CITY ATTORNEY
 1200 3RD AVENUE, SUITE 700
 SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANT: KATHERINE BRANER, CHIEF DEPUTY
 PRIMARY PUBLIC DEFENDER
 BY: ABRAM GENSER
 DEPUTY PUBLIC DEFENDER
 451 A STREET, SUITE 900
 SAN DIEGO, CALIFORNIA 92101

NANCY B. CASTREJON, CSR NO. 14186
OFFICIAL COURT REPORTER

1 SAN DIEGO, CA, TUESDAY, AUGUST 2, 2022, 9:15 A.M.

2

3 THE COURT: THIS IS THE CASE OF PEOPLE VERSUS TOMMY
4 BONDS.

5 APPEARANCES OF COUNSEL, PLEASE.

6 MR. HEARNSBERGER: TAYLOR HEARNSBERGER FOR THE
7 PEOPLE.

8 MR. GENSER: DEPUTY PUBLIC DEFENDER ABRAM GENSER ON
9 BEHALF OF MR. BONDS, 977. I'M ASSISTED BY MY LAW CLERK.

10 THE COURT: THIS IS A MOTION TO -- FOR RELIEF UNDER
11 THE RACIAL JUSTICE ACT, AND I REVIEWED THE FOLLOWING
12 DOCUMENTS IN PREPARATION FOR THIS MOTION: A NOTICE OF
13 MOTION AND MOTION FOR RELIEF UNDER THE RACIAL JUSTICE ACT
14 PURSUANT TO PENAL CODE SECTION 745, PARENTHESIS SMALL A,
15 PARENTHESIS 1, AUTHORED BY MR. GENSER AND ASHKAN
16 KARGAREN, K-A-R-G-A-R-E-N, FIRST NAME, A-S-H-K-A-N, ON
17 BEHALF OF THE DEFENDANT. ARE YOU WAIVING THE DEFENDANT'S
18 PRESENCE?

19 MR. GENSER: YES.

20 THE COURT: OKAY. THAT'S FILE STAMPED JULY 12TH,
21 2022. I'VE ALSO REVIEWED AN OPPOSITION TO THAT MOTION
22 AUTHORED BY DEPUTY CITY ATTORNEY TAYLOR HEARNSBERGER ON
23 BEHALF OF THE PEOPLE, FILE STAMPED JULY 26TH, 2022.

24 AND TODAY'S MOTION IS TO DETERMINE, AS I
25 UNDERSTAND IT, WHETHER THERE WAS A PRIMA FACIE SHOWING
26 SUFFICIENT TO ORDER A HEARING ON THE ALLEGED VIOLATION
27 INCLUDED IN THE DEFENSE MOTION.

28 MY NORMAL PRACTICE IS TO HEAR FROM THE MOVING

1 PARTY FIRST AND ALSO GIVE YOU THE LAST WORD.

2 SO I'LL ALLOW YOU TO PROCEED, MR. GENSER, AND
3 THEN I'LL HEAR FROM THE PEOPLE.

4 MR. GENSER: THANK YOU, YOUR HONOR. IN ADDITION TO
5 THE EVIDENCE WE'RE GOING TO -- THE EVIDENCE WE'RE GOING
6 TO PRESENT TODAY CAN ALSO BE USED SHOULD THE COURT FIND
7 THAT WE'VE MADE OUR PRIMA FACIE CASE. IT WILL BE THE
8 SAME EVIDENCE TO DETERMINE WHETHER OR NOT WE'VE ALSO MET
9 THE A VIOLATION UNDER THE PREPONDERANCE STANDARD.

10 THE COURT: AS I UNDERSTAND IT, THE STATUTE OF -- AS
11 I MENTIONED IN PREVIOUS MOTIONS, THERE'S A LOT TO BE
12 ANSWERED BY THE APPELLATE COURTS WITH REGARD TO
13 INTERPRETATION OF THE STATUTE, BUT PENAL CODE SECTION
14 745, PARENTHESIS SMALL C, SAYS IF A MOTION IS FILED IN A
15 TRIAL COURT AND THE DEFENDANT MAKES A PRIMA FACIE SHOWING
16 OF A VIOLATION OF SUBDIVISION PARENTHESIS SMALL A, THE
17 TRIAL COURT SHOULD HOLD THE HEARING.

18 SO MY UNDERSTANDING IS THAT THE PRIMA FACIE
19 SHOWING IS SIMILAR TO A PITCHESS MOTION WHERE THERE ARE
20 EITHER DECLARATIONS OR OFFERS OF PROOF, AND IF I FIND
21 THAT SUFFICIENT, THEN I CONDUCT THE HEARING.

22 MR. GENSER: YOUR HONOR, ALSO, UNDER SUBSECTION
23 (C)(1), WE ARE PERMITTED TO PRESENT STATISTICAL EVIDENCE,
24 AGGREGATE DATA, EXPERT TESTIMONY, AND SWORN TESTIMONY.

25 THE COURT: AT THE HEARING. THAT'S THE HEARING
26 ORDERED AFTER I MAKE A PRIMA FACIE SHOWING. (C)(1)
27 BEGINS BY SAYING, "AT THE HEARING," COMMA, "EVIDENCE MAY
28 BE PRESENTED BY EITHER PARTY."

1 SO FOR THE PRIMA FACIE SHOWING, I DON'T BELIEVE
2 THE STATUTE WAS INTENDED FOR THE COURT TO HOLD A HEARING
3 IN ORDER TO DECIDE WHETHER TO HOLD A HEARING.

4 MR. GENSER: WELL, I THINK I'M STILL PERMITTED TO
5 PRESENT EVIDENCE TO THE COURT THAT THE COURT SHOULD HOLD
6 A HEARING. I DON'T THINK I'M LIMITED TO PAPERWORK. I
7 THINK I CAN CALL WITNESSES, AND THE COURT CAN EXAMINE
8 THEM AND DETERMINE WHETHER OR NOT I'VE MADE A PRIMA FACIE
9 SHOWING.

10 THE COURT: WELL, WHAT WOULD BE THE DIFFERENCE
11 BETWEEN THAT AND A HEARING?

12 MR. GENSER: WELL, I THINK, AS OFTEN WILL BE THE
13 CASE -- FOR EXAMPLE, IF THIS WERE A BATSON-WHEELER
14 CHALLENGE, I WOULD SAY, "YOUR HONOR, I HAVE AN
15 OBJECTION." THE COURT WOULD HOLD A PRELIMINARY HEARING
16 TO DETERMINE WHETHER OR NOT THERE'S ENOUGH EVIDENCE TO
17 SHIFT THE BURDEN TO THE PROSECUTION. AT THE PRIMA FACIE
18 SHOWING, I WOULD SAY THE JUROR THE PROSECUTION KICKED IS
19 BLACK, AND THERE IS NO RACE-NEUTRAL REASON FOR THEM
20 KICKING SAID JUROR. AND IN EVERY COURTROOM I'VE EVER
21 BEEN IN, THAT'S BEEN ENOUGH FOR THE JUDGE TO SAY, "OKAY.
22 THE BURDEN NOW SHIFTS TO THE PROSECUTION. IS THERE A
23 RACE-NEUTRAL REASON FOR EXPLAINING THAT?" THE STANDARD
24 IS EXCEEDINGLY LOW.

25 NOW, I THINK THAT I COULD PRESENT EVIDENCE THAT
26 THE JUROR WAS BLACK. FOR EXAMPLE, I COULD SAY -- PRIMA
27 FACIE SHOWING, "YOUR HONOR, IN ORDER TO SUPPORT THIS, I
28 WOULD LIKE TO TAKE THE SWORN TESTIMONY OF THIS WITNESS.

1 I'D LIKE TO INTRODUCE THE WITNESS' INSTAGRAM PAGE WHERE
2 HE CLAIMS THAT HE IS AFRICAN AMERICAN." I CAN -- SO ON
3 AND SO FORTH.

4 NOW, THAT NEVER HAPPENS BECAUSE THE PRIMA FACIE
5 CHALLENGE IS SO LOW THAT WE NEVER GET TO THAT. WE MOVE
6 RIGHT INTO THE EVIDENTIARY PART OF THINGS. I THINK THIS
7 COURT SHOULD DO THAT AS WELL, ESPECIALLY IN LIGHT OF THE
8 EVIDENCE IN THIS CASE.

9 THE COURT: LET ME HEAR FROM THE PEOPLE.

10 MR. HEARNSBERGER: YOUR HONOR, THIS ISN'T A
11 BATSON-WHEELER HEARING. WE HAVE A STATUTE HERE THAT
12 IS -- WHILE THERE -- THE COURT POINTS OUT THERE'S MANY
13 THINGS THAT WILL EVENTUALLY BE ANSWERED BY REVIEWING
14 COURTS, I THINK THE PROCEDURE HERE IS VERY CLEAR. UNDER
15 (C) AND (C)(1), THE DEFENSE HAS TO MAKE THAT PRIMA FACIE
16 SHOWING AND THEN A HEARING IS ORDERED, AT WHICH TIME
17 EVIDENCE AND TESTIMONY IS RECEIVED BY THE COURT.

18 AS THE COURT POINTED OUT, IT DOESN'T MAKE SENSE
19 TO HOLD A HEARING TO DECIDE WHETHER TO HOLD A HEARING.
20 THERE'S NO AUTHORITY TO TAKE TESTIMONY THIS MORNING. THE
21 COURT NEEDS TO CONSIDER WHAT IT HAS BEFORE IT NOW IN
22 DETERMINING WHETHER THAT SHOWING HAS BEEN MADE BY THE
23 DEFENSE.

24 THE COURT: AS I MENTIONED, THERE'S VERY LITTLE
25 APPELLATE GUIDANCE, ONLY ONE PUBLISHED DECISION, YOUNG
26 VERSUS SUPERIOR COURT OF SOLANO COUNTY, 79 CAL.APP.
27 FIFTH, 138. AND THAT CASE CONCERNED A DISCOVERY ISSUE,
28 BUT IN THE CONTEXT, IT'S THE ONLY CASE THOROUGHLY

1 DISCUSSING THE RACIAL JUSTICE ACT, AND IT DOES MENTION
2 THE PRIMA FACIE SHOWING REQUIRED. IT DOES NOT DISCUSS
3 THE PROCEDURE BECAUSE THAT WASN'T THE ISSUE IN THAT CASE,
4 BUT IT DOES TALK ABOUT THE ANALOGY TO PITCHESS MOTIONS.
5 IN PITCHESS MOTIONS, THE DEFENSE ADMITS AN AFFIDAVIT
6 UNDER PENALTY OF PERJURY, AND THAT'S NOT REQUIRED HERE.

7 BUT THE COURT THEN REVIEWS IT AND DECIDES,
8 WITHOUT HEARING ANY OTHER EVIDENCE, WHETHER OR NOT THE
9 ALLEGATIONS MADE IN THE AFFIDAVIT ARE SUFFICIENT FOR THE
10 COURT TO CONDUCT AN IN-CAMERA REVIEW. AND IN THE YOUNG
11 CASE, IT TALKS ABOUT THE SIMILARITIES. THERE'S NO CASE
12 SPECIFICALLY HOLDING WHAT THE PROCEDURE IS FOR THIS TYPE
13 OF MOTION, BUT IT SEEMS TO MAKE SENSE IN LIGHT OF THE
14 FACT THAT SUBDIVISION C OF 745 SAYS IF A MOTION IS FILED
15 IN THE TRIAL COURT AND THE DEFENDANT MAKES A PRIMA FACIE
16 SHOWING, THEN THE TRIAL COURT SHALL HOLD A HEARING.

17 WITH REGARD TO PITCHESS DECLARATIONS, THE
18 COURT'S FUNCTION IS NOT TO DECIDE WHAT IS TRUE OR NOT
19 TRUE, ONLY WHETHER DEFENSE ALLEGATIONS SHOW A REASONABLE
20 POSSIBILITY THAT THERE IS SOME TYPE OF VIOLATION. SO I
21 BELIEVE UNTIL THERE'S FURTHER APPELLATE GUIDANCE, THAT
22 SHOULD BE THE PROCEDURE HERE, AND I WILL PERMIT
23 MR. GENSER TO MAKE OFFERS OF PROOF AS PART OF THE PRIMA
24 FACIE SHOWING, AND I'M NOT GOING TO JUDGE WHETHER OR NOT
25 THOSE OFFERS ARE ACCURATE OR NOT, BUT I'M NOT GOING TO
26 HEAR ANY TESTIMONY TODAY.

27 WITH THAT IN MIND, I WILL ALLOW MR. GENSER TO
28 ADD -- YOU HAVE ALLEGATIONS CONTAINED WITHIN YOUR MOTION.

1 I'LL ALLOW YOU TO ADD TO THAT ORALLY IF YOU WISH AND
2 INDICATE WHAT ANY WITNESSES YOU WOULD HAVE CALLED WOULD
3 HAVE SAID, AND I WILL INCORPORATE THAT INTO THE SHOWING
4 FOR THE PRIMA FACIE CASE.

5 MR. GENSER: OKAY. YOUR HONOR, CAN I EXCLUDE -- LET
6 MS. MOORE KNOW HER TESTIMONY WILL NOT BE NEEDED TODAY?

7 THE COURT: SURE. UNLESS SHE WANTS TO STAY AND
8 LISTEN.

9 MR. GENSER, AS YOU KNOW FROM PREVIOUS MOTIONS,
10 I'VE READ EVERYTHING. PLEASE DON'T REPEAT EVERYTHING,
11 BUT FEEL FREE TO ACCENTUATE ANYTHING YOU'D LIKE.

12 MR. GENSER: I'D LIKE TO START BY HAVING THE COURT
13 RECEIVE EXHIBITS A THROUGH M.

14 THE COURT: ANY OBJECTION FROM THE PEOPLE?

15 MR. HEARNSBERGER: YES, YOUR HONOR. I WOULD OBJECT
16 TO A THROUGH J. THERE'S VERY -- THERE'S VERY LIMITED
17 UTILITY TO THESE EXHIBITS TO BEGIN WITH, BUT I THINK
18 THEY'RE HEARSAY AND LACKING IN FOUNDATION, NOT FOUNDATION
19 NECESSARILY FOR AUTHENTICITY, BUT FOR THE METHODOLOGIES
20 IN SOME OF THESE STUDIES. I HAVE NO OBJECTION TO K
21 THROUGH M.

22 THE COURT: OKAY. WELL, THIS ISSUE HAS COME UP
23 BEFORE, AND MY ATTITUDE IS THAT FOR THE PURPOSE OF A
24 PRIMA FACIE SHOWING, THE EVIDENCE CODE DOES NOT APPLY.
25 THE FACT THAT I RECEIVED THESE THINGS INTO EVIDENCE
26 DOESN'T INDICATE WHAT WEIGHT I'M GOING TO GIVE THEM. FOR
27 EXAMPLE, I MAY RECEIVE A STUDY AND FIND A -- OR DETERMINE
28 THE STUDY IS MEANINGLESS AND THEN NOT CONSIDER IT, BUT

1 THERE'S A DIFFERENCE BETWEEN RECEIVING THE EVIDENCE AND
2 THEN GIVING IT --

3 MR. HEARNSBERGER: OKAY.

4 THE COURT: -- GIVING IT WEIGHT. SO I WILL RECEIVE
5 THE DEFENSE EXHIBITS AT THIS TIME.

6 (DEFENSE EXHIBITS A THROUGH M WERE RECEIVED
7 INTO EVIDENCE.)

8 MR. GENSER: THANK YOU, YOUR HONOR. I WANT TO START
9 BY TALKING ABOUT THE STANDARD OF REVIEW THAT THE COURT
10 MENTIONED. IT STARTS WITH BATSON VERSUS KENTUCKY, WHICH
11 IS, OF COURSE, THE CASE THAT I MENTIONED EARLIER ON THE
12 BATSON-WHEELER CHALLENGE. THE PHRASE USED IN THAT --

13 IT'S 476 U.S. AT PAGE 96 -- IS THAT IT RAISE AN
14 INFERENCE, IS THE STANDARD IN A BATSON-WHEELER CHALLENGE.

15 NOW, CALIFORNIA INTERPRETED THAT LANGUAGE TO --
16 IN WHEELER. SO WE CALL IT A BATSON-WHEELER CHALLENGE.
17 IN WHEELER, THEY INTERPRETED THE LANGUAGE "RAISE" AND
18 "INFERENCE" TO WHERE THE DEFENSE MUST SHOW A STRONG
19 LIKELIHOOD. THE COURT FURTHER WENT ON IN PEOPLE VERSUS
20 BOX, 2000 23 CAL.4TH, 1153 AT 1188, FOOTNOTE SEVEN. IT
21 SAYS, "IN CALIFORNIA, A STRONG LIKELIHOOD MEANS A
22 REASONABLE INFERENCE."

23 SO WE USE THOSE WORDS INTERCHANGEABLY, STRONG
24 LIKELIHOOD AND REASONABLE INFERENCE. SO THE STANDARD IN
25 THIS HEARING IS THE SAME STANDARD WE USE IN A
26 BATSON-WHEELER CHALLENGE. CAN THE DEFENSE DEMONSTRATE A
27 REASONABLE INFERENCE THAT A VIOLATION OF SUBSECTION A
28 OCCURRED?

1 THE COURT: YOU'RE STATING THAT AS YOUR
2 INTERPRETATION OF (H)(2), WHICH IS THE SPECIFIC
3 DEFINITION IN 745 OF PRIMA FACIE SHOWING, SUBSTANTIAL
4 LIKELIHOOD?

5 MR. GENSER: YES. THEY USE THAT SPECIFIC LANGUAGE,
6 SUBSTANTIAL LIKELIHOOD OR STRONG LIKELIHOOD, WHICH COMES
7 FROM WHEELER, WHICH WAS THE CALIFORNIA SUPREME COURT
8 INTERPRETING BATSON. THAT WENT FURTHER IN PEOPLE VERSUS
9 BOX WHERE THE PEOPLE VERSUS BOX MADE IT VERY CLEAR THAT,
10 IN CALIFORNIA, QUOTE, UNQUOTE, "A STRONG LIKELIHOOD MEANS
11 A REASONABLE INFERENCE." SO WHAT IT'S DOING IS TAKING
12 THE BATSON STANDARD AND APPLYING IT TO CALIFORNIA, AND WE
13 FIND THE SAME LANGUAGE HERE IN SUBSECTION H OF PENAL CODE
14 SECTION 745.

15 IN ADDITION TO THE EXHIBITS THAT I HAVE
16 PRESENTED, THE COURT HAS EXHIBITS FROM THE PROSECUTION.
17 THE PROSECUTION PROVIDED THE COURT WITH A C.D. SHOWING
18 THE VIDEO. HAS THE COURT REVIEWED THE VIDEO?

19 THE COURT: YES.

20 MR. GENSER: AND THE TRANSCRIPT?

21 THE COURT: AND THE TRANSCRIPT.

22 MR. GENSER: I HAVE MY OWN COPY OF THAT IF THE
23 PROSECUTION WANTS ME TO FILE THAT. OR IF THE COURT IS
24 WILLING TO ACCEPT THOSE EXHIBITS AS WELL, I'M FINE WITH
25 THAT.

26 THE COURT: I ASSUME YOU'RE OFFERING THEM.

27 MR. HEARNSBERGER: THAT WAS GOING TO BE MY REQUEST,
28 FOR THE COURT TO RECEIVE PEOPLE'S 1 AND 1A.

1 THE COURT: THAT'S FINE. AND IT SOUNDS LIKE THERE'S
2 NO DEFENSE OBJECTION, SO --

3 MR. GENSER: NO. THE DEFENSE WOULD ASK THE COURT TO
4 REVIEW THAT. IT IS A FIVE-MINUTE VIDEO AT THE BEGINNING
5 OF THE STOP WITH OFFICER CAMERON AND OFFICER EYSIE. AND
6 FOR THE RECORD, IT'S C-A-M-E-R-O-N AND E-Y-S-I-E. IT IS
7 OFFICER CAMERON WHO DOES MOST OF THE TALKING ON THAT
8 VIDEO.

9 THE COURT: I WILL RECEIVE PEOPLE'S 1 AND 1A.

10 (PEOPLE'S EXHIBITS 1 AND 1A WERE RECEIVED
11 INTO EVIDENCE.)

12 MR. GENSER: IN THAT VIDEO, MR. BONDS SAYS TO THE
13 DETECTIVES, "I SAW YOU TURN AROUND LIKE YOU SAW TWO GUYS,
14 TWO BLACK GUYS IN A CAR, OBVIOUSLY." AND WHAT MR. BONDS,
15 THE DEFENDANT IN THIS CASE, IS SAYING TO OFFICER CAMERON
16 IS: I SAW YOU SEE ME AND TURN AROUND, AND YOU TURNED
17 AROUND AFTER ME BECAUSE YOU SAW TWO BLACK GUYS IN A CAR.
18 AND THE OFFICER RESPONDS, "WELL, PART OF IT. THE HOODIES
19 ARE UP AND STUFF."

20 SO THE OFFICER HAS TOLD MR. BONDS THAT THERE ARE
21 TWO REASONS FOR THE STOP: ONE, HE IS BLACK. TWO, HIS
22 PASSENGER HAS HIS HOODIE UP. THAT IS THE ONLY REASON
23 THAT HE EVER SAYS FOR STOPPING MR. BONDS.

24 THE COURT: FOR THE RECORD, WE'RE ON PAGE 2, LINE 17,
25 OF THE TRANSCRIPT.

26 MR. GENSER: YES.

27 THE COURT: OF PEOPLE'S 1A.

28 MR. GENSER: TO SUPPORT THIS CONCLUSION, THE OFFICER

1 GOES ON FROM THERE AND EXPLAINS. MR. BONDS IS UPSET
2 ABOUT BEING STOPPED BECAUSE HE'S BLACK AND BECAUSE HIS
3 PASSENGER HAS A HOODIE UP, AND HE SAYS, "I WONDER IF YOU
4 STOP EVERYBODY LIKE THIS." SPECIFICALLY, HE USES THE
5 N-WORD, WHICH REFERS TO AFRICAN AMERICANS. AND IN ORDER
6 TO EXPLAIN HIS RACE-BASED STOP, DETECTIVE CAMERON THEN
7 SAYS -- EXPLAINS TO HIM THAT WHEN HE'S IN EAST COUNTY, HE
8 ALSO IS RACIALLY PROFILED. AND THAT'S ON PAGE 3,
9 BEGINNING OF LINE 6.

10 AND MY CLIENT SAYS, "YEAH, YEAH, YOU'RE RIGHT,
11 IN EAST COUNTY." AND DETECTIVE CAMERON GOES ON TO
12 EXPLAIN THAT HE HAS A TATTOO SLEEVE AND THAT HE'S WHITE
13 AND THAT HE WEARS A BACKWARDS CAP SOMETIMES. AND BECAUSE
14 HE'S WHITE AND HAS A TATTOOED SLEEVE AND WEARS A
15 BACKWARDS CAP, HE ALSO IS RACIALLY PROFILED. AND HE SORT
16 OF ACTS AS IF THERE'S NOTHING ONE CAN DO ABOUT THAT.
17 THAT'S THE NATURE OF POLICING. PEOPLE GET RACIALLY
18 PROFILED.

19 HE SAYS, "LISTEN, MAN, I GET HOW FRUSTRATING IT
20 IS. I GET RACIALLY PROFILED TOO, BUT THAT'S THE WAY
21 POLICING WORKS, AND I'M RACIALLY PROFILING YOU RIGHT
22 NOW."

23 THE PROSECUTION BROUGHT UP IN THEIR -- IN THEIR
24 BRIEF THAT, TOWARDS THE END, OFFICER CAMERON SORT OF
25 DENIES THE RACIAL PROFILING. HE SAYS, "WE CAN AGREE TO
26 DISAGREE." I'M LOOKING AT PAGE 7, LINE 13. HE SAYS, "WE
27 CAN AGREE TO DISAGREE ABOUT THE RACIAL PROFILING." BUT
28 THEN, AGAIN, OFFICER CAMERON GOES ON TO SAY, "BECAUSE

1 IT'S THE SAME." HE SAYS FIRST ON LINE 21, "I UNDERSTAND
2 THE FRUSTRATION. TRUST ME. I GET IT. BECAUSE IT'S THE
3 SAME, LIKE I SAID, OUT IN EAST COUNTY FOR ME." RIGHT?
4 THIS OFFICER IS EXPLAINING THAT HE GETS RACIALLY
5 PROFILED, AND HE'S FRUSTRATED BY IT, BUT THE FACT OF THE
6 MATTER IS -- AND WHAT'S LEFT TACIT IS HE'S SAYING THE
7 FACT OF THE MATTER IS RACIAL PROFILING IS PART OF
8 POLICING, AND HE'S JUST BEING A GOOD COP.

9 STOPPING SOMEBODY FROM THEIR -- BECAUSE THEY'RE
10 BLACK AND THEY HAVE A HOOD UP, IN OFFICER CAMERON'S MIND,
11 IS JUST GOOD POLICE WORK. THAT'S WHAT'S SAID ON
12 BODY-WORN RECORDED, AVAILABLE FOR THE COURT TO LISTEN TO.
13 I HAVE -- I HAD MS. MOORE HERE AS A WITNESS. SHE'S A
14 POLICE PRACTICES EXPERT. I HAD HER REVIEW THE VIDEO,
15 TRANSCRIPT, THE DISCOVERY IN THE CASE. HER OPINION --
16 SHE WAS A SAN DIEGO POLICE OFFICER FOR TEN YEARS. SHE
17 WAS INJURED IN THE LINE OF DUTY AND RETIRED FROM POLICE
18 AS A RESULT OF HER INJURY. SHE RECEIVED THREE
19 COMMENDATIONS FOR HER POLICE WORK WHILE SHE WAS A SAN
20 DIEGO POLICE OFFICER. SHE THEN WENT ON TO DO FURTHER
21 INVESTIGATIVE WORK. SHE HAS A MASTER'S DEGREE IN PUBLIC
22 ADMINISTRATION. SHE IS A CERTIFIED LAW ENFORCEMENT
23 INSTRUCTOR. SHE TEACHES THE POST CLASS THAT EVERY
24 OFFICER COMES IN HERE AND SAYS -- THE PROSECUTION SAYS,
25 "ARE YOU POST-CERTIFIED?" SHE TEACHES THE CLASS WHERE
26 EVERY OFFICER SAYS, "YES, I AM POST-CERTIFIED." SHE'S
27 ALSO A NATIONALLY CERTIFIED LAW ENFORCEMENT INSTRUCTOR,
28 ONE OF 150 PEOPLE THAT HAS THAT DESIGNATION IN THE

1 COUNTRY.

2 SHE TEACHES A COURSE IN INVESTIGATIVE ETHICS.
3 SHE WAS ASKED TO CHAIR THE CIVILIAN OVERSIGHT BOARD WHEN
4 THE DEPARTMENT OF JUSTICE ISSUED A CONSENT DECREE FOR THE
5 POLICE IN ALBUQUERQUE. SHE'S TESTIFIED NUMEROUS TIMES IN
6 FEDERAL COURT, STATE COURT, IN CALIFORNIA, AND IN SAN
7 DIEGO. SHE HAS NEVER ONCE IN HER CAREER BEEN EXCLUDED AS
8 AN EXPERT.

9 HER OPINION WAS THAT OFFICER CAMERON ACTED WITH
10 RACIAL BIAS, AND HER OPINION IS THAT HE SAYS HE ACTED
11 WITH RACIAL BIAS TO MR. BONDS. IT'S HARD TO DISPUTE THAT
12 OFFICER CAMERON DIDN'T ACT WITH RACIAL BIAS WHEN HE
13 EXPLICITLY SAYS TO MR. BONDS, "I'M STOPPING YOU BECAUSE
14 YOU'RE BLACK AND BECAUSE OF THE WAY YOU'RE DRESSED." HE
15 ALSO MENTIONS IN HIS POLICE REPORT, WHICH I HAVE GIVEN
16 THE COURT AS AN EXHIBIT -- POLICE REPORT IS EXHIBIT L,
17 FOR THE RECORD -- HE SAYS THAT THEY ARE PROACTIVE
18 ENFORCEMENT IN CITY HEIGHTS AREA. PROACTIVE ENFORCEMENT
19 IS SIMPLY CODE FOR WE'RE STOPPING BLACK PEOPLE.

20 THE COURT: WHERE DOES THAT COME FROM?

21 MR. GENSER: IT COMES FROM PENAL CODE SECTION 745.

22 THE COURT: NOW, THAT TERM, I'VE HEARD MINORITIES USE
23 THAT TERM TO ENCOURAGE POLICE TO DO MORE POLICING. SO
24 WHY IS THERE A RACIAL INTERPRETATION OF THAT TERM?

25 MR. GENSER: THE COURT HAS HEARD MINORITIES USE THAT
26 TERM --

27 THE COURT: TO REQUEST THAT THE POLICE PATROL, FOR
28 EXAMPLE, CERTAIN NEIGHBORHOODS MORE. THEY REFER TO THAT

1 AS PROACTIVE POLICING. SO I DON'T KNOW WHAT'S RACIAL
2 ABOUT THAT TERM.

3 MR. GENSER: WHAT'S RACIAL ABOUT THAT TERM IS
4 PROACTIVE POLICING OCCURS IN PRIMARILY MINORITY
5 NEIGHBORHOODS, AND WHAT THEY DO -- THIS PARTICULAR
6 OFFICER IS A MEMBER OF THE GANG SUPPRESSION UNIT OR
7 WHATEVER RENAMING OF THE GANG SUPPRESSION UNIT THE POLICE
8 HAVE COME UP WITH NOW. I THINK IT'S SPECIAL OPERATIONS
9 OR SOME SUCH NONSENSE. BUT HE'S A MEMBER OF THE GANG
10 SUPPRESSION UNIT. AND IN CITY HEIGHTS, THERE'S AN
11 AFRICAN AMERICAN GANG. WHY BOTHER STOPPING WHITE PEOPLE?
12 THEIR GOAL IS TO GO OUT THERE AND STOP BLACK PEOPLE.

13 NOW, IN THIS PARTICULAR CASE, OFFICER CAMERON
14 AND HIS PARTNER ARE DRIVING EASTBOUND ON EL CAJON
15 BOULEVARD. MR. BONDS IS DRIVING WEST. THEY PASS EACH
16 OTHER HEAD-TO-HEAD. AFTER THEY PASS EACH OTHER, HE TURNS
17 AROUND AND BEGINS PURSUING THE CAR. THE CAR PULLS OVER
18 INTO A GAS STATION. OFFICER CAMERON TURNS THE RED AND
19 BLUE LIGHTS ON, DETAINS HIM, AND THEN GOES UP TO DO AN
20 INVESTIGATION. WHEN HE TURNED AROUND, HE HAD ALREADY
21 SEEN THAT MR. BONDS WAS BLACK, AND THERE HAD BEEN NO
22 VIOLATION. HE BEGINS FOLLOWING MR. BONDS SIMPLY BECAUSE
23 HE IS A BLACK MAN AND HIS PASSENGER HAS A HOODIE UP, AND
24 THAT IS EXACTLY WHAT HE TELLS MR. BONDS ON BODY-WORN. "I
25 HAVE STOPPED YOU BECAUSE YOU'RE BLACK, AND I HAVE STOPPED
26 YOU BECAUSE YOUR PASSENGER HAS A HOODIE UP."

27 NOW, I DON'T -- I THINK IT -- IT MAKES SENSE TO
28 JUST SAY NEITHER OF THOSE ARE A REASONABLE SUSPICION TO

1 DO A TRAFFIC STOP. NEITHER OF THOSE ARE A PROPER BASIS
2 TO DO A TRAFFIC STOP.

3 THE COURT: LET ME JUST INTERJECT SOMETHING. I WANT
4 TO MAKE SURE WE'RE CLEAR ON THE PARAMETERS. I WANT TO
5 COMPARE THAT TO AN EXTREME HYPOTHETICAL TO MAKE SURE
6 WE'RE ON THE SAME PAGE. LET'S SAY THERE'S AN ARMED
7 ROBBERY, AND A RADIO CALL GOES OUT, AND THE SUSPECT IS
8 DESCRIBED AS A BLACK MAN WEARING CERTAIN CLOTHING. THE
9 POLICE THEN SEE SOMEBODY THEY BELIEVE FITS THAT
10 DESCRIPTION, AND THEY STOP A BLACK MAN WEARING THAT KIND
11 OF CLOTHING. YOU'RE NOT SUGGESTING THERE'S ANYTHING
12 RACIALLY BIAS ABOUT THAT? THEY'RE SIMPLY FOLLOWING A
13 DESCRIPTION FROM A ROBBERY.

14 MR. GENSER: I WOULD AGREE WITH THAT. I WOULD ALSO
15 ADD THAT I DON'T THINK THAT HAS ANYTHING TO DO WITH
16 TODAY'S HEARING.

17 THE COURT: I UNDERSTAND. TRYING TO SEPARATE WHAT
18 YOU'RE CLAIMING FROM A SITUATION WHERE A BLACK MAN IS
19 STOPPED BECAUSE OF SPECIFIC INFORMATION THAT WOULD MAKE
20 IT INCOMPETENT FOR AN OFFICER TO STOP ANYONE OF ANOTHER
21 RACE.

22 MR. GENSER: YES. I THINK IF THERE'S A REPORT OF A
23 BLACK MAN WHO ROBBED A BANK, AND THERE'S A BLACK MAN
24 RUNNING AROUND WITH A GUN AND A BAG OF MONEY, I THINK
25 THAT'S A PROPER BASIS TO STOP HIM. THERE IS NO SUCH
26 REPORT IN THIS CASE.

27 THE COURT: WHAT WAS THE INITIAL JUSTIFICATION FOR
28 THE STOP IN THIS CASE?

1 MR. GENSER: THE JUSTIFICATION THAT THE OFFICER CAME
2 UP FOR HIS REPORT WAS THAT THE LICENSE PLATE WAS
3 OBSCURED, A VAGUE STATUTE, AT BEST.

4 BUT THE IMPORTANT THING FOR THE COURT TO KNOW IS
5 THAT WHEN THE OFFICER TURNED AROUND TO ENGAGE THE TRAFFIC
6 STOP, HE HAD NOT SEEN THE REAR LICENSE PLATE. THERE WAS
7 NO BASIS FOR THE STOP. THIS IS WHAT IS KNOWN AS A
8 PRETEXTUAL STOP. IF THE COURT LOOKS AT MY EXHIBIT J, I
9 HAVE CITED THE CITY OF SAN DIEGO MEMORANDUM. IT'S
10 S.D.P.D.'S ANALYSIS OF THE COMMUNITY ACTION BOARD, AND
11 THEY MADE SOME RECOMMENDATIONS. I'D LIKE TO GO OVER ONE
12 SPECIFICALLY.

13 ONE OF THE RECOMMENDATIONS THAT THE COMMUNITY
14 ACTION BOARD MADE -- AND IT'S EXHIBIT J. I'M ON PAGE
15 4 -- WAS TO HAVE A PILOT MORATORIUM ON PRETEXTUAL STOPS.
16 AND WHAT THE COMMUNITY ACTION BOARD SAYS IS, QUOTE,
17 UNQUOTE, "IT IS PERCEIVED AS A DISHONEST INTERACTION, BY
18 DEFINITION, WITH RESIDENTS. IT HAS NEGATIVELY IMPACTED
19 THE TRUST AND INCREASED THE TENSION BETWEEN POLICE AND
20 CITIZEN INTERACTIONS DURING STOPS."

21 THE RESPONSE FROM THE CAPTAIN OF THE SAN DIEGO
22 POLICE DEPARTMENT WAS FIRST TO DEFINE A PRETEXTUAL STOP
23 AND THEN TO SAY, "WHILE THE USE OF PRETEXTUAL STOPS TO
24 FACILITATE INVESTIGATIONS REMAINS A CONTROVERSIAL ISSUE
25 IN LAW ENFORCEMENT, IT IS THE SUBJECT OF FREQUENT LEGAL
26 CHALLENGES AND POLITICAL DISCUSSION RELATED TO
27 CONSTITUTIONAL RIGHTS. THE BENEFITS AS AN INVESTIGATIVE
28 TOOL IS PROFOUND."

1 WHAT THE CAPTAIN IS SAYING HERE IS: "WE
2 UNDERSTAND THERE'S RACIAL PROFILING GOING ON, AND WE
3 DON'T CARE. WE MAKE CASES BASED ON RACIAL PROFILING.
4 THIS IS HOW WE BRING IN CASES, AND WE DON'T CARE IF IT'S
5 DISHONEST."

6 THE COURT: I NOTE THAT THE -- THE RESPONSE POINTS
7 OUT THAT UNDER WHREN VERSUS UNITED STATES, UNDER FEDERAL
8 LAW, PRETEXT STOPS ARE, IN GENERAL, IRRELEVANT BECAUSE
9 THIS OBJECTIVE STATE OF MIND OF THE OFFICER IS
10 IRRELEVANT. OBVIOUSLY, THAT'S VERY DIFFERENT FROM A
11 SITUATION UNDER 745 WHERE THE INTENT OF THE OFFICER IS
12 RELEVANT. SO, CLEARLY, UNDER FOURTH AMENDMENT LAW, A
13 PRETEXT STOP IS NOT A VIOLATION OF THE LAW, BUT I
14 UNDERSTAND THAT'S NOT YOUR ARGUMENT HERE.

15 MR. GENSER: I DON'T THINK THAT THAT'S ACCURATE, YOUR
16 HONOR. I THINK WHAT WHREN HOLDS IS THAT ONE CAN'T
17 COMPLAIN OF A PRETEXTUAL STOP IF YOU'RE, IN FACT,
18 VIOLATING THE LAW.

19 THE COURT: IT'S AN OBJECTIVE STANDARD.

20 MR. GENSER: RIGHT. BUT THERE'S A DIFFERENCE BETWEEN
21 SAYING THAT THERE'S NO BEARING BECAUSE, IN FACT, IN A
22 PRETEXTUAL STOP, EVEN IF IT DOESN'T VIOLATE THE FOURTH
23 AMENDMENT, YOU CAN STILL PROCEED FORWARD ON DUE PROCESS
24 GROUNDS. AND HERE'S THE IMPORTANT PART FOR THIS MOTION,
25 THAT PENAL CODE SECTION 745, THE RACIAL JUSTICE ACT, IS A
26 DIRECT COUNTERMAND TO WHREN. IT IS TELLING THE POLICE IN
27 THE STATE OF CALIFORNIA THAT THIS BEHAVIOR IS NOT
28 ACCEPTABLE. WE DON'T CARE IN CALIFORNIA IF THERE WAS, IN

1 FACT, A TRAFFIC VIOLATION. YOU CANNOT USE RACE AS A
2 BASIS TO STOP SOMEONE.

3 AND, IN FACT, WHAT THIS OFFICER DID IS NOT ONLY
4 STOP HIM BASED ON RACE BUT THEN SAID VERY SPECIFICALLY TO
5 MR. BONDS, "I'M STOPPING YOU BECAUSE YOU'RE BLACK. I'M
6 STOPPING YOU BECAUSE YOU HAVE A HOODIE UP. AND LISTEN, I
7 GET RACIALLY PROFILED TOO, SO I'M ALLOWED TO DO IT TO
8 YOU." THAT'S NOT WHAT 745 SAYS.

9 I WANT TO TALK MORE ABOUT MS. MOORE, MY EXPERT,
10 BECAUSE SHE WOULD HAVE SAID THAT WHEN THE OFFICER TELLS
11 MR. BONDS THAT HE'S STOPPING HIM BECAUSE HE'S BLACK, WE
12 SHOULD BELIEVE HIM. THAT, IN HER OPINION, THAT IS, IN
13 FACT, HIS REASON FOR A STOP. HE'S BEING HONEST WITH
14 MR. BONDS. THIS IS WHY WE'VE BEGUN THE ENCOUNTER. AT
15 ONE POINT, MR. BONDS RESPONDS WHEN THEY'RE TALKING ABOUT
16 THE HOODIE BEING UP, THAT IT IS, IN FACT, A COLD NIGHT,
17 AND THAT'S WHY HE HAS HIS HOODIE UP.

18 HER ULTIMATE CONCLUSION -- AND SHE ALSO BASES
19 THIS ON THE POLICY AND PROCEDURES MANUAL. I HAVE CITED
20 THE POLICY AND PROCEDURES MANUAL AS MY EXHIBIT M, BUT I'D
21 LIKE TO SHOW THE COURT THE SPECIFIC SECTIONS WHICH
22 MS. MOORE WOULD HAVE DISCUSSED, SPECIFICALLY SECTION 7.01
23 REGARDING TRAFFIC ENFORCEMENT POLICY. UNDER THE POLICY
24 AND PROCEDURES FOR THE POLICE, IT SAYS, "THE ENFORCEMENT
25 OF ALL TRAFFIC LAWS SHALL BE ADMINISTERED EQUALLY AND
26 FAIRLY REGARDLESS OF THE PERSONS INVOLVED AND BASED
27 SOLELY ON THE NATURE OF THE OFFENSE."

28 ALSO, ON PAGE 35 OF THE SAME EXHIBIT, UNDER

1 SECTION 9.31, THE TITLE IS HEADED "NON-BIASED POLICING.
2 THE DEPARTMENT DOES NOT TOLERATE BIAS-BASED POLICING.
3 BIAS-BASED POLICING OCCURS WHEN LAW ENFORCEMENT
4 INAPPROPRIATELY CONSIDERS FACTORS SUCH AS RACE, RELIGION,
5 NATIONAL ORIGIN, GENDER, LIFESTYLE, SEXUAL ORIENTATION,
6 SIMILAR PERSONAL CHARACTERISTICS IN DECIDING WITH WHOM
7 AND HOW TO INTERVENE IN AN ENFORCEMENT CAPACITY."

8 DETECTIVE MOORE WOULD OPINE THAT BOTH OF THOSE
9 SECTIONS WERE VIOLATED BY THIS OFFICER. TO BE EXTRA
10 CLEAR WITH REGARDS TO THE POLICY MANUAL, THERE IS AN
11 EXECUTIVE ORDER ON THE FIRST PAGE. IT SAYS THAT EACH
12 MEMBER OF THE POLICE DEPARTMENT MUST BE FAMILIAR WITH THE
13 CONTENTS AND POLICY MANUAL OF DEPARTMENT PROCEDURES.

14 YOUR HONOR, MY NEXT WITNESS WOULD HAVE BEEN --
15 WOULD HAVE BEEN PROFESSOR JOSHUA CHANIN. HE AUTHORED
16 DEFENSE EXHIBIT F. HE IS ALSO FAMILIAR WITH THE REPORTS
17 UNDER E, D, AND C. HE IS A STATISTICIAN AT SAN DIEGO
18 STATE UNIVERSITY. HE REVIEWED HUNDREDS OF THOUSANDS OF
19 POLICE STOPS. HE'S A DOCTOR IN THE FIELD OF STATISTICS.
20 HE WAS PREPARED TO COME TO THIS COURT AND EXPLAIN THE
21 SCIENTIFIC METHOD BY WHICH THEY REACHED THE CONCLUSIONS
22 IN THIS CASE. THERE HAVE BEEN FOUR SEPARATE REPORTS, ALL
23 COMING TO THE SAME CONCLUSION, THAT THE SAN DIEGO POLICE
24 DEPARTMENT USES -- USES RACIAL BIAS WHEN IT MAKES TRAFFIC
25 ENFORCEMENT STOPS.

26 I WOULD LIKE TO SPECIFICALLY POINT OUT EXHIBIT
27 D, WHICH WAS A STUDY COMMISSIONED BY THE POLICE
28 DEPARTMENT WHERE THEY WENT OUT AND SAID, "LISTEN, WE HAVE

1 TO HAVE -- WE HAVE TO FIGURE OUT WHETHER OR NOT THESE
2 ALLEGATIONS ARE TRUE. WE'VE GOT A PUBLISHED ARTICLE BY A
3 SAN DIEGO STATE PROFESSOR SAYING WE'RE ACTING WITH BIAS.
4 LET'S DO OUR OWN STUDY." THEIR OWN STUDY CAME BACK WITH
5 THE FACT THAT THEY WERE BIASED.

6 DOCTOR CHANIN WOULD HAVE TESTIFIED THAT EACH OF
7 THESE REPORTS WERE CONDUCTED IN A SCIENTIFIC MANNER AND
8 THAT THEIR CONCLUSIONS ARE SCIENTIFICALLY AND
9 STATISTICALLY VALID. WHAT HE WOULD HAVE CITED IS THE
10 ULTIMATE CONCLUSION: THAT AFRICAN AMERICANS ARE STOPPED
11 AT AN ASTRONOMICALLY HIGHER RATE THAN THEIR WHITE
12 COUNTERPARTS.

13 THE COURT: BUT MY JOB IN THIS CASE IS TO DETERMINE
14 WHETHER A PARTICULAR OFFICER SHOWED THAT BIAS, NOT WHAT
15 THE STATISTICS SHOW. THAT OFFICER MAY OR MAY NOT FALL
16 WITHIN THAT STATISTICAL RANGE.

17 MR. GENSER: I THINK THE COURT IS WRONG ABOUT THAT.
18 UNDER PENAL CODE SECTION 745, SUBSECTION (C)(1), THE
19 COURT SAYS, "AT A HEARING, EVIDENCE MAY BE PRESENTED BY
20 EITHER PARTY, INCLUDING BUT NOT LIMITED TO, STATISTICAL
21 EVIDENCE."

22 THE COURT: THAT DOESN'T SAY HOW I SHOULD WEIGH IT.

23 MR. GENSER: HOW COULD STATISTICAL EVIDENCE EVER
24 PROVE WHETHER OR NOT A PARTICULAR OFFICER ON A PARTICULAR
25 OCCASION ACTED IN RACIAL BIAS? THAT'S NOT WHAT
26 STATISTICS DOES. WHAT THIS STATUTE TELLS THIS COURT IS
27 THAT YOU CAN CONSIDER STATISTICS, AND THE FACT THAT
28 AFRICAN AMERICAN PEOPLE ARE STOPPED AT AN ASTRONOMICALLY

1 HIGHER RATE MATTERS, AND THE COURT CAN DECIDE PURELY
2 BASED ON THAT. THAT'S ALL THE COURT NEEDS TO DECIDE
3 WHETHER OR NOT AN OFFICER ACTED WITH RACIAL BIAS. THE
4 GREAT NEWS IN THIS CASE IS THAT'S NOT ALL THE EVIDENCE
5 THERE IS. WE HAVE THE OFFICER TELLING US, IN HIS OWN
6 WORDS, THAT HE'S ACTING WITH RACIAL BIAS.

7 MY NEXT WITNESS WOULD HAVE BEEN GENEVIEVE
8 JONES-WRIGHT. MS. JONES-WRIGHT RUNS A POLICY COMMITTEE
9 IN SAN DIEGO. I WANT TO GET THE NAME RIGHT. SHE RUNS --
10 SHE'S THE EXECUTIVE DIRECTOR OF THE COMMUNITY ADVOCATES
11 FOR A JUST AND MORAL GOVERNANCE. AND THEIR JOB IS TO
12 PROMOTE, YOU KNOW, DUE POLICY ADVOCACY AGAINST RACIAL
13 PROFILING. SHE HAS A BACKGROUND DOING THAT. IN
14 ADDITION, SHE'S A LAWYER. SHE ACTED AS A PUBLIC DEFENDER
15 FOR MANY YEARS. SHE'S AN ADJUNCT PROFESSOR AT THE POINT
16 LOMA NAZARENE UNIVERSITY WHERE SHE TEACHES CRIMINAL
17 JUSTICE, INCLUDING COURSES ON COMPASSION RELATED TO LAW
18 ENFORCEMENT AND ETHICS RELATED TO LAW ENFORCEMENT. SHE
19 ALSO SITS ON THE BOARD OF SEVERAL COMMUNITY ORGANIZATIONS
20 AND TEACHES IN THIS AREA AND IS GENERALLY AN EXPERT IN
21 THE AREA OF PUBLIC POLICY.

22 SHE WOULD HAVE TESTIFIED -- I SHOULD ALSO ADD
23 THAT MS. JONES-WRIGHT HAS PERSONALLY BEEN RACIALLY
24 PROFILED AND HAS EXPERIENCED RACIAL PROFILING BY THE SAN
25 DIEGO POLICE DEPARTMENT. SHE WOULD HAVE TESTIFIED BEFORE
26 THIS COURT THAT AFTER VIEWING THE VIDEO AND READING THE
27 TRANSCRIPTS, SHE BELIEVES THAT OFFICER CAMERON ACTED WITH
28 RACIAL BIAS IN THIS PARTICULAR INSTANCE.

1 IN ADDITION, SHE WOULD TELL THIS COURT THAT SHE
2 BELIEVES THE ONLY APPROPRIATE REMEDY FOR THIS IS
3 DISMISSAL, AND THE REASON THAT IS THE ONLY APPROPRIATE
4 REMEDY IS THAT ANYTHING SHORT OF THAT TELLS THE POLICE
5 THAT THIS BEHAVIOR WILL ONLY RECEIVE A SLAP ON THE HAND
6 AND TO KEEP IT UP. IT'S A WINK AND A NOD FROM THE COURT
7 TO KEEP UP THE GOOD WORK. AND HER TESTIMONY, AS AN
8 EXPERT IN PUBLIC POLICY, WOULD HAVE BEEN TO EXPLAIN THAT
9 THIS CANNOT BE PERMITTED, SHOULD NOT BE PERMITTED, AND IT
10 IS WRONG.

11 IN THIS CASE, ALL WE HAVE TO SHOW IS THAT THERE
12 IS SOME EVIDENCE OF BIAS. THAT CAN BE IMPLICIT BIAS. IT
13 CAN SIMPLY MEAN THAT, BASED UPON THE OFFICER'S LIFE, HIS
14 TRAINING, WHATEVER HE'S GONE THROUGH, SOMETHING IN HIS
15 BRAIN TREATED MR. BONDS DIFFERENTLY THAN SOMEONE ELSE.
16 THE GOOD NEWS IS THAT'S NOT ALL WE HAVE. IMPLIED BIAS
17 ALONE IS ENOUGH FOR THE COURT TO HOLD A HEARING, AND IN
18 ADDITION TO FIND THAT THERE WAS A VIOLATION, BUT THAT'S
19 NOT WHAT WE HAVE HERE. WE HAVE EXPLICIT BIAS BY THIS
20 POLICE OFFICER. ON TOP OF THE EXPLICIT BIAS, WE HAVE
21 STATISTICAL AND AGGREGATE DATA. BUT WE DON'T HAVE TO
22 STOP THERE. WE HAVE EXPERT TESTIMONY OF A POLICE
23 PRACTICES PERSON TELLING THIS COURT THAT IT IS EXPLICIT
24 BIAS.

25 THERE IS AN OLD SAYING. WHEN SOMEONE TELLS YOU
26 WHO THEY ARE, BELIEVE THEM. THIS IS RACE-BASED POLICING.
27 THE OFFICER TELLS US THAT THAT'S THE WAY HE PRACTICES.
28 HE TELLS US THAT IT HAPPENS TO HIM, AND THERE'S NOTHING

1 HE CAN DO ABOUT IT BECAUSE THAT'S THE WAY POLICE IN SAN
2 DIEGO ACT. THE POLICE IN SAN DIEGO ACT BASED ON RACE.

3 THERE IS DIRECT UNCONTROVERTED EVIDENCE OF BIAS
4 STRAIGHT FROM THE OFFICER'S MOUTH. THE BELIEF THAT IT IS
5 EXPLICIT IS BASED ON POLICE PRACTICES, EXPERTS IN PUBLIC
6 POLICY, THE SAN DIEGO POLICE DEPARTMENT'S OWN POLICY AND
7 PROCEDURES, AND THE WRITTEN REPORT AND RECORDED
8 STATEMENTS OF THE OFFICER.

9 I WANT TO SPEND JUST A SECOND TALKING ABOUT THE
10 PROSECUTION. WE WORK IN AN ADVERSARIAL SYSTEM. THE
11 PROSECUTION GENERALLY OPPOSES MY MOTIONS, BUT NOT ALL OF
12 THEM. I'VE HAD A NUMBER OF MOTIONS WHERE THE PROSECUTION
13 COMES IN AND SAYS, "YOU KNOW WHAT? I AGREE WITH YOU.
14 WHAT HAPPENED --" A FOURTH AMENDMENT VIOLATION, FOR
15 EXAMPLE. SOMETIMES THE PROSECUTION LOOKS AT THE CASE AND
16 SAYS, "THIS IS A FOURTH AMENDMENT VIOLATION, AND I'M
17 GOING TO AGREE." SOMETIMES I MOVE TO CONTINUE A CASE,
18 AND I EXPLAIN TO THE PROSECUTION I NEED MORE TIME BECAUSE
19 I'M STILL DOING INVESTIGATION. THE PROSECUTION CAN'T
20 OPPOSE THAT, BUT MORE OFTEN THAN NOT, THEY DON'T. THE
21 PROSECUTION DOESN'T HAVE TO COME IN HERE TODAY AND OPPOSE
22 THIS MOTION. INSTEAD, THEY CHOOSE TO.

23 THE PROSECUTION HAS MADE A DECISION TO COME IN
24 HERE AND OPPOSE THIS MOTION. WHAT'S MORE, THE
25 PROSECUTION SAYS IN THEIR MOTION ON PAGE 4, LINE 19, "THE
26 DEFENDANT IS MAKING A BIG LEAP IN CONCLUDING THAT THERE
27 WAS AN ADMISSION BY OFFICER CAMERON AND THAT THE STOP WAS
28 RACIALLY MOTIVATED." WHAT A SLAP IN THE FACE TO THE

1 BLACK AND BROWN PEOPLE OF THIS COMMUNITY, THAT WHEN A COP
2 TELLS SOMEBODY, "I'VE PULLED YOU OVER BECAUSE YOU'RE
3 BLACK. I'VE PULLED YOU OVER BECAUSE YOUR PASSENGER IS
4 WEARING A HOODIE," CLEARLY RACIST MANEUVERS, CLEARLY,
5 THAT THIS PROSECUTION WOULD COME INTO THIS COURT AND
6 OPPOSE THIS MOTION AND SAY THAT THE DEFENSE IS
7 OVERSTEPPING. IT IS SHOCKING, AND IT IS HEARTBREAKING
8 THAT OUR ELECTED OFFICIALS WOULD MAKE A DECISION TO
9 OPPOSE WHAT IS CLEAR RACIST BEHAVIOR.

10 I WANT TO TALK ABOUT DEFENSE EXHIBIT B, WHICH IS
11 AN ARTICLE BY CHARLES BLOW OF THE NEW YORK TIMES. IN
12 THAT ARTICLE, CHARLES BLOW SAYS, "RACISM HAS EVOLVED AND
13 BECOME LESS BLUNT, BUT IT HAS NOT BECOME LESS EFFECTIVE.
14 NOW SYSTEMS DO THE WORK THAT ONCE REQUIRED THE OVERT
15 ACTION OF MASSES OF INDIVIDUAL RACISTS."

16 THE CITY ATTORNEY'S OFFICE IS ONE OF THOSE
17 SYSTEMS THAT IS IN PLACE, WHERE THIS PROSECUTION CAN COME
18 IN AND SAY, "IT'S NOT ME. THIS IS AN ADVERSARIAL SYSTEM.
19 I'M JUST DOING MY JOB." "I'M JUST DOING MY JOB" IS A
20 SHOCKING DERELICTION OF DUTY.

21 I WANT TO CONCLUDE WITH THIS: I DID A MOTION IN
22 FRONT OF THIS COURT SOMETIME AGO, AND IN THAT MOTION, MY
23 CLIENT, WHO IS AFRICAN AMERICAN, HAD BEEN STOPPED BY THE
24 POLICE. A BE-ON-THE-LOOKOUT HAD GONE OUT FOR AN AFRICAN
25 AMERICAN WOMAN WEARING PURPLE LEGGINGS, WHO IS 20 TO 24
26 YEARS OLD, WHO HAD A LONG BLONDE WEAVE. THE POLICE USED
27 THAT TO STOP MY CLIENT WHO WAS 48 YEARS OLD, WHO WAS
28 WEARING BLACK LEGGINGS, AND WHO HAD BLACK HAIR. THE ONLY

1 CONNECTION BETWEEN THEM WAS THAT SHE WAS BLACK.

2 I CAME TO THIS COURT, AND I ARGUED BEFORE THIS
3 COURT THAT THAT WAS CLEAR EVIDENCE OF RACISM, AND THE
4 COURT AND I DISAGREED. AND THE COURT DID NOT GRANT MY
5 MOTION IN THAT CASE, BUT THE COURT SAID SOMETHING THAT, I
6 THINK, IS OF VALUE. THE COURT SAID, "IF I SEE RACISM, NO
7 ONE WILL COME DOWN HARDER THAN ME. NO ONE WILL COME DOWN
8 HARDER THAN ME." THAT WAS THE QUOTE FROM THIS COURT,
9 THAT "WHEN I SEE RACISM, NO ONE WILL COME DOWN HARDER
10 THAN ME," AND I AM HERE TODAY TO FIND OUT IF THAT'S TRUE.
11 I'LL SUBMIT, YOUR HONOR.

12 THE COURT: THANK YOU, MR. GENSER.

13 I'LL HEAR FROM THE PEOPLE.

14 MR. HEARNSBERGER: THANK YOU, YOUR HONOR. PERSONAL
15 BELIEFS ASIDE, THIS COURT'S ROLE IS TO DETERMINE WHETHER
16 THE DEFENSE HAS -- WHETHER THE COURT HAS BEFORE IT FACTS
17 THAT ESTABLISH A PRIMA FACIE SHOWING. THE DEFENSE JUST
18 MADE A PASSIONATE ARGUMENT THAT CONTAINED A LOT OF
19 BELIEFS, A LOT OF CONCLUSIONS, EXPERT OPINION, BUT NOT
20 FACTS. THE FACTS ARE WHAT WAS SAID. THE COURT HAS IT
21 BEFORE IT, AND THAT'S THE REASON I LODGED THE BODY-WORN
22 RECORDING, SO THE COURT CAN, OBVIOUSLY, MAKE AN OBJECTIVE
23 REVIEW OF THIS INTERACTION BETWEEN THE DEFENDANT AND THE
24 OFFICER, NOT -- AND THAT'S REALLY WHAT NEEDS TO HAPPEN
25 HERE.

26 THERE'S VERY LITTLE VALUE TO EXPERT TESTIMONY
27 SAYING, "I BELIEVE THIS IS WHAT THE OFFICER MEANT WHEN HE
28 SAID THIS." THE DEFENSE JUST SAID SEVERAL TIMES THAT

1 OFFICER CAMERON EXPLICITLY SAID, "THIS IS THE REASON I
2 STOPPED YOU, IT'S BECAUSE OF YOUR RACE." THAT'S NOT WHAT
3 HE SAID AT ALL. OFFICER CAMERON ALSO DIDN'T SAY, "I GET
4 STOPPED BECAUSE I'M WHITE." HE TALKED ABOUT HIS TATTOOS
5 AND THE WAY HE WEARS HIS HAT, AND HE DRIVES IN EAST
6 COUNTY. OFFICER CAMERON DID NOT SAY, "I STOPPED YOU
7 BECAUSE OF YOUR RACE." HE -- IN RESPONSE TO THE
8 DEFENDANT BRINGING THAT UP, OFFICER CAMERON SAYS, "WELL,
9 THE HOODIE IS UP, AND EVERYTHING THAT'S BEEN GOING ON IN
10 THIS CITY." THAT IS A FAR CRY FROM A UNEQUIVOCAL
11 ADMISSION THAT THAT'S THE REASON HE STOPPED HIM, BECAUSE
12 OF HIS RACE.

13 I -- THE DEFENDANT CERTAINLY CAN'T BE FAULTED
14 FOR HAVING THAT BELIEF. THAT'S CERTAINLY REASONABLE FOR
15 HIM TO FEEL THAT WAY, BUT THAT'S A BELIEF AND A FEELING
16 AND A CONCLUSION THAT THE DEFENSE IS REACHING, WHICH IS
17 HOW THE DEFENSE IS READING THAT STATEMENT BY OFFICER
18 CAMERON WHILE IGNORING THE TWO SUBSEQUENT STATEMENTS BY
19 OFFICER CAMERON THAT ARE UNEQUIVOCAL, THAT ARE VERY
20 CLEAR. HE SAYS -- WHEN THE DEFENDANT BRINGS IT UP AGAIN,
21 OFFICER CAMERON SAYS, "NO, IT'S NOT THAT." AND THEN WHEN
22 THE DEFENDANT BRINGS IT UP AGAIN, OFFICER CAMERON SAYS,
23 "WELL, WE CAN AGREE TO DISAGREE." HE DOESN'T WANT TO
24 ARGUE ABOUT IT ANYMORE, BUT HE'S OBVIOUSLY SAYING TO THE
25 DEFENDANT, "I DIDN'T PULL YOU OVER BECAUSE OF YOUR RACE."

26 AGAIN, IT'S A CONCLUSION THAT THE DEFENSE IS
27 REACHING, BUT THAT'S NOT WHAT OFFICER CAMERON SAID. AND
28 WHEN CONSIDERED FAIRLY IN THE CONTEXT OF THE ENTIRE

1 INTERACTION AND THE ENTIRE BODY-WORN, NOT JUST THAT FIRST
2 STATEMENT, IT'S NOT ANYTHING MORE THAN A BELIEF OR
3 SPECULATION. IT DOESN'T RISE TO THE STANDARD OF A
4 SUBSTANTIAL LIKELIHOOD, AND THAT'S THE DEFENSE BURDEN
5 WITH THIS PRIMA FACIE SHOWING.

6 SO THE STANDARDS THAT THE DEFENSE REFERENCED FOR
7 BATSON-WHEELER, AGAIN, DON'T APPLY TO THIS CASE. THE
8 LEGISLATURE HAS GIVEN US A DEFINITION OF SUBSTANTIAL
9 LIKELIHOOD, AND THAT IS MORE THAN A MERE POSSIBILITY. AN
10 EXPERT'S CONCLUSION AS TO WHAT THE OFFICER MEANT WHEN HE
11 SAID THAT AND THE DEFENSE'S CONCLUSION DOESN'T REACH THAT
12 STANDARD THAT'S -- THAT DOESN'T REACH ANY MORE THAN A
13 POSSIBILITY.

14 IT'S FAIR FOR SOMEONE TO REACH THAT CONCLUSION
15 BASED ON WHAT THE OFFICER SAYS, BUT IT IS FAR FROM CLEAR
16 AS TO WHAT HE MEANT. ANOTHER VERY FAIR READING OF THAT
17 IS HE'S NOT ACKNOWLEDGING WHAT THE DEFENDANT WAS
18 ALLEGING, BUT HE'S SAYING THE HOODIES AND THINGS THAT
19 HAVE BEEN GOING ON, WHICH SEEMS TO BE REFERRING TO
20 VIOLENCE IN THE COMMUNITY OR VIOLENCE IN THE CITY. AT NO
21 POINT DOES HE SAY, "YES, I PULLED YOU OVER FOR THAT
22 REASON." IN FACT, HE CLEARLY DENIES IT TWICE WHEN THE
23 DEFENDANT ACCUSES HIM OF THAT. SO THE DEFENSE HAS NOT
24 MET THAT BURDEN.

25 THE EXPERT TESTIMONY IS VERY LIMITED OR OF NO
26 RELEVANCE TO THE OFFICER'S SUBJECTIVE BELIEF OR
27 MOTIVATION OR JUST THE MEANING OF OFFICER CAMERON'S
28 STATEMENT WHEN HE SAID THAT. AND THE STATISTICS OFFER --

1 I BELIEVE THE STATS AND THE STUDIES COULD BE HELPFUL IN
2 CERTAIN 745 MOTIONS. I THINK IT WOULD BE MORE APPLICABLE
3 TO DISPARITIES IN CHARGING, ALLEGING ELEVATORS, OR
4 SENTENCING, BUT I DON'T THINK THE STATISTICS ARE
5 INFORMATIVE AT ALL AS TO THIS PARTICULAR ENCOUNTER
6 BETWEEN THE DEFENDANT AND OFFICER CAMERON.

7 AGAIN, THE DEFENSE OBVIOUSLY IS PASSIONATE AND
8 FIRM IN THEIR POSITION, BUT THE FACT IS THE RECORDING AND
9 THE TRANSCRIPT, WHICH THE COURT HAS CONSIDERED, AND THAT
10 DOESN'T REACH THE STANDARD OF A SUBSTANTIAL LIKELIHOOD.
11 IT'S NOTHING MORE THAN A MERE POSSIBILITY OR SPECULATION.

12 THE COURT: ALL RIGHT. I PROMISED MR. GENSER THE
13 LAST WORD, BUT I WANT TO ASK YOU A COUPLE OF QUESTIONS.
14 I GET YOUR TAKE ON YOUR EVALUATION OF THE LAW SINCE, AS I
15 MENTIONED SEVERAL TIMES, WE HAVE NO APPELLATE GUIDANCE ON
16 MANY OF THESE ISSUES. THE ACTUAL VIOLATION IN 745(A)
17 READS AS FOLLOWS: "THE STATE SHALL NOT SEEK OR OBTAIN A
18 CRIMINAL CONVICTION OR SEEK, OBTAIN, OR IMPOSE A SENTENCE
19 ON THE BASIS OF RACE, ETHNICITY, OR NATIONAL ORIGIN."
20 AND THEN IT SAYS, "A VIOLATION IS ESTABLISHED IF THE
21 DEFENDANT PROVES BY A PREPONDERANCE OF THE EVIDENCE ANY
22 OF THE FOLLOWING." AND IT MENTIONS THE JUDGE, AN
23 ATTORNEY IN THE CASE, LAW ENFORCEMENT OFFICER IN THE
24 CASE, OR IF AN EXPERT WITNESS OR A JUROR EXHIBITS BIAS OR
25 ANIMUS TOWARD THE DEFENDANT BECAUSE OF THE DEFENDANT'S
26 RACE, ETHNICITY, OR NATIONAL ORIGIN.

27 NOW, THE QUESTION I'VE RAISED IN THE PAST -- AND
28 THIS IS UNANSWERED AS WE SIT HERE NOW -- IS: SINCE THE

1 VIOLATION, IS THE STATE -- AND THE STATE IS DEFINED AS A
2 PROSECUTORIAL AGENCY -- SEEKING A CRIMINAL CONVICTION OR
3 A SENTENCE BASED ON RACE OR ETHNICITY OR NATIONAL ORIGIN?
4 IS THE CONDUCT OF A LAW ENFORCEMENT OFFICER IN THE FIELD
5 BEFORE THE STATE EVEN GETS THE CASE TO PROSECUTE EVEN
6 RELEVANT TO THIS VIOLATION?

7 AND, OF COURSE, MR. GENSER AND -- IN THE PAST --
8 THE CITY ATTORNEY HAS NOT OPPOSED THIS. IT HAS RELIED ON
9 THE STATEMENT IN THE STATUTE REGARDING A LAW ENFORCEMENT
10 OFFICER EXHIBITING ANIMUS OR RACIAL BIAS TOWARD THE
11 DEFENDANT, DOESN'T SAY WHEN. BUT LET'S SAY,
12 HYPOTHETICALLY, THE BIAS IS IN THE FIELD BEFORE THE STATE
13 GETS THE CASE, THEN THE STATE GETS THE CASE FOR
14 PROSECUTION, AND FROM THAT POINT ON, THERE'S NO BIAS OF
15 ANY KIND -- THIS IS A HYPOTHETICAL -- INDICATED BY THE
16 OFFICER OR ANYONE ELSE WHEN HE TESTIFIES. DOES THE
17 STATUTE APPLY?

18 MR. HEARNSBERGER: I THINK IT DOES, YOUR HONOR.

19 THE COURT: OKAY. ALL RIGHT. I WANTED TO GET YOUR
20 TAKE ON THE LAW.

21 MR. HEARNSBERGER: OBVIOUSLY, LACKING ANY APPELLATE
22 GUIDANCE ON THAT, MY READING IS THAT IT WOULD APPLY.

23 THE COURT: NOW, THE SECOND ISSUE IS WITH REGARD TO
24 THE THOROUGH DISCUSSION MR. GENSER GAVE TO THE STANDARD.
25 NOW, THE STATUTE DEFINES PRIMA FACIE SHOWING MEANS THE
26 DEFENDANT PRODUCES FACTS THAT, IF TRUE, ESTABLISH THERE
27 IS A SUBSTANTIAL LIKELIHOOD OF VIOLATION OF SUBDIVISION A
28 OCCURRING. AND THEN IT SAYS, FOR PURPOSES OF THIS

1 SECTION, A SUBSTANTIAL LIKELIHOOD REQUIRES MORE THAN A
2 MERE POSSIBILITY, BUT LESS THAN A STANDARD OF MORE LIKELY
3 THAN NOT.

4 SO, OBVIOUSLY, IN ANY GIVEN CASE, THE COURT HAS
5 TO MAKE A DECISION WHETHER THE ALLEGATIONS ARE MORE THAN
6 A MERE POSSIBILITY. NOW, IN DOING THAT -- AND I KNOW
7 MR. GENSER KNOWS THIS FROM MY PAST RULINGS -- I DON'T
8 PLACE MUCH WEIGHT ON STUDIES BECAUSE THEY DON'T TELL ME
9 IF A PARTICULAR OFFICER SHOWED RACIAL BIAS ON A
10 PARTICULAR OCCASION. THEY MAY MAKE A SUGGESTION THAT
11 IT'S A POSSIBILITY, BUT IT'S THE FACTS OF THE CASE THAT
12 TELL ME WHAT THAT OFFICER, AT LEAST BY INFERENCE, WAS
13 THINKING WHEN HE STOPPED THE DEFENDANT.

14 SO I AGREE THE STATISTICS ARE MORE USEFUL WHEN
15 YOU GET TO SENTENCING. FOR EXAMPLE, THERE WAS ONE CASE
16 INVOLVING DISCOVERY WHERE A DEFENDANT ALLEGED
17 SUCCESSFULLY THAT HE HAD BEEN TREATED DIFFERENTLY FOR
18 SENTENCING PURPOSES. THE DEFENDANT WAS CHARGED WITH THE
19 SAME CRIME, AND HE WAS THE ONLY PERSON OF THAT RACE. AND
20 THE COURT FOUND THAT WAS SUFFICIENT TO WARRANT DISCOVERY.

21 IN THE PRETRIAL PHASE, STATISTICS THAT A POLICE
22 DEPARTMENT ACTS IN A CERTAIN WAY DON'T TELL ME HOW THIS
23 OFFICER BEHAVED ON A PARTICULAR OCCASION, BUT THIS CASE
24 IS A LITTLE BIT DIFFERENT FROM SOME OF THE OTHER CASES IN
25 THAT THE CONCEPT OF RACE COMES UP IN A DISCUSSION BETWEEN
26 THE OFFICER AND THE DEFENDANT. IN OTHER CASES I'VE HAD,
27 THERE'S NEVER ANY DISCUSSION OF THAT. BUT HERE, AS WAS
28 POINTED OUT IN PAGE 2, LINE 15, THE DEFENDANT SAYS --

1 WELL, PART OF IT IS UNINTELLIGIBLE. IT STARTS OUT BY
2 SAYING, "GOOD, ACTUALLY, BUT YOU PULLED OVER. YOU TURNED
3 AROUND LIKE YOU SAW --" UNINTELLIGIBLE -- "IN A CAR
4 PROBABLY."

5 AND THE OFFICER, "WHAT'S THAT?"

6 THEN HE SAYS IN LINE 17, "I SAID YOU SAW -- YOU
7 TURNED AROUND LIKE YOU SAW TWO GUYS, LIKE, TWO BLACK GUYS
8 IN A CAR, OBVIOUSLY."

9 AND THEN 19, THE OFFICER SAYS, "WELL, PART OF
10 IT, YOU KNOW, THE HOODIE IS UP AND STUFF. JUST --"

11 THE DEFENDANT SAYS, "I MEAN, IT'S COLD OUTSIDE."

12 THEN THE OFFICER SAYS, "THE CLIMATE AND
13 EVERYTHING THAT'S GOING ON IN THE CITY THESE DAYS, SO --"

14 SO CLEARLY, THAT'S NOT AN EXPLICIT STATEMENT.
15 "I STOPPED YOU BECAUSE YOU'RE BLACK." BUT DOESN'T
16 THAT -- DOES THAT NOT LEAD TO AN INFERENCE THAT THAT WAS
17 A REASON WHY THE DEFENDANTS WERE STOPPED SINCE THE
18 OFFICER DIDN'T ISSUE A BLANKET DENIAL WHEN THE DEFENDANT
19 ACCUSED HIM OF THAT?

20 MR. HEARNSBERGER: WELL, AN OFFICER CAN RESPOND TO
21 THAT IN SO MANY DIFFERENT WAYS.

22 THE COURT: BY THE WAY, I UNDERSTAND THERE'S A BIG
23 DIFFERENCE BETWEEN THE DEFINITION OF A PRIMA FACIE
24 SHOWING AND WHAT'S REQUIRED TO SHOW AN ACTUAL VIOLATION.
25 AFTER A HEARING, THE COURT HAS TO BE CONVINCED BY A
26 PREPONDERANCE OF THE EVIDENCE, MEANING HE HAS TO -- THE
27 COURT HAS TO DECIDE IT'S MORE LIKELY THAN NOT THAT THE
28 DEFENDANT WAS STOPPED BECAUSE OF RACIAL BIAS. WE'RE NOT

1 AT THAT POINT. I'M JUST DECIDING WHETHER OR NOT THERE'S
2 SUFFICIENT EVIDENCE OF A PRIMA FACIE SHOWING, MEANING
3 MORE THAN A MERE POSSIBILITY, TO JUSTIFY A HEARING. I
4 JUST WANT TO MAKE IT CLEAR THAT'S MY FOCUS TODAY.

5 MR. HEARNSBERGER: THE WAY I SEE IT IS THE DIFFERENCE
6 BETWEEN, AGAIN, FACTS AND CONCLUSIONS. IT'S NOT A FACT
7 THAT THAT STATEMENT IS AN ADMISSION OR AN ACKNOWLEDGMENT
8 OF THE DEFENDANT'S ACCUSATION.

9 THE COURT: I AGREE. I'M SORRY TO INTERRUPT. BUT
10 COMPARING IT TO PITCHESS, THERE ARE MANY ALLEGATIONS THAT
11 ARE FREQUENTLY MADE IN PITCHESS MOTIONS THAT I DON'T
12 AGREE WITH. YOU KNOW, THE DEFENSE ALLEGES, YOU KNOW, THE
13 OFFICER DID THIS, OR THE DEFENSE ALLEGES THE OFFICER DID
14 THAT. BUT IF I DECIDE THAT IF THE ALLEGATION IS TRUE
15 IT'S SUFFICIENT TO WARRANT AN IN-CAMERA REVIEW, THEN I
16 HAVE TO ORDER AN IN-CAMERA REVIEW.

17 SO THE LANGUAGE HERE SEEMS TO PARALLEL THAT OF
18 PITCHESS BECAUSE IT SAYS PRIMA FACIE SHOWING MEANS THE
19 DEFENDANT PRODUCES FACTS THAT, COMMA, IF TRUE, COMMA,
20 ESTABLISH THERE WAS A SUBSTANTIAL LIKELIHOOD OF A
21 VIOLATION, MEANING THE LEGISLATURE RECOGNIZES IT MIGHT
22 NOT BE TRUE. SO I HAVE TO ASSUME, HYPOTHETICALLY, JUST
23 AS IN A PITCHESS MOTION, THAT THE FACTS ALLEGED ARE TRUE
24 FOR THE PURPOSE OF DECIDING WHETHER THERE'S A PRIMA FACIE
25 SHOWING. THAT'S NOT THE CASE WHEN I DECIDE IF A
26 VIOLATION HAS BEEN PROVEN BY A PREPONDERANCE OF THE
27 EVIDENCE. I WANT TO MAKE SURE YOU UNDERSTAND HOW I'M
28 THINKING. YOU CAN CORRECT ME IF YOU THINK I'M WRONG IN

1 MY ANALYSIS OF THE STATUTE.

2 MR. HEARNSBERGER: THERE'S A COUPLE DIFFERENT WAYS TO
3 READ IT, YOUR HONOR. ONE WAY TO READ IT IS THAT THE
4 DEFENDANT MAKES AN ALLEGATION AS A FACT, THE FACT BEING
5 THAT THE STOP WAS MADE RACIALLY MOTIVATED. AND IF THAT'S
6 THE FACT, THEN THE COURT HAS TO TAKE THAT AS TRUE AND
7 ORDER A HEARING. BUT THERE HAS TO BE SOME EVIDENCE FOR
8 THAT, SO THAT'S WHY I'M TRYING TO SEPARATE FACTS FROM
9 ALLEGATIONS OR CONCLUSIONS OR BELIEFS. THE DEFENDANT
10 WANTS THE COURT TO TAKE AS FACT THE OFFICER'S MEANING IN
11 THAT STATEMENT. I DON'T THINK THAT IS A FACT. THAT IS A
12 CONCLUSION.

13 SO I AGREE THAT THE FACT -- THE COURT DOESN'T
14 HAVE TO -- OBVIOUSLY, ISN'T MAKING A FACTUAL FINDING AT
15 THIS STAGE, AND IT'S SOMEWHAT DIFFICULT BECAUSE WE HAVE
16 FACTS AND ALLEGATIONS. THERE'S SOME OVERLAP THERE, BUT
17 THE ONLY FACTS WE HAVE ARE WHAT THE DEFENDANT SAID AND
18 WHAT THE OFFICER SAID. AND THEN THE DEFENSE IS MAKING
19 CONCLUSIONS BASED ON THAT, BUT THAT DOESN'T RISE BEYOND
20 THE LEVEL OF A POSSIBILITY. I CAN SEE THAT SOMEONE WOULD
21 READ IT THAT WAY OR HEAR IT THAT WAY, BUT THERE'S ALSO A
22 CONTRARY WAY TO READ IT AND HEAR IT. SO IT'S, AGAIN, NOT
23 BEYOND A MERE POSSIBILITY. I DON'T THINK THE CONCLUSION
24 IS A FACT.

25 THE COURT: OKAY. ALL RIGHT. THANK YOU. I
26 APPRECIATE THAT.

27 I PROMISED YOU THE LAST WORD, MR. GENSER.

28 MR. GENSER: YOUR HONOR, I JUST WANT TO RESPOND TO A

1 COUPLE THINGS THE COURT SAID IN TALKING WITH THE
2 PROSECUTION. I WANT TO TALK ABOUT SUBDIVISION A, (A)(1).
3 THE COURT SEEMED TO IMPLY THAT (A)(1) MIGHT NOT APPLY
4 UNTIL A CASE IS FILED.

5 THE COURT: I JUST RAISED THE QUESTION. I DON'T
6 REALLY KNOW, AND I'M ASSUMING IT DOES UNTIL I'M TOLD
7 OTHERWISE.

8 MR. GENSER: I WANT TO ADD THAT WHEN THEY INCLUDE A
9 LAW ENFORCEMENT OFFICER, THERE WOULD NEVER BE A TIME WHEN
10 MY CLIENT HAS AN INTERACTION WITH A LAW ENFORCEMENT
11 OFFICER AFTER THE CASE HAS BEEN FILED. IT WOULD ALWAYS
12 GO THROUGH DEFENSE, AND IT WOULD ESSENTIALLY RENDER THAT
13 A REDUNDANCY, WHICH IS WHY BOTH THE PROSECUTION AND
14 MYSELF DON'T READ IT THAT WAY.

15 THE COURT: WELL, UNLESS THE OFFICER AT TRIAL
16 TESTIFIES DEMONSTRATING SOME TYPE OF BIAS.

17 MR. GENSER: THAT WOULD BE SUBSECTION (A)(2). (A)(2)
18 SAYS DURING THE DEFENDANT'S TRIAL, AND THEN GOES ON TO
19 TALK ABOUT THE PEOPLE. (A)(1) IS SOMEBODY INVOLVED IN
20 THE CASE. SPECIFICALLY, QUOTE, UNQUOTE, "INVOLVED," I
21 THINK THAT IMPLIES THROUGHOUT THE PROCESS OF THE CASE.

22 THE COURT: I ACCEPT THAT INTERPRETATION.

23 MR. GENSER: I ALSO THINK THAT IN PENAL CODE SECTION
24 745, THIS COURT -- SPECIFICALLY UNDER SUBSECTION C WHERE
25 IT TALKS ABOUT A PRIMA FACIE CASE, THE COURT HAS TO
26 ASSUME THE LEGISLATURE KNEW WHAT THAT MEANT AND THE
27 SITUATIONS WHERE WE USE THAT PHRASE. FOR EXAMPLE, IF I
28 WANT TO PRESENT A WITNESS AT A PRELIM, I HAVE TO MAKE A

1 PRIMA FACIE CASE THAT I'M EITHER PRESENTING THAT WITNESS
2 TO, YOU KNOW, SUPPORT SOME DEFENSE OR UNDERMINE SOME
3 ELEMENT, AND ALL THAT REQUIRES IS ME STANDING UP AND
4 SAYING, "THIS WITNESS WILL DISCUSS THIS AFFIRMATIVE
5 DEFENSE," AND THAT'S A PRIMA FACIE CASE, OR IN THE
6 BATSON-WHEELER CONTEXT, WHICH WE ALREADY TALKED ABOUT.
7 IT IS AN EXCEEDINGLY LOW STANDARD. THE STANDARD HAS BEEN
8 MET HERE, YOUR HONOR.

9 THE COURT: OKAY. ALL RIGHT. WELL, I APPRECIATE THE
10 HARD WORK BOTH SIDES HAVE PUT INTO THIS, AND, YOU KNOW,
11 I -- I'M NOT AFRAID TO SAY WHEN I DON'T KNOW SOMETHING,
12 BECAUSE THE LEGISLATURE, I THINK, HAS NOT THOUGHT THROUGH
13 SOME OF THESE ISSUES SUFFICIENTLY TO PROVIDE PROPER
14 GUIDANCE TO ATTORNEYS AND JUDGES, BUT WE WILL FIND OUT IN
15 THE FUTURE, WITH APPELLATE COURT DECISIONS, WHAT SOME OF
16 THESE PROVISIONS MEAN. SO, FOR EXAMPLE, THE DEFINITION
17 OF PRIMA FACIE SHOWING BEING MORE THAN A MERE POSSIBILITY
18 BUT LESS THAN A STANDARD OF MORE LIKELY THAN NOT. WHAT
19 DOES THAT MEAN? WE HAVE TO USE COMMON SENSE.

20 I GET BACK TO WHAT I SAID WHEN IT COMES TO --
21 THIS IS A CASE WHERE THERE'S A SPECIFIC DIALOGUE BETWEEN
22 THE OFFICER AND THE DEFENDANT ABOUT RACE. AND I AGREE
23 WITH THE PROSECUTION THAT THERE'S NO EXPLICIT ADMISSION
24 THAT THE STOP WAS BECAUSE OF RACE. BUT, AS I MENTIONED,
25 THE STATUTE DESCRIBES A PRIMA FACIE SHOWING AS A
26 DEFENDANT PRODUCING FACTS THAT, IF TRUE -- THEY DIDN'T
27 HAVE TO PUT IN "IF TRUE." I THINK BY PUTTING THAT IN,
28 THEY MEAN THE COURT IS NOT TO DETERMINE WHETHER THEY'RE

1 TRUE OR NOT, ONLY WHETHER, IF THEY'RE TRUE, THERE'S A
2 SUFFICIENT BASIS TO CONCLUDE THERE COULD BE A VIOLATION.

3 SO THE STUDIES THEMSELVES HAVE VERY LITTLE
4 BEARING ON MY DECISION. AS I MENTIONED, THERE'S A BIG
5 DIFFERENCE BETWEEN CORRELATION AND CAUSATION, AND WE CAN
6 SPEND DAYS AND DAYS TALKING ABOUT THE USE OF STATISTICS
7 AND WHETHER OR NOT THE STATISTICS SHOW WHAT THIS OFFICER
8 DID ON A PARTICULAR OCCASION, DEMONSTRATED RACIAL BIAS.
9 I PREFER TO RELY ON THE SPECIFIC FACTS OF THE CASE JUST
10 LIKE IN A PITCHES MOTION, SO I'M NOT REALLY CONSIDERING
11 THE STUDIES OR THE CONCLUSIONS OF THE EXPERTS. I'M
12 SIMPLY FOCUSING ON WHAT HAPPENED ON THIS CASE, AND I
13 THINK THE DEFENSE, FOR THE PURPOSE OF A PRIMA FACIE
14 SHOWING, HAS SATISFIED THE BURDEN, AS I UNDERSTAND IT.

15 BUT THAT IS NOT AN INDICATION THAT I BELIEVE
16 THERE'S BEEN A VIOLATION BY A PREPONDERANCE OF THE
17 EVIDENCE. THAT'S FOR A FUTURE DETERMINATION. BUT I
18 THINK FOR THE PURPOSE OF TRIGGERING THE HEARING, THERE'S
19 BEEN A SUFFICIENT SHOWING.

20 NOW, LET ME JUST INDICATE WHAT I JUST SAID ABOUT
21 STUDIES. AT THE HEARING -- AND, AGAIN, THERE'S NO --
22 ABSOLUTELY NO APPELLATE AUTHORITY PUBLISHED THAT
23 DESCRIBES WHAT'S SUPPOSED TO HAPPEN AT THE HEARING EXCEPT
24 WHAT EVIDENCE CAN BE OFFERED, SO I CAN FORESEE A HEARING
25 THAT CAN TAKE A WEEK WHERE BOTH SIDES OFFER STATISTICAL
26 EVIDENCE THAT, ON THE ONE HAND, THE POLICE DEPARTMENT IS
27 RACIALLY BIASED. ON THE OTHER HAND, THE PROSECUTION
28 EXPERTS CAN CONCLUDE IT'S NOT TRUE. THE FACTS OF THE

1 CASE ARE WHAT'S MOST IMPORTANT TO ME. SO I DON'T KNOW
2 HOW WE WOULD STRUCTURE SUCH A HEARING, WHAT THE PARTIES
3 WOULD INTEND TO OFFER AS EVIDENCE AT THE HEARING. THAT'S
4 ALL AN OPEN QUESTION.

5 BUT I'M ONLY SUGGESTING THAT WE DISCUSS THAT
6 BECAUSE I HAVE NO IDEA HOW LONG SUCH A HEARING WOULD
7 TAKE. AND SINCE I'M BOOKED UP ON A REGULAR BASIS WITH
8 PRETRIAL MOTIONS, I WOULD HAVE TO SET ENOUGH TIME -- SET
9 ASIDE ENOUGH TIME FOR SUCH A HEARING.

10 DO YOU HAVE ANY SENSE, MR. GENSER, OF THE
11 LENGTH -- THE LENGTH OF TIME IT WOULD OCCUPY?

12 MR. GENSER: I THINK IF WE RESERVE A DAY, IT WOULD BE
13 ENOUGH. I THINK IT WILL BE LESS. I BELIEVED COMING IN
14 THIS MORNING WE COULD GET IT DONE IN HALF A DAY. I STILL
15 BELIEVE I CAN DO IT IN HALF A DAY.

16 THE COURT: HOW ABOUT THE PEOPLE?

17 MR. HEARNSBERGER: AGREE.

18 THE COURT: OKAY. THE ONE THING I DID NOT DO WAS
19 BRING MY CALENDAR IN TO COURT. GIVE ME ONE MOMENT. I
20 HAVE TO GO GET MY CALENDAR. MAYBE YOU CAN USE THESE
21 COUPLE OF MINUTES TO TALK TO EACH OTHER ABOUT A POSSIBLE
22 DATE. OKAY. LET'S GO OFF THE RECORD.

23 (OFF THE RECORD.)

24 THE COURT: OKAY. WE'RE BACK ON THE RECORD. I NOW
25 HAVE MY CALENDAR IN FRONT OF ME. ANY THOUGHTS ON A DATE?

26 MR. GENSER: YES, YOUR HONOR. WE WERE LOOKING AT
27 SEPTEMBER 27TH, AND I'VE LET THE PROSECUTION KNOW THAT IF
28 HE HAS A CONFLICT, I WOULD BE OPEN TO MOVING THAT DATE.

1 THE COURT: I'M OUT OF TOWN. SORRY.

2 MR. GENSER: OCTOBER 4TH?

3 THE COURT: NO. HOW ABOUT THE FOLLOWING, OCTOBER 10?

4 MR. GENSER: OCTOBER 11? IS THAT ACCEPTABLE TO THE
5 PEOPLE?

6 MR. HEARNSBERGER: YES, YOUR HONOR, TENTATIVELY.

7 I'LL BE IN TOUCH WITH THE DEFENSE AND THE COURT VERY SOON
8 IF I HAVE ANY ISSUES, BUT I THINK THE 11TH SHOULD BE
9 FINE.

10 THE COURT: OKAY. WE'LL SET IT FOR HEARING PURSUANT
11 TO PENAL CODE SECTION 745 ON OCTOBER THE 11TH, AT
12 9:00 A.M., IN THIS DEPARTMENT. AND IF EITHER SIDE PLANS
13 ON SUBMITTING ANY ADDITIONAL PLEADINGS, I'M NOT GOING TO
14 SET A FIRM DEADLINE, BUT I'D LIKE TO HAVE THEM AT LEAST A
15 WEEK BEFORE THE HEARING. WHAT I DON'T WANT IS ANYBODY
16 WALKING IN ON THE DATE OF THE HEARING WITH SOMETHING FOR
17 ME TO READ, BECAUSE I READ EVERYTHING THOROUGHLY BEFORE A
18 HEARING, AS YOU KNOW.

19 NOW, I HAD ORIGINALLY SIGNED THE MEDIA REQUEST
20 WITH TODAY'S DATE ONLY TO AVOID THEM HAVING TO SUBMIT A
21 NEW REQUEST. DO YOU AGREE TO CONTINUE THE MEDIA COVERAGE
22 SO I DON'T HAVE TO SIGN A NEW ORDER?

23 MR. GENSER: SO STIPULATED.

24 MR. HEARNSBERGER: YES, YOUR HONOR.

25 THE COURT: ALL RIGHT. WHOEVER IS HERE, YOU DON'T
26 HAVE TO SUBMIT A NEW ORDER. I'LL MODIFY IT NOW BEFORE I
27 FORGET. I WILL CHECK THE BOX ABOVE "ALL PROCEEDINGS."
28 OKAY. IT'S BEEN MODIFIED. ALL RIGHT. THANK YOU. WE'LL

1 BE IN RECESS ON THIS CASE.

2 MR. HEARNSBERGER: THANK YOU.

3 MR. GENSER: THANK YOU, YOUR HONOR.

4 (OFF THE RECORD.)

5 THE COURT: LET'S GO ON THE RECORD. THIS IS BACK ON
6 THE BONDS CASE.

7 OFFICERS, CAN WE HAVE YOU STATE YOUR NAMES FOR
8 THE REPORTER, PLEASE.

9 OFFICER CAMERON: FIRST NAME RYAN, LAST NAME CAMERON
10 C-A-M-E-R-O-N.

11 OFFICER EYSIE: LAST NAME, E-Y-S-I-E.

12 THE COURT: I HAVE SET A HEARING FOR OCTOBER THE
13 11TH, 9:00 A.M. I'M ORDERING YOU BACK FOR THAT HEARING.
14 WHETHER OR NOT YOU GET A SUBPOENA, IT DOESN'T MATTER.
15 I'M ORDERING YOU BACK. TAKE CARE.

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1 STATE OF CALIFORNIA)

2 : SS.

3 COUNTY OF SAN DIEGO)

4 I, NANCY B. CASTREJON, OFFICIAL REPORTER FOR THE
5 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR
6 THE COUNTY OF SAN DIEGO, DO HEREBY CERTIFY:

7 THAT AS SUCH REPORTER, I REPORTED IN MACHINE
8 SHORTHAND THE PROCEEDINGS HELD IN THE FOREGOING CASE;
9 THAT MY NOTES WERE TRANSCRIBED INTO COMPUTER FORMAT
10 UNDER MY DIRECTION, AND THE PROCEEDINGS HELD ON AUGUST
11 2, 2022, CONTAINED WITHIN PAGES 1 THROUGH 40, ARE A TRUE
12 AND CORRECT TRANSCRIPTION.

13 DATED THIS 19TH DAY OF AUGUST, 2022.

14

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16

nancy castrejon

NANCY B. CASTREJON
CSR NO. 14186

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Exhibit F

1 **JUDGE: HOWARD H. SHORE, JUDGE**
2 **GENSER: ABRAM GENSER, DEFENSE**
3 **HEARNSBERGER: TAYLOR HEARNSBERGER, PROSECUTION**
4 **CLERK: UNKNOWN NAME, COURT CLERK**
5 **MOHR: BETH MOHR, WITNESS 1**
6 **DR. CHANIN: DR. JOSHUA CHANIN, WITNESS 2**
7 **CAMERON: OFFICER RYAN CAMERON, SDPD, WITNESS 3**
8 **DR. GLOVER: DR. KAREN GLOVER, WITNESS 4**

6 Clerk: ... for Department 2102 is now in session.

7 Judge: All right, this is a case of People versus Tommy Bonds. Could I have the
8 appearances of counsel, please?

9 Hearnberger: Good morning, Your Honor. Taylor Hearnberger for the People.

10 Genser: Morning, Your Honor. Deputy Public Defender Genser 977 for Mr. Bonds.

11 Judge: All right. Thank you. Let me first put on the record what I have here. I
12 have a defendant's motion for relief under the Racial Justice Act pursuant
13 to penal code section 745(a)(1) authored by Mr. Genser on behalf of the
14 defendant. And there's a second name on the motion, Ashkan Kargaran, A-
15 S-H-K-A-N, the last name, K-A-R-G-A-R-A-N. And that was file stamped
16 July 12, 2022. I have the opposition to the defendant's motion authored by
17 Mr. Hearnberger file stamped July 26th, 2022, um, together with, within
18 exhibit, which is the transcript of the body worn camera footage. Um, I
19 have a, um, if I can find it here, a notice of lodgment of an exhibit, which is
20 the actual, um, CD or DVD of the body worn camera footage, uh, that was
21 filed by the People.

22 I have the, um, People's objections to proposed defense opinion testimony
23 authored by Mr. Hearnberger filed stamped October 27th, 2022. Um, and
24 I believe that's all the pleadings I have. Um-

25 Genser: And would it possible for you to move your microphone a little closer to
26 you?

27 Judge: Sorry. Uh, have you heard anything or-

28 Genser: I, I have. I'm just worried that since we're recording instead of transcribing

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and then, uh, subdivision 1, um, indicates the hearing evidence may be presented by either party, including but not limited to statistical evidence, aggregate data, extra testimony and the sworn testimony witnesses. The court may also appoint an independent expert. Uh, I will indicate I have not done that. And subdivision (c)(2) says a defendant shall have the burden of proving a violation of subdivision A by a preponderance of the evidence. And at the conclusion of the hearing, the court shall make findings on the record, and my written ruling will be those findings.

Now, uh, one observation, um, the statute does not indicate the rules of evidence that apply, except to say that certain listed items are admissible, um, kind of like, for example, 1170.95, which has now been renumbered, um, murder re-sentencing. The statute specifically, the current version, specifically states the evidence code shall apply to the evidentiary hearing. There's no statement like that by the legislature here, so that's another issue or first impression is what are the rules. Um, and so, um, you know, my attitude is that anything that's relevant would be admissible subject to my weighing, um, that evidence according to the, um, according to the, the manner which is the evidence is presented.

Now, the People have raised a couple objections that I want to address, um, in their opposition. Uh, there are two main categories I think to your objection, um, and I want to make sure I have the correct ones, the studies, the foundation for the studies. And the other is the nature of the opinion testimony. But I want to talk about the studies first. I, I pointed out, I think, at the [inaudible 00:06:28] hearing that, um, no study or, or group of statistics can tell a trier of fact what was going on in a mind of a particular person on a particular occasion. They're in the nature of, I, I suppose an analogy would be character evidence to show that certain conduct fits within a pattern that, um, has been, uh, analyzed and recorded, uh, over the

1 years.

2 So, um, it, there's a difference between admitting the study and giving it a

3 certain amount of weight. And I, I think it would, um, the, the in your

4 objections, you talked about the foundation for the studies. I'm inclined to

5 allow the defense, to allow for whatever studies they want subject to my

6 weighing. It, um, I may admit it and find that it has absolutely no value.

7 And I'm just making a point that unlike a jury trial, you know, where we

8 can spend days laying the foundation for particular studies, I don't think

9 would be of much benefit here, because I'm a trier of fact. I don't have to

10 worry about filtering evidence for a jury to consider.

11 And so, um, I'm happy to consider anything Mr. Genser offers in the way

12 of studies subject to my weighing it. So I don't know if that will save us

13 time or not, because I know you had issues with regard to the foundation

14 for certain studies and, and I understand that. And you're free to argue why

15 you believe certain studies have no merit. Um, but I'll let you respond.

16 Hearnberger: I, I don't have much to add, Your Honor. I, I understand the Court's ruling.

17 Um-

18 Judge: Well, I ... That was not a ruling.

19 Hearnberger: Okay.

20 Judge: I'm just telling you what I'm thinking right now, so-

21 Hearnberger: I just, it, for ... I certainly would like to ask Dr. Shannon some questions

22 about the SDSU Study, and he'll be able to intelligently speak about that

23 study because he co-authored it. But he won't be able to intelligently speak.

24 I, I'm not aware that he has, um, personal knowledge of the other studies

25 that on cross-examination he'd be able to, to talk about those. So, um-

26 Judge: I'm not gonna preclude your cross-examining him. You know, I'm just

27 saying that I, I don't wanna get bogged down in a lengthy argument over

28 admissibility where I'm the trier of fact and I will have the opportunity to

1 decide how much weight any of these studies has in my final decision.
2 And, and again, the focus is on what a particular officer was, the state of
3 mind of a particular officer on a particular occasion. Um, so he may in fact
4 have been acting consistently with what the studies allege or he may have
5 been acting in completely contradiction to what the studies allege. I don't
6 know. Uh, but I'm the trier of fact, and I will consider that once I've read all
7 the evidence. So I just don't wanna get bogged down in a lengthy
8 foundational hearing.

9 Hearnberger: Understood. I don't have anything to add, Your Honor.

10 Judge: Okay.

11 Hearnberger: Thank you.

12 Judge: Now, with regard to the opinion, um, evidence, uh, the ... I, I haven't heard
13 it yet. Uh, apparently the People know more about what's gonna be offered
14 than I do. But, um-

15 Genser: And just to speed it up, I have no intention of asking the expert what the
16 internal thoughts of anyone else are. That's not my intention, and it's not
17 her area of expertise. She's not a mind reader.

18 Judge: See, if I'd known that, you would've saved me several hours of reading.
19 Um (laughs), no, I, I, I'm just teasing. Um, yeah, the, the case law is pretty
20 clear. For example, in the case involving a murder charge, no expert, the
21 expert may be absolutely right, but no expert can take the stand and say,
22 "In my opinion the defendant premeditated and deliberated." That's a
23 question for the trier of fact.

24 Um, and there were cases that, you know, [inaudible 00:10:08] cases, there
25 are many different areas where the courts have made clear that experts can
26 testify indirectly that certain conduct is consistent with a certain state of
27 mind, but they cannot give an ultimate opinion as to, in, in the form, in my
28 opinion, "This is what the officer was thinking when he sought the

1 defendant." So Mr. Genser has represented that's not gonna happen, so
2 you're free to object if you think that a line has been crossed, but, um, I'm
3 not gonna spend any more time on it now. I had the cases ready to cite, but
4 apparently it's not necessary.

5 Genser: Sure.

6 Hearnberger: Thank you. And I ... My objection was based on offers approved at the last
7 hearing, but if that is not gonna be the testimony, then that's fine.

8 Judge: Okay. Now, with regard to the exhibits, um, I noticed that you did have the
9 transcript attached as Exhibit A, um, to your opposition. Now, this court
10 requires that within the, um, audio recording, there has to be a transcript
11 accompanying it. Um, I assume the defense isn't going to be objecting to
12 the People offering the, the DVD.

13 Genser: We're actually gonna stipulate to Defense Exhibit A, which is a thumb
14 drive. Um, I believe the court has the list of, of things that are on the thumb
15 drive.

16 Judge: Okay. So I don't need to have this marked and the DVD.

17 Genser: No, I, I, I think it makes more sense to keep the exhibits separate between
18 hearings.

19 Judge: Okay. All right. I, I agree. All right. Then we'll just take it one exhibit at a
20 time. All right. So with that since the burden of proof is on the defense, the
21 defense, the party, burden of proof usually goes first. So I'll allow you to
22 proceed, Mr. Genser. And, uh, what would you like to do first?

23 Genser: Thank you, Your Honor. I, I'd like to start by, uh, offering exh- Defense
24 Exhibit A. It is a thumb drive is the body worn camera as edited by People,
25 so it's edited down from the original 49 minutes to five minutes and eight
26 seconds. There is a transcript that the People originally provided at the last
27 hearing, which is also on there. On the thumb drive, I have also provided
28 the four statistical studies, um, and I have put the, uh, police department's

1 Policy and Procedural Manual, um, on the thumb drive as well. So that's
2 Exhibit A.

3 Judge: All right. And where is Exhibit A?

4 Genser: I have it.

5 Judge: Okay. And it's marked?

6 Genser: Mm-hmm.

7 Judge: All right. So is there any objections on receiving Exhibit A?

8 Hearnberger: I will, I'll stipulate to the body worn and the transcript, um, understanding
9 the Court's rulings about the studies. I have no further objections on that
10 issue. Um, I don't think the San Diego Police Department policy is
11 relevant. And that's one of the objections I, uh, briefed on, uh, relevant to,
12 uh, at the Morris testimony. I don't think that's relevant, uh, for this
13 hearing.

14 Judge: Well, I don't know what's in there, but I'll receive A with the understanding
15 that I will weigh the evidence. And if I find the policy is irrelevant to my
16 decision, I will say so in my ruling. All right, so Defendant's A will be
17 received.

18 Genser: Thank you, Your Honor. Defense calls Mohr.

19 Judge: Okay.

20 Speaker 2: Do you solemnly state that the evidence you shall give in this matter shall
21 be the truth, the whole truth and nothing but the truth so help you God?

22 Mohr: Yes, I do.

23 Speaker 2: Thank you. If you could please take a seat at the witness stand.

24 Judge: And the attorney will ask the name. And since we're recording, you can
25 pull the mic toward you once you get seated and comfortable.

26 Mohr: Thank you, Your Honor.

27 Judge: You might want to raise it just a little bit. All right. Thank you.

28 Mohr: Thank you.

- 1 Judge: All right. Whenever you're ready, you can proceed.
- 2 Genser: Thank you. Uh, Ms. Mohr, could you state your, uh, name for the record
3 and spell your first and last name?
- 4 Mohr: Mohr, M-O-H-R.
- 5 Genser: Um, you are here today to testify as a police practices expert. Is that
6 correct?
- 7 Mohr: Yes, sir.
- 8 Genser: Uh, before I ask you about your opinion, I want to discuss your
9 qualifications.
- 10 Mohr: Certainly.
- 11 Genser: Uh, have you ever worked as a police officer?
- 12 Mohr: Yes, I have. I'm retired from the San Diego Police Department.
- 13 Genser: Could you describe your employment as a police officer?
- 14 Mohr: Sure. I went to the Academy in 1984 and worked as a patrol officer and in
15 special investigative assignments in Vice and sex crimes. And I was
16 injured in the line of duty and retired in 1992, I believe.
- 17 Genser: Uh, did you ever received any awards or honors as a police officer?
- 18 Mohr: I did. I received three commanding officer citations. All of those were
19 investigated, uh, investigative acumen.
- 20 Judge: Okay. Can I just ask what years you were with the San Diego PD?
- 21 Mohr: Yes, sir. In 1984 and 1992.
- 22 Judge: Um, can, can I ask one question? I, um ... What, what month in 1984?
- 23 Mohr: Uh, 10/10/84, so, uh, October.
- 24 Judge: Okay. No, I, it's just your name sounds familiar to me. And the, were you
25 involved in any way in the Joselito Cinco Case involving the murder of
26 two San Diego police officers?
- 27 Mohr: Uh-
- 28 Judge: Your name sounds familiar from the witness list, but I may be wrong.

1 Mohr: Uh, I, I could've been.

2 Judge: Okay. All right. Yeah, if, if, if I had any ... Let me just indicate why I asked
3 the question. I was involved when I was in the District Attorney's Office
4 with that case, and there were hundreds of officers involved in that case.
5 And, um, if I had had personal contact with Ms. Mohr, um, and had
6 familiarity with her, I would have to state that on the record. But based on
7 what she said, I don't believe I do. So let's move on.

8 Genser: And just for the record, I, I don't think that that would be a conflict, and I
9 would waive the conflict if one existed.

10 Judge: All right. All right. Thank you.

11 Hearnberger: I would too. Thank you.

12 Judge: All right. Sorry for the interruption. You, you can continue with your
13 training and experience.

14 Genser: You mentioned that you had a, a, a citation, uh, from the captain, chief?

15 Mohr: So it was a commanding officer citation.

16 Genser: What is that?

17 Mohr: Uh, it's one of the, at the time, it was the highest award that you could get
18 as a police officer.

19 Genser: Um, after working for the police, did you continue to do investigative
20 work?

21 Mohr: I did. I went to work for the Public Defender's Office up in Whatcom
22 County, Washington, uh, doing primarily felony investigations and death
23 penalty mitigation investigations.

24 Genser: Um, did you at some point earn a Master's Degree in Public
25 Administration?

26 Mohr: Yes, I did. Uh, I moved to, uh, New Mexico. I received a Master's in Public
27 Administration from the University of New Mexico. And my, um, thesis,
28 my master's thesis was on the use of performance measurement and

1 [inaudible 00:17:22].

2 Genser: Um, did you become a private investigator at some point?

3 Mohr: I did. I'm licensed as a private investigator in California, Arizona and New
4 Mexico.

5 Genser: Um, are you a certified law enforcement instructor as well?

6 Mohr: I am. I'm certified, uh, by the State of California to teach post, uh, police
7 officer, sorry, peace officer, uh, standard and training courses. Uh, so, uh,
8 one of, one of about 150 people that are certified nationally to teach law
9 enforcement courses under the DOJ's new program trying to standardize
10 training throughout the, the United States.

11 Genser: And POST is the class that when, when an officer comes in and wants to
12 testify about hearsay, that's the, they always say, "I'm POST certified."
13 That's the class that you teach.

14 Mohr: Yes, sir.

15 Genser: Um, you have also taught various courses related to training law
16 enforcement. Is that correct?

17 Mohr: Yes.

18 Genser: Um, I wanna talk about a couple of the courses that you've taught, um, one
19 in particular. Have you taught a course in investigative ethics?

20 Mohr: Yes.

21 Genser: Could you describe that?

22 Mohr: Sure. It's actually a, a half-day segment out of a two-day course on, uh,
23 investigations, interviewing and interrogation. And, uh, in the ethics
24 portion, I teach about how officers have responsibilities around their
25 investigations. I teach about, uh, false confessions and the concerns that
26 can happen around individuals who falsely confess, um, and just ethics
27 generally for law enforcement officers.

28 Genser: Um, you were also tasked, tasked as the Chair of the Civilian Oversight

1 Board related to a Department of Justice Consent Decree. Is that correct?

2 Mohr: Yes, sir. The City of Albuquerque, uh, entered into a consent decree with

3 the Department of Justice over, uh, use of force and various other issues.

4 And we created out of that a Civilian Oversight Board and I chaired that

5 board for the first two years of its existence.

6 Genser: Have you testified as a police practices expert before?

7 Mohr: Yes, I have.

8 Genser: In federal and state court?

9 Mohr: Yes.

10 Genser: Um, outside of California?

11 Mohr: Yes.

12 Genser: Within California?

13 Mohr: Yes (laughs).

14 Genser: Um, in San Diego particularly?

15 Mohr: Yes, sir.

16 Genser: Um, specific to the area of racial bi- bias, racial profiling, do you review

17 reports and publications to stay abreast of the most current information?

18 Mohr: Yes, I do.

19 Genser: Um, in preparation for today's hearing, could you just describe the number

20 of articles that you reviewed in order to, I supposed, you know, stay on top

21 of this issue?

22 Mohr: So, uh, in, in preparation for this but also, uh, two other cases that I'm, uh,

23 working on, one which was a death penalty heinous case out of Cincinnati

24 and another is a, um, civil suit out of the City of Chicago, I have done quite

25 a bit of reading and research about the areas of cognitive bias as a sort of

26 overarching umbrella and then implicit bias and confirmation bias talking

27 about, uh, the different ways that people either consciously or

28 unconsciously act in particular ways.

1 Genser: Um, did you provide me with a bibliography of articles that you have
2 reviewed?
3 Mohr: Yes, I did.
4 Genser: Um, I'm gonna mark that as Exhibit B.
5 Judge: All right, Defendant's B for identification. How many page document?
6 Genser: Um, it is a ... Where does the court like the tag back front?
7 Judge: As lo- anywhere where it's not interfering with the print.
8 Genser: Okay. It is a, um, one, two, a three page document labeled Bibliography.
9 Judge: All right. Defendant's B for identification, three page.
10 Genser: Uh, permission to approach?
11 Judge: Yes.
12 Genser: Do you have what's been marked as Exhibit B in front of you?
13 Mohr: Yes, I do.
14 Genser: What is that?
15 Mohr: So this is a bibliography, um, it's lifted as a portion of a bibliography out of
16 a [inaudible 00:21:48] report that I'm doing for a federal court elsewhere,
17 uh ... And this is just a list of articles that I've read, and including one book
18 chapter that I've written, uh, talking about, uh, confirmation bias and other
19 types of, um, other types of biases.
20 Genser: And that's ... I, I didn't count it, but it's probably 40 articles. Does that
21 sound right?
22 Mohr: Hm, probably.
23 Genser: Okay. Um, let's turn to this case for a moment. Um, what did you review in
24 this case in order to prepare you to testify today?
25 Mohr: Uh, I watched the officer's body worn camera video. I, um, read the
26 officer's reports. Um, I reviewed some standard operating procedures for
27 the, um, San Diego Police Department. Um, and I also reviewed a
28 transcript of the body worn camera video.

People v. TOMMY BONDS, Case No. M280282
RJA Hearing on Unknown Date

1 Genser: Um, okay. Um, with that, um, based upon your training and experience,
2 your review of the records, do you have an opinion about whether or not
3 the officer in this case, um, shown in the video acted with racial bias?

4 Mohr: Yes, I do.

5 Genser: And what is that opinion?

6 Hearnberger: Objection, foundation, relevance.

7 Judge: Well, I think I, I think I indicated that I would not permit someone to
8 testify as to somebody else's state of mind, but that certain conduct was
9 consistent in, in the form of either a hypothetical or ... The, the way it's
10 phrased, I will sustain the objection, because I think that's-

11 Genser: I'll rephrase it.

12 Judge: All right.

13 Genser: Based upon your review of the records, your training and experience, was
14 the officer's behavior consistent with, um, what you understand to be racial
15 bias?

16 Mohr: Yes, it was.

17 Genser: Um, I wanna talk about how you arrived at that opinion. Um, I wanna talk
18 about a couple of things observed on the video, and I wanna start with the
19 part of the video where Mr. Bonds asks Officer Cameron if he pulled him
20 over because he saw, quote, unquote, two Black guys in a car. And I
21 believe Officer Cameron responds by saying that, indeed, part of the reason
22 he stopped Mr. Bonds was his race. Is that accurate?

23 Hearnberger: Objection, leading, uh, misstates the Exhibit 1A.

24 Genser: This is an expert, Your Honor.

25 Judge: Well, obviously it has to be accurate information. What part do you believe
26 is misstated?

27 Hearnberger: Officer Cameron's response.

28 Judge: Well, I'll allow the witness to answer, and you can cross-examine and point

1 out any, any errors in her understanding of the facts. So overruled for now.

2 Genser: Do you recall that section of the, uh, um, of the video that I'm referring?

3 Mohr: Yes.

4 Genser: Um, was that statement important to your opinion?

5 Mohr: It was. There, there was several aspects of the entire stop as observed on

6 the video that, uh, shaped my opinions on this case, and that's one of them.

7 Um, Mr. Bonds essentially asks, "Did you pull us over because it's two

8 Black guys in a car?", uh, and the officer essentially responds, "Part," he

9 says, "Partly." That's, in other words, "That's partly the reasons I pulled

10 you over." And he goes on to talk about that the passenger had a hood up

11 on his hoodie. And so those were the, um, initial reasons that the officer

12 gave for the stop when he was asked by Mr. Bonds.

13 Genser: Uh, based upon your, uh, expertise, knowledge, training and experience, is,

14 uh, being Black a valid reason to conduct a traffic stop?

15 Mohr: It is not unless you're looking for a particular individual relative to a

16 particular case who happens to be Black.

17 Genser: Um, did Officer Cameron's statement that part of the reason they stopped

18 Mr. Bonds was Mr. Bonds' race support your ultimate conclusion that

19 Officer Cameron acted with racial bias?

20 Mohr: Yes.

21 Genser: The next thing I wanna talk to you about is when the officer says, uh, in

22 addition to Mr. Bonds' race, that he stopped them because the the

23 passenger had his hoodie up.

24 Mohr: Yes.

25 Genser: Do you recall that?

26 Mohr: I do.

27 Genser: Um, was that important to your opinion?

28 Mohr: Yes, it was.

1 Genser: Why?

2 Mohr: Well, wearing a hoodie in a car isn't illegal. So for that to be apart of the
3 reason for the stop, again, unless they were seeking a particular individual
4 from, say, a bank robbery from a few minutes prior who was wearing that
5 color hoodie or something, um, just wearing a hoodie isn't a valid reason to
6 conduct a traffic stop.

7 Genser: And just to be clear, based upon your review of all of the documents in this
8 case, there was no call that they were responding to.

9 Mohr: Correct

10 Genser: Um, in fact, I believe in the, in the officer's police report, they state that
11 they were on proactive enforcement.

12 Mohr: Yes.

13 Genser: Okay. Um, did Officer Cameron's statement that the other reason that he
14 stopped Mr. Bonds was based on the pa- based on the fact that the
15 passenger was wearing a hoodie, did that support your opinion that Officer
16 Cameron acted with racial bias?

17 Mohr: Yes, that shaped my opinion as well.

18 Genser: Um, as, as Mr. Cameron, as Officer Cameron and Mr. Bonds are
19 interacting, when Officer Cameron asks Mr. Bonds about the passenger's
20 hoodie being up, he mentions that it's cold outside. Did that weigh into
21 your opinion?

22 Mohr: Somewhat.

23 Genser: How?

24 Mohr: Well, uh, cold is sort of relative term in San Diego, but it was January. So,
25 you know, having a hoodie up may be reasonable, but again, there's
26 nothing illegal about wearing a hoodie, uh, regardless of the weather.

27 Genser: Uh, I wanna talk about the officer's, um, statement where he talks about
28 East County and being detained in East County. Are you familiar with that

1 section of the-

2 Mohr: Yes.

3 Genser: Okay. Um, at s- at, at ... There's actually two points in the transcript that
4 the, at the first point when Mr. Bonds is asking Officer Cameron being
5 stopped because of his race, I believe Officer Cameron responds that he
6 also is profiled in East County.

7 Mohr: Yes.

8 Genser: Um, how did that weigh into your opinion?

9 Mohr: So when the officers asked about, um, why were, you know, "Why were
10 we stopped? Is it 'cause it's two Black guys in car?", he initially says,
11 "Well, partly," and then, you know, "Your passenger had a hoodie up. And
12 then he goes on to talk about the fact he is also profiled. He says he gets
13 pulled over in East County because he has a sleeve of tattoos and wears his
14 hats backwards. And so what I took from that is, you know, "It's not that I,
15 uh," speaking from the officer essentially, you know, "Oh, it's not that I
16 intended to do this," as much as, "This happens to me too, and that's just
17 the way it is."

18 Genser: Um, at some point during the contact, uh, Mr. Bonds is actually detained.

19 Mohr: Yes.

20 Genser: Is it your opinion that Mr., that Officer Cameron and Offr- Officer Icey had
21 probable cause when they detained, when they detained him?

22 Hearnberger: Objection, relevance, foundation.

23 Judge: Uh, I'm not, I'm gonna overrule it subject to cross-examination a possible
24 motion to strike. You can answer. And I'm ki- I wanna hear what the
25 reasons are for whatever answer's given.

26 Mohr: So let me back up a little bit. At the very beginning of the video, we see
27 that the two vehicles, the officer's vehicle and Mr. Bonds' vehicle passed
28 face-to-face. The front plate is not obscured. Now, the officer decides to

1 make a U-turn and pull in behind Mr. Bonds, uh, and then he initiates the
2 traffic stop. So from the very beginning, the point of stop, the point of him
3 turning around to go behind Mr. Bonds was, in my expert opinion,
4 precisely what the officer said it was, which is two guys in a car who were
5 Black, one of whom was wearing a hoodie.

6 So the officer pulls around and discovers that, uh, there's a, some sort of a
7 film over the rear license plate, and in his report he says that's why he
8 makes the stop. Um, but the fact that there's no obscured front plate, you
9 know, the U-turn ... So from the very beginning, he sees the two guys, he
10 makes the U-turn, he has this interaction. He doesn't immediately say, uh,
11 if I, uh, I don't recall that he ever says on the wor- body worn camera, he
12 never actually says, "I pulled you guys over because of your license plate."
13 Um, he addresses Mr. Bonds very casually, you know, "Hey bro." And, uh,
14 then he goes on to talk about, uh, he's asked why they were pulled over.
15 And the reason was, "Oh, because two Black guys in a car." "Well, it was
16 partly, but your friend has his hoodie on."

17 So now we've got this traffic stop that was initiated because of who was in
18 the car, and he, the officer, uh, is interacting with Mr. Bonds and then says,
19 "So do you have any weapons in the car?" And Mr. Bonds says, "Yes." So
20 at that point, the officer has a concern. But the fact that the, this stop
21 should've never been made based on a lawful reason is the problem that I
22 see with that.

23 Genser: Does it bear on your opinion that the officer acted with racial bias that the
24 initial contact was without probable cause?

25 Mohr: It does.

26 Genser: How so?

27 Mohr: So if you just are stopping people for no reason, then you should stop
28 everyone. Right? I mean, the officers set up road blocks and they look to

1 see if anyone has been drinking or if there's other issues. But if you're
2 gonna pull over one particular vehicle, you need to at least have reasonable
3 suspicion that something is occurring, uh, that is illegal. So you're either
4 looking for a specific individual or that specific vehicle, uh, or you have
5 some sort of specific information as to why you'd be stopping that vehicle
6 and those individuals, um, or you need to have a traffic violation. At the
7 point at which the officer made that U-turn, he had no knowledge of a
8 traffic violation yet.

9 Genser: Um, you used the phrase reasonable suspicion, and you're using that in a
10 technical legal sense. Is that correct?

11 Mohr: Yes, sir.

12 Genser: Um, at the end of the transcript, um, Mr. Bonds and Officer Cameron are
13 again sort of talking about race, and again, Officer Cameron brings up the
14 fact that, I think he says, quote, unquote, because it's the same, like, like I
15 said, out in East County for me.

16 Mohr: Yes.

17 Genser: The fact that he brings that up again, did that bear on your opinion?

18 Mohr: It did, yeah. The fact that the officer's response is, "Hey, I get profiled too,"
19 um, is, you know, a- a way to develop rapport with someone, but it's not an
20 explanation of why, you know- what legal reason the officer actually
21 pulled Mr. Bonds over for.

22 Genser: Um, have you had a chance to review the San Diego Police Department
23 Policy and Procedure Manual?

24 Mohr: I did.

25 Genser: Um, are you familiar with section 9.31?

26 Mohr: Yes.

27 Genser: What's section 9.31 about?

28 Mohr: It's a section about bias based policing.

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- 1 Genser: Um, based upon your training and experience, do you believe that oper-
2 Officer Cameron met the obligations outlined for him in section 9.31?
- 3 Mohr: I do not.
- 4 Genser: Why not?
- 5 Mohr: So, again, the initial reason for the stop, the initial reason for the U-turn
6 even before the stop, was based on who was in the vehicle. Um, the officer
7 then makes the U-turn, he makes the stop, and when he's asked, you know,
8 oh, "You stopped us because it- there was two Black guys in the car,"
9 obviously, I believe is the statement from Mr. Bonds, and the officer says,
10 "Partly." Well, even partly is not okay. The- there's not supposed to be any
11 reason based on race that a person would be stopped unless you are seeking
12 someone out of that race for a specific investigatory reason, a specific
13 crime.
- 14 Genser: Your honor, just for the record, I- I have that on Exhibit A, but I know the
15 court does not have it in front of you. Uh, section 9.31 states, and I'll- I'll
16 read- it's, uh, sort of lengthy, but I'll state the beginning part. It's, "The
17 department does not tolerate bias based policing. Bias based policing
18 occurs when law enforcement inappropriately considers factors such as
19 race, religion, national origin, gender, to include gender identity and
20 gender expression, lifestyle, sexual orientation, or similar personal
21 characteristics in deciding with whom and how to intervene in an
22 enforcement capacity." Um, are you also familiar with, uh, policy and
23 procedure section 7.01?
- 24 Mohr: Yes.
- 25 Genser: Um, what's that section about?
- 26 Mohr: Uh, that speaks to traffic enforcement. That traffic, uh, laws will be
27 enforced equally.
- 28 Genser: Just for the record again, your honor, since the court doesn't have it in front

1 of him, uh- in front of you, 7.01 reads, "The enforcement of all traffic laws
2 shall be administered equally and fairly regardless of the person involved
3 and based solely on the nature of the offense." Um, based upon your
4 training and experience, do you believe that Officer Cameron met the
5 obligations of policy and procedure 7.01?

6 Mohr: I do not.

7 Genser: Why not?

8 Mohr: So, again, the officer pulled the, uh, gentleman in the car over partly
9 because of their race, partly because someone was wearing a hoodie. Uh,
10 that's the reason for the U-turn. He tells them that's the reason for the stop.
11 And when they complain about, you know, hey, stopping two Black guys
12 in a car, he responds, "Partly. Partly, that's the reason I stopped you,
13 because it's two Black guys in a car." That is not okay. That is precisely
14 what is not supposed to happen in terms of, uh, you know, equal treatment
15 and unbiased policing.

16 Um, the- the other thing that's in the video, and I apologize if I'm jumping
17 the gun, but I don't want to forget, um, is how casually the officer, uh, has a
18 conversation with Mr. Bonds. And there's actually some very good studies
19 out there. One of them was on this list, a couple of them on the list, but one
20 of them involves a- a study by Voit. And they looked at tens of thousands
21 of body worn camera interactions, um, with police officers and citizens,
22 and what they determined was that using this huge data source, there was,
23 uh, you know, no racist language used in any of these stops. But what they
24 found was that the, uh, white citizens were treated slightly differently than
25 Black citizens. And essentially, uh, the officers said something to the effect
26 of, "Oh, I'm sorry I had to stop you, sir," when pulling over a white person,
27 a white male. And when they were pulling over a Black male, they'd say
28 something along the lines of, you know, "Hey bro, where you going

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1 Mohr: Correct.

2 Hearnberger: And are you aware that it is a violation of the vehicle code to have an
3 obscured license plate in California?

4 Mohr: Yes.

5 Hearnberger: So you would agree that if- if an officer is following a vehicle and sees a
6 license plate that they can't quite make out, um, that would give a- give an
7 officer concern that that is a violation of the vehicle code, correct?

8 Mohr: Yes.

9 Hearnberger: And under the law, and under proper police practices, uh, there's- a
10 detention doesn't occur until the officer actually stops the vehicle, correct?

11 Mohr: I believe so.

12 Genser: [inaudible 00:40:21].

13 Judge: Well, she gave her opinion about the legality of probable cause, so, um,
14 that door was opened. So, overruled. You can answer if you have an
15 answer.

16 Mohr: I'm sorry, could you repeat the question.

17 Hearnberger: S- uh, the... A detention occurs not while an officer's following a vehicle,
18 but once an officer activates his lights or otherwise signals that driver to
19 pull over, correct?

20 Mohr: And they actually pull over. Yes, sir. (laughs)

21 Hearnberger: Yes. Thank you.

22 Now, when... I want to talk about a couple of the statements that were
23 made, uh, by the officer. Um, your testimony on direct, that was when-
24 when the defendant said, "You pulled us over because of our race," I
25 believe your- your recollection of the officer's statement was, "Partly." Is
26 that correct?

27 Mohr: Uh, yes, sir.

28 Hearnberger: Okay.

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1 Mohr: If you have the actual transcript, I'd be happy to read the actual statement
2 into the record, but.

3 Judge: I have it here, if you want.

4 Hearnberger: If... I have an extra copy, but I- if we want to s- stay.

5 Judge: Well, I didn't know if you want it marked separately, or.

6 Hearnberger: I've got a statement of what the court has received, but-

7 Judge: Well, that's on a thumb drive. I have the hard copy that you submitted as an
8 exhibit, which I assume is the same.

9 Hearnberger: I'll m- I'll mark a separate copy.

10 Judge: Okay. It might be neater on the records to have a hard copy of whatever the
11 witness is being cross-examined on. All right. So, it's a how many page
12 document?

13 Hearnberger: Seven, I believe.

14 Genser: Yes. Oh, I'm sorry. There's a title page, so it's eight.

15 Judge: Well, whatever you're marking, counsel, tell me how many pages is yours.
16 Is it eight? Or is-

17 Hearnberger: Seven.

18 Judge: All right. Seven page document will be People's One, for identification.

19 Hearnberger: I already started with People's One for my other exhibits, your honor. I
20 haven't marked them, but I wrote the numbers on the tags.

21 Judge: And that's why I tell people, never pre-mark in this court, because for
22 exactly that reason. So-

23 Hearnberger: People's One will be the transcript. I'll- I'll start over.

24 Judge: I always go in chronological order. That's why I tell attorneys never pre-
25 mark.

26 Hearnberger: Okay.

27 Judge: All right, People's One, seven page transcript.

28 Hearnberger: May I approach?

1 Judge: Yes.

2 Hearnberger: So I'm showing the witness People's One, the second page, starting at line
3 13, is when this discussion begins about race.

4 Mohr: Yes, sir. Line 13. Uh, they're, uh, in conversation with the officer and, uh,
5 the, um, D, which I assume is the defendant, says, uh, how you... Well, the
6 officer says, "How you been?" And he says, uh... The defendant says,
7 "Good, actually. But why are you pulling over? You turned around like
8 you saw two niggers in the car, probably." And the officer says, "What's
9 that?" The defendant says, "I said we saw you turn around like you saw
10 two guys, like, two Black guys in the car, obviously." And the officer then
11 says, "Well, part of it, the hoodies up and stuff."
12 You want me to go on? 'Cause there's a little more.

13 Hearnberger: No, that's fine.
14 And then you testified on direct about a discussion about East County, the
15 tattoos, and the snapback hat. And let me make sure that I understand. It's
16 your opinion that, when the officer's saying that he gets pulled over too,
17 that he's not just trying to build rapport with the defendant, but he is
18 actually affirmatively stating that, um, that's a statement that he just
19 racially profiled the defendant in this stop?

20 Mohr: So, the way I'm taking it, in watching the video and reading the transcript,
21 you know, when the officer's asked, oh, "You pulled us over 'cause two-
22 it's two Black guys," uh, as an officer, I would have said, no, absolutely
23 not. I pulled you over because of this reason. Your plate was obscured.
24 Okay, so it makes it very clear. Instead of doing that, the officer says,
25 "Well, partly," and goes on to talk about the hoodie. And then later on,
26 when he's asked again, instead of saying, you know, oh, definitely did not
27 pull you over because of your race, he says, "Yeah, I get it. It happens to
28 me too. I'm all tatted up, I got my hat on backwards, and I get essentially

1 profiled in the East County as well." And so, the way I'm taking that is,
2 instead of saying, no, absolutely not, he's saying, yeah, it happens to me
3 too. It's a bummer, isn't it?

4 Hearnberger: So the items you reviewed in this case are body worn... Uh, we're looking
5 at the transcript. So you watched the body worn recording that corresponds
6 with- with this transcript, uh, People's One. Is that correct?

7 Mohr: Yes, sir.

8 Hearnberger: Um, how much body worn did you review?

9 Mohr: All of it that I was provided. It- it's this entire incident up through, um, the
10 arrest. I didn't watch the whole day's worth, if that's what you're asking.

11 Hearnberger: So I'm- I'm asking, at what- what... What interactions did you review? You
12 obviously reviewed the- the vehicle stop, this discussion that we're talking
13 about. What else did you review subsequent to this discussion that we're
14 talking about right now?

15 Mohr: Uh, I watched to the end of the clip that I was provided.

16 Hearnberger: H- how long was that clip?

17 Mohr: It matches the, uh... I don't actually know how long precisely, but it
18 matches the transcript. So, um, it ends with the discussion around, uh,
19 officer saying, "I haven't disrespected you, uh, in any way," and Mr. Bond
20 saying, "I hope I haven't either. I mean, I'm just trying to talk to you." And
21 you know, Mr. Bond says, "It's unfortunate. I should have kept my ass at
22 home." The officer says, "I understand the frustration, trust me, 'cause the
23 same, like I said, out in East County." And that was... That was what I saw.

24 Hearnberger: Okay. So that's the entirety of the body worn recording that you reviewed
25 for this case?

26 Mohr: Yes, sir. That's what I was provided.

27 Hearnberger: And which police f- report did you review?

28 Mohr: Um, I reviewed, uh, the reports that were provided to me. I can grab them

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1 if you want to see exactly what I have, but...

2 Hearnberger: Who wrote the report?

3 Mohr: Um, I believe there was two officers. I'd have to look, I'm sorry.

4 Hearnberger: Would it refresh your recollection to review a copy of the- of the report?

5 Mohr: Yes, sir.

6 Hearnberger: You want a copy? This conversation [inaudible 00:47:43].

7 Mohr: Yeah, that's- that's the one.

8 Hearnberger: May I approach?

9 Judge: Yes.

10 Hearnberger: I'm handing the witness a five page San Diego Police Department report.

11 Mohr: Yes, sir. I reviewed this. There were some additional pages as well. Um,

12 there was some photographs, still photographs, uh, that were printed and,

13 uh, then I believe Mr. Bond's jail records, as well.

14 Hearnberger: But as far as the, uh, officer narrative, that's the only police report that you

15 reviewed, correct?

16 Mohr: I believe so, sir.

17 Hearnberger: And who authored that report?

18 Mohr: Uh, this was, uh, Officer Daniel Eysie. I apologize if I'm saying that right.

19 And reviewed by Allen Bouchart.

20 Hearnberger: And the body worn clip you reviewed, we're talking about this interaction

21 between the defendant and the officer that's standing at the driver's

22 window, correct?

23 Mohr: Correct.

24 Hearnberger: Whose body worn camera recording was that?

25 Mohr: Uh, I believe that was Officer Eysie, but I'm not positive.

26 Mm-hmm.

27 Hearnberger: Did you speak with o- Officer Eysie about this case?

28 Mohr: I did not.

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1 Hearnberger: Did you speak with Officer Cameron about this case?
2 Mohr: I did not.
3 Hearnberger: Nothing further. Thank you.
4 Judge: Thank you. Redirect.
5 Genser: No, thank you.
6 Judge: All right, thank you very much. You can step down.
7 Mohr: Thank you, your honor.
8 Clerk: [inaudible 00:49:30].
9 Judge: Uh, they haven't been offered yet, so.
10 All right.
11 Genser: Your honor, the defense calls Dr. Joshua Chanin.
12 Dr. Chanin: [inaudible 00:50:22].
13 Genser: I think we're gonna have you go to the stand to take you [inaudible
14 00:50:25].
15 Dr. Chanin: The stand?
16 Genser: Yeah. Is that okay to have him-
17 Hearnberger: Your honor?
18 Judge: Yes, that's fine.
19 Genser: You can be up there so you can be on the record.
20 Dr. Chanin: Mm-hmm.
21 Clerk: Do you solemnly state that the evidence you shall give in this matter shall
22 be the truth, the whole truth, and nothing but the truth, so help you God?
23 Dr. Chanin: I do.
24 Clerk: Thank you. Please be seated.
25 Judge: A- at the distance we're at, are you comfortable removing your mask-
26 Dr. Chanin: Sure.
27 Judge: ... for the purpose of your testimony?
28 Dr. Chanin: Yeah. Thank you.

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1 Genser: Good morning, Dr. Chanin.

2 Dr. Chanin: Good morning.

3 Genser: Could you spell your first and last name for the record?

4 Dr. Chanin: J-O-S-H-U-A, Joshua, Chanin, C-H-A-N-I-N.

5 Genser: Your honor, does the court, uh, want me to do that? Spell the first and last
6 name. I know that sort of-

7 Judge: No, that's fine.

8 Genser: Okay.

9 Judge: It's fine.

10 Genser: Um, could you describe your educational background?

11 Dr. Chanin: Sure. Uh, I graduated from University of Pennsylvania with a BA in
12 history in 1998. Uh, from there, I went to law school. Uh, graduated, uh, in
13 2006. Um, never practiced, did not sit for the bar. Um, but went on directly
14 to a PhD program in public administration, and have worked in academia
15 ever since.

16 Genser: Um, did you obtain your PhD?

17 Dr. Chanin: I did, yes. Yep.

18 Genser: Um, what do you presently do for a living?

19 Dr. Chanin: I am an associate professor of public affairs at San Diego State, where I
20 teach courses in both public admin and criminal justice.

21 Genser: And what experience do you have with, uh, statistics outside of an
22 academic setting?

23 Dr. Chanin: Uh, outside of an academic setting? Well, I- I conduct research, uh, using
24 quantitative, uh, statistical techniques. Um, I've published various papers,
25 uh, using, uh, statistical analyses, and have taught courses in- in data
26 analytics and statistics.

27 Genser: Um, do you have a specialized area of research?

28 Dr. Chanin: I would say that my research is- is specialized in police reform, sort of

1 broadly. Um, that has ranged from looking at, uh, formal efforts to drive
2 change at- at the local level, um, and studying the effects of- of data and
3 patterns in data on changes to, uh, bureau- police bureaucracies.

4 Genser: Um, and has your research been published?

5 Dr. Chanin: Yes. I've published, um, about 20 papers and two books.

6 Genser: Um, do you also keep abreast of other publications in your field?

7 Dr. Chanin: Sure. Yeah.

8 Genser: Um, okay. I want to start by talking about, um, the article that you have
9 authored. Your honor, for the court's record, um, this was in my motion
10 filing. It was Exhibit F, if the court wants to look at it. Um, otherwise, it is
11 on, for this hearing, Exhibit A, the thumb drive.

12 Judge: Okay, thank you.

13 Genser: Um, you authored a, um- a paper titled Traffic Enforcement Through the
14 Lens of Race. Is that correct?

15 Dr. Chanin: Yes.

16 Genser: Um, what was your role in writing and publishing this article?

17 Dr. Chanin: Uh, I was the lead author, and so I was responsible for, um, drafting the-
18 the language used and the analytics that went into, um, the analysis at the
19 center of the paper.

20 Genser: When you say analytics, what do you mean by that?

21 Dr. Chanin: Uh, com- compiling the data, uh, running statistical models to try to, um,
22 anticipate, predict what the data will show. Um, so, probably, yeah.

23 Genser: I- is that something that is standard in the industry?

24 Dr. Chanin: Very much so, yeah.

25 Genser: Is it widely accepted?

26 Dr. Chanin: Absolutely, yes.

27 Genser: Okay. Uh, sorry, that's, uh... There are some court rules. When we're gonna
28 talk about science, you got to-

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- 1 Dr. Chanin: Sure.
- 2 Genser: ... ask those questions.
- 3 Dr. Chanin: Understood, yeah.
- 4 Genser: Um, so, I suppose sort of as a- as a enca- so- so encapsulated, it's, the- the
5 field is statistics. Is that right? Or is that wrong?
- 6 Dr. Chanin: Um, I mean, I- I won't, uh, burden the court with, uh- with academics ar-
7 academic arguments about what field is what field. Um, but- but generally
8 speaking, I would- I would characterize this as sort of criminal justice
9 research where statistics are at the center of the- the analysis driving the-
10 the research.
- 11 Genser: Um, as an overview, what was your paper about?
- 12 Dr. Chanin: Uh, it- it used, uh, a quarter of a million traffic stops from the city of San
13 Diego to look at the effects of police enforcement on, uh, the race of
14 drivers that were stopped, and the enforcement, uh, after stop, vis a vis
15 race.
- 16 Genser: Um, how did you get that data?
- 17 Dr. Chanin: Uh, the data came from the San Diego Police Department?
- 18 Genser: Um, and- and how did... How did you get it from them?
- 19 Dr. Chanin: We were hired, uh, to- to analyze, to s- to serve as an independent, uh,
20 team of academic analysts to look at data that was being collected by the
21 San Diego Police Department. So, at the behest of, um, the party enrolled,
22 excuse me, who sat on the city council, uh, and with agreement with the
23 mayor, um, they transferred data to us and agreed to have us, uh- my- my
24 academic team, um, comprised of four professors at San Diego State, uh,
25 analyze the data and produce a- a report. And- and the academic article
26 that- that you mentioned, uh, was- was sort of derivative of a product of
27 that initial research.
- 28 Genser: Um, are you familiar with the- the RIPA law?

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1 Dr. Chanin: Sure, yes.

2 Genser: What is that?

3 Dr. Chanin: Uh, it's a law in the state of California that requires police departments to
4 capture and disseminate, uh, information on every s- encounter, uh,
5 whether traffic, uh, pedestrian, or otherwise, and report that to- to the state.

6 Genser: Um, what are the findings of your report?

7 Dr. Chanin: I... Uh, very, very broadly, that there was, um- there was evidence of, um,
8 racially dispar- disparate treatment in the enforcement of traffic laws in the
9 city of San Diego.

10 Genser: Um, and that was based upon the review of, I think you said, 250,000...

11 Dr. Chanin: 259,000 plus from two- two, uh- 2014 and 2015. Yep.

12 Genser: Um, just from a sort of mathematical statistical perspective, the- when
13 you... In order to form that opinion, is that because it was, um, statistically
14 significant?

15 Dr. Chanin: Yes. Um, we looked at every traffic stop that was conducted over that two
16 year period, and that's the entire population of- of traffic stops. And so, um,
17 we did not need to extrapolate or draw any conclusions about the
18 representation of the sample. We had the entire population. And so, yes,
19 that's as- that's as valid as it comes.

20 Genser: Okay. Um, and your finding ultimately was, in your report, that people of
21 color tend to be stopped more frequently and... Well, is that accurate?

22 Dr. Chanin: There's some- some nuance to that finding, based on the- the year and the
23 location of the stop. Um, so I would say that, in 2014, um, Black drivers
24 were stopped, um, more often than- than white drivers, or at
25 disproportionate rates to white drivers. It- it's not entirely the case based on
26 what we've found in- in 2015. Um, and we can talk about why, uh, I- I
27 believe that was the case, and sort of where some of that nuance comes
28 from. But, um, yeah.

1 Genser: Why do you believe that was the case?

2 Dr. Chanin: Um, it's- it is, I think, a combination of- of lots of things, not least of which
3 is that it- it's- it's really, really hard, as a- as a- as an analyst, to parse all of
4 the factors that go into explaining patterns of- of traffic stops, uh, from
5 where the stop occurred to the nature of the stop, um, to try to figure out
6 how to explain patterns in where people drive, when they drive. So this is
7 just difficult work, and I think that, um, some of the other research out
8 there somewhat oversimplifies the- the analysis, and- and if you look at our
9 work, uh, and you compare just raw numbers, traffic stops to, uh, predicted
10 traffic stops based on census data, um, Black and Hispanic drivers are
11 always disproportionately stopped based on- on- on that simple
12 methodology. We tried to incorporate a bunch of other factors and, um, had
13 some difficulty doing so.

14 Um, and so I think that that- that is one- one explanation. It's that this is
15 just really difficult work, and I- I think that- that, um- and- and this is
16 something that my academic team and I talked quite a bit about, and- and
17 we supposed that there was some change in the behavior of the police
18 department from 2014 to 2015, um, based on the- the collection of data and
19 the reporting of data recognizing that we were watching, in effect.

20 Genser: Okay. W- when did... Does that coincide also with the passage of RIPA?

21 Dr. Chanin: That's a good question, and I'm not exactly sure when- when, um, RIPA
22 was codified.

23 Genser: Okay. Um, I mentioned the phrase statistical significance. What is that?

24 Dr. Chanin: Uh, statistical significance is- is, uh, a figure that attaches to a set of results
25 that is designed to give the reader, uh, some sense for the- for the kind of
26 confidence that they can take in interpreting the data, uh, to suggest that it
27 is, uh, a valid and represent- representative outcome of the entire
28 population. So if we find something, uh, that- that we call statistically

1 significant, then the- the- the reader ought to interpret that data with- with
2 confidence that it is a real finding, as opposed to just noise or, um, a- a- a
3 function of randomness.

4 Genser: So, right. So I- I suppose as a- a- a... When you say a function of
5 randomness, you mean that- that the ch- it's simple chance that this stop
6 happened to be a police officer and a Black driver. And it's- it's your
7 finding that it was statistically significant that people of color are stopped
8 at a- a higher rate than white people?

9 Dr. Chanin: Yeah, if you look at, you know, th- this quarter of a million stops, uh, we
10 found with statistical confidence that it is- it is not randomness, when we
11 look at the- the entire cross-section of stops conducted over this two year
12 period, the findings that, in- in certain cases, Black drivers were over-
13 stopped or stopped disproportionately was not a function of noise or
14 randomness, that it was a statistically significant finding.

15 Genser: Um, a... As somebody who is not a statistician, were there- was there
16 another part of your report that you found particularly relevant to this issue
17 that you wanted to discuss?

18 Dr. Chanin: Yeah. I mean, I think that- that the- the part of the report that get- that got,
19 back- back then, the most attention, was- was what we've just been talking
20 about, is the stop data. But I think that, uh, I would- I would highlight the
21 importance of what happened after the stop as sort of indicative of- of the
22 way that, um, Black and Hispanic drivers are- are thought of and policed
23 in- in San Diego. There is very clear evidence that the statistical
24 methodology is much stronger. Um, we are better able to discern what
25 happens after the stop, and we found very clear evidence that Black drivers
26 were disproportionately stopped, um, despite the- the- having lower odds
27 of- of holding illegal contraband. Uh, and the same is true of Hispanic
28 drivers. Uh, and furthermore, we found that- that Black and Hispanic

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1 drivers that were stopped, uh, were subject to field interviews, uh, at
2 significantly higher rates than either white or Asian drivers.
3 Genser: Um, and I'm not sure if I said it before, but, but the data you collected was
4 specific to the San Diego Police Department.
5 Dr. Chanin: Correct.
6 Genser: Okay. Um, did you review, um, the Center for Policing Equity, our report?
7 Dr. Chanin: Yes.
8 Genser: Um, could you describe that report a little bit?
9 Dr. Chanin: Yeah. Give me... Give me a second to pull that one up. Hmm.
10 Genser: I can probably show it to you if you want to take a look at it.
11 Dr. Chanin: No, I haven't on my phone, if that-
12 Genser: Yeah, that's fine.
13 Dr. Chanin: If that's fine. Um-
14 Genser: If that'll refresh your recollection, go ahead.
15 Dr. Chanin: Yeah. Um... So the center for policing equity is a very, very well
16 recognized, highly respected, uh, nonprofit organization led by high profile
17 academics that, that are, um, you know, widely published and their
18 research is widely cited. Uh, and they were... They were paid by the city of
19 San Diego to analyze, uh, traffic data over among other things; traffic data
20 from 17, 18, and 19. It looks like.
21 Genser: Okay. Um, did they also include 2020?
22 Dr. Chanin: Hmm.
23 Genser: I have that in my, in my, in my little notes here, but I could be wrong.
24 Dr. Chanin: Bear with me.
25 Genser: Sure.
26 Dr. Chanin: Uh, yeah, it looks like you're right. So through Q2 of 2020.
27 Genser: Um... And I'm sorry. I, I, I wanted to go back to your report for one more,
28 one more second. Did you make recommendations as a result of your

1 analysis?

2 Dr. Chanin: We made several recommendations. Yeah.

3 Genser: What were your recommendations?

4 Dr. Chanin: Um... So I'm on page V and VI, uh, we listed 10 recommendations. Uh,
5 number one was acknowledged the existence of racial and ethnic
6 disparities, and we combating such disparities a priority. Number two,
7 continue to enhance training and supervision around the issues of race,
8 racial and ethnic disparities. Number three, make traffic practices more
9 transparent. Number four, make traffic, traffic stop practices more
10 systematic a- and data driven. Number five, make community engagement
11 a core, [inaudible 01:06:46] value. Number six, work to improve
12 communication and transparency regarding police practices. Number
13 seven, provides a current data collection system. Number eight, coordinate
14 existing data collection efforts. Nine, collect additional data and 10,
15 strengthen accountability and oversight and data collection and
16 management.

17 Genser: Is your knowledge today [inaudible 01:07:10] your recommendations?

18 Dr. Chanin: Not to my knowledge.

19 Genser: Okay. Um, do you keep an eye on it to see whether or not they have done
20 any of those things?

21 Dr. Chanin: Not as closely as I once did, but, uh, if they had made significant changes,
22 then I would certainly be aware.

23 Genser: Okay. Um, let me go back to the Center for Policing Equity report. Um,
24 what were the findings from that report?

25 Dr. Chanin: Uh, it looks like they examined use of force, uh, traffic stop, post-op
26 outcomes, non-traffic stop and, and post-op outcomes following non-traffic
27 stops. And, and to varying degrees, they found that, that Blacks and
28 Hispanics were disproportionately affected compared to whites.

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1 Genser: Um, did you review a dataset from The San Diego Union-Tribune, um,
2 from Winkley and Schroeder?
3 Dr. Chanin: Yes.
4 Genser: Um... Was that... Do you know the how they collected their data?
5 Dr. Chanin: I don't know whether those data were transferred from SDPD or whether
6 they were the subject of a PRA request, um, but it looks like they examine
7 data that was the, the, the product of RIPA, uh, collection.
8 Genser: Okay. Um, and what was their finding?
9 Dr. Chanin: Rather similar. Uh, they found, um, disparities, uh, disproportionate, uh,
10 effects on Black and Hispanic, uh, residents.
11 Genser: And then did you review a, uh, an article evaluating policing in San Diego
12 from policescorecard.org?
13 Dr. Chanin: Yes, I did.
14 Genser: What was their... Uh... Well, I suppose I should start with the based on
15 your review of that, did they review similar RIPA data?
16 Dr. Chanin: Yes.
17 Genser: Um, and what was their finding?
18 Dr. Chanin: Well honestly, the same. You know, honestly, the same that Blacks and
19 Hispanics are disproportionately affected.
20 Genser: And so just to be clear, there's this four separate reports. All based upon
21 scientific statistical analysis. That all find the same thing that Black and
22 Hispanic people tend to do worse in traffic signs.
23 Dr. Chanin: I would agree with that statement. Yep.
24 Genser: That's all I've got. Thank you.
25 Judge: All right, cross examination.
26 Hearnberger: Thank you. Good morning.
27 Dr. Chanin: Hey.
28 Hearnberger: So the study that you... So you're the lead of this study, um, Traffic

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1 Enforcement in San Diego.

2 Dr. Chanin: Correct.

3 Hearnberger: And that is data from San Diego Police Department stops from the years
4 2014 and 2015, correct?

5 Dr. Chanin: That's right.

6 Hearnberger: And, uh, you compiled the data. You did your analysis. You reached
7 conclusions, and then the study was published in late 2016.

8 Dr. Chanin: That's right. Mm-hmm.

9 Hearnberger: And you have several sections here and, uh, some appendices as well.
10 Um... And co- correct me if I'm wrong, but it seems that you wanted to...
11 Although they're related issues, you wanted to separate, um, the analysis of
12 the traffic stops from, uh, post-op outcomes such as searches.

13 Dr. Chanin: That's right. Yeah.

14 Hearnberger: Okay. So you had mentioned... You had mentioned in direct that, um, in
15 the year 2014, uh, you did see some significant, uh, disparities in the
16 numbers for, uh, people of color as opposed to white drivers.

17 Dr. Chanin: That's right. Yeah.

18 Hearnberger: Um... And then in 2015.

19 Dr. Chanin: Mm-hmm.

20 Hearnberger: Or let me, let me correct myself. When you combine the numbers from
21 both 2014 and 2015, there was no meaningful statistical distinction bet-
22 between traffic stops of Black drivers and white drivers.

23 Dr. Chanin: That's right. Yeah.

24 Hearnberger: And I, I would... I think we can certainly agree that it's very difficult to,
25 um, to do a statistical analysis in this area, because there's lots of other
26 factors just besides the numbers, is that right?

27 Dr. Chanin: Yeah. So, so for example, um... We, we talk a lot about benchmarking and,
28 and the trick really is figuring out how, how to, or what baseline against

1 which to compare traffic stop patterns. Um... And, and the most common,
2 the easiest way to do it is to look at the census data and say, okay, well, X
3 percentage of Black drivers live in this area and so we would expect that
4 the same percentage of, of traffic stops would involve Black drivers. Um...
5 But part of the problem with that analysis is that the driving population is
6 different from the census data. And, and it's very difficult to figure out
7 who's driving, when they're driving and so on. So it becomes a ve- very
8 sort of tricky game of, of figuring out how best to, to analyze traffic stop
9 patterns. And so we, we, we, we pursued what has become sort of the
10 leading analytical method.

11 And it's, it's, it's much harder to discern obvious patterns than if you're, you
12 know, following the, the, the old way of doing things, which is just to, to
13 look at, um, traffic stop patterns versus census patterns. Um... And, and
14 indeed, we did look at, at, at traffic patterns versus census patterns and
15 found, like, everybody else that we've talked about this morning, uh, that
16 Black and Hispanic drivers were, were disproportionately stopped based on
17 expectations of, of census figures.

18 Hearnberger: So the benchmark, I think that you're referencing that you sought to
19 incorporate in your study was the veil of darkness.

20 Dr. Chanin: That's right. Yeah.

21 Hearnberger: And can you explain that briefly?

22 Dr. Chanin: Sure. Briefly, um, the, the premise is that if, if there is, um... If, if race is a
23 factor in the, the traffic stop itself, then that will be much more evident at
24 daylight hours as opposed to in darkness when the, the police officer has a
25 much more difficult time of, of discerning the race of the driver. And so we
26 compare the... To, to just finish the thought, we compared stop patterns that
27 happened during daylight hours with those that happened at night.

28 Hearnberger: And you need to sort of establish that benchmark because, uh, just besides

1 the raw numbers, there's so many factors that go into, um... Well, they go
2 into this area such as gender, social economic standards, or, uh, social
3 economic, uh, differences. Uh, are those a couple of things that you have to
4 contend with?

5 Dr. Chanin: Yeah. Uh, mo- most of the research suggests that those things aren't really,
6 uh, predictive. Um... The, the things that tend to matter more are really sort
7 of place based, uh, what the crime rate is in an area. Um... For example, the
8 kind of car that someone is driving, um, the, the, the particular views held
9 by the officer and the, the connections that he or she has drawn between,
10 um, whe- when and where to make traffic stops, and, and the odds that they
11 will find something illegal that has happened. Um... So there's, there's lots
12 of sort of situational factors, there's lots of environmental factors,
13 contextual factors. It's very difficult to develop a statistical model that
14 incorporates all that stuff.

15 Hearnberger: And some of the findings that you... As you said during 2014, you did find
16 that people of color were stopped at a disproportionately higher rate than
17 white drivers, correct?

18 Dr. Chanin: That's right. Yeah.

19 Hearnberger: But in 2015, there was no meaningful statistical distinction. Is that correct?

20 Dr. Chanin: I, I wouldn't say no meaningful statistical distinction. Um, I would say that
21 it did not meet the 5% threshold that we had identified, but if you look at
22 the... If you look at the data, um, we do find... Well, I'll just leave it at that.
23 That, that we decided that in the report to establish, uh, a, a 5% threshold
24 and it did not meet that standard. So yes.

25 Hearnberger: Okay. So, uh, I want to make sure we're talking about the same thing.

26 Dr. Chanin: Mm-hmm.

27 Hearnberger: So, like... So the report states on page 36, "When the 2014 and 2015 data
28 are combined, we find no meaningful statistical distinction between Blacks

1 and whites."
2 Dr. Chanin: If we... If we combine data, that's right.
3 Hearnberger: Okay. So when you're talking about this 5% threshold, is that what we're
4 referring to?
5 Dr. Chanin: Indeed. Yeah.
6 Hearnberger: And we- we're talking about your analysis, um, incorporating the veil of
7 darkness, uh, methodology. Um, [inaudible 01:16:35] you didn't see
8 conclusions that, uh, Black drivers were no- not as likely to be stopped
9 during the day when you believe that race is more visible. Is that correct?
10 Dr. Chanin: Uh, in, in... That... That's what the combined data would show, is that there
11 was no meaningful difference in the stop patterns that occurred during the
12 day compared to those at night.
13 Hearnberger: Thank you. Nothing further, Your Honor.
14 Judge: I'd like to ask a few questions, um, for my closure. Um, in your statistical
15 analysis, um, **did you consider the race of the officer conducting the stop?**
16 Dr. Chanin: We would've like to have considered the race of the officer but that's not
17 information that we were given by the San Diego Police Department.
18 Judge: So you have no opinion at this point as to whether the stops you're
19 referring to, um, involve officers of the same or a different race as the
20 driver.
21 Dr. Chanin: No, no. In, in, in this particular setting, that's not something that we
22 included.
23 Judge: Okay. Um, and also, is it correct that in doing any statistical evaluation,
24 you have to distinguish between correlation and causation?
25 Dr. Chanin: Absolutely. Yes.
26 Judge: All right, so for example, uh, hypothetically if, if you have a statistic that
27 says a disproportionate or a greater number of a certain minority are
28 stopped. I take it you did not automatically conclude that that's a result of

1 bias, ra- racial bias. Am I correct?

2 Dr. Chanin: Hmm. This is something that we thought very careful about and you will
3 find zero instances of the word bias in this report. Um, we are merely
4 looking at disparities. It's impossible to figure out what's in the data, why
5 this occurred. Um, we can... We can draw conclusions, uh, but those are,
6 are not, um, things that we felt comfortable providing on to this, to this
7 work.

8 Judge: Yeah. It, it seems to be a lingering issue as to what the word bias means in
9 certain circumstances. So I take it that's something you've confronted, for
10 sure.

11 Dr. Chanin: Yes.

12 Judge: Okay. Last question. Um... On page 69 of your report, there's an interesting
13 statement that, that you explained. At the bottom of page 69, it says of your
14 study, uh, that was referred to by Mr. Genser, "We found no evidence of
15 Blacks or Hispanics were treated differently in Northern, Eastern, Western
16 or Northwestern divisions, but statistically significant evidence of disparity
17 among stops initiated in the Northeastern division." Uh, any theory as to
18 why that would be the case?

19 Dr. Chanin: Yeah. I mean, it, it's really difficult to say. Um... I, I mean, uh, the, the, the
20 most obvious interpretation in those data was that the, there's different
21 policing strategies that are used in, in each division. They all have, um,
22 separate bureaucracies, uh, separate people that are running those divisions.
23 And the, the approach that officers take in, in the Northeastern division, uh,
24 was different, is different from that take in Northern, Eastern, or Western,
25 or Northwestern divisions. And that, that may have contributed, um...
26 There's also... The- there's looking at the, the population of drivers in those
27 divisions. Um, it, it's really speculative at this point. Um... But it, it's worth
28 noting [inaudible 01:20:26]-

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- 1 Judge: I appreciate that. And you do, that's why I went and asked you about it
2 because of it was in your report. Okay, that's all I have at this point. Any
3 redirect?
- 4 Genser: Uh, yes. Just briefly. Um, the prosecution asked you about, uh, a number
5 of, um... The prosecution asked you, you've got a number of difficulties in
6 analyzing the data. Despite those difficulties, you were still able to form
7 conclusions.
- 8 Dr. Chanin: Yes.
- 9 Genser: And those conclusions were significant in a statistically scientific manner.
- 10 Dr. Chanin: Yes.
- 11 Genser: Um... The judge asked you about sort of the idea of whether or not you can
12 establish bias, and I, I think you said you don't use the word bias in the,
13 um, in your report, and part of that is there's no scientific way to analyze
14 bias.
- 15 Dr. Chanin: Correct.
- 16 Genser: But based upon your data, the recommendations you made were aimed at
17 confronting bias.
- 18 Dr. Chanin: Yes.
- 19 Genser: Okay. Thank you.
- 20 Judge: Any re-cross?
- 21 Hearnberger: No. Thank you.
- 22 Judge: All right. Thank you very much, [inaudible 01:21:28]. You may step down.
- 23 Dr. Chanin: Thank you.
- 24 Judge: Thank you for coming. Okay.
- 25 Genser: It's 10:47 at the court. You want to take a long break or [inaudible
26 01:21:42] we're just gonna keep going?
- 27 Judge: Um...
- 28 Genser: I, I'm, uh... I'm ready to keep going, but I, I'm [inaudible 01:21:47].

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1 Hearnberger: I'm fine.
2 Judge: Okay, no, we can keep going.
3 Genser: Okay. Defense calls Officer Cameron.
4 Judge: Mr. Camera Man, would you like a chair?
5 Camera Man: Oh. (laughs)
6 Judge: We can get you a chair, if you want.
7 Camera Man: If you don't mind, actually.
8 Court: I'll grab one [inaudible 01:22:19].
9 Judge: Okay. I should have asked earlier.
10 Camera Man: (laughs) [inaudible 01:22:24]-
11 Judge: I hate it when camera men pass out on my courtroom floor, so...
12 Court: [inaudible 01:22:32], sir.
13 Camera Man: [inaudible 01:22:32].
14 Genser: [inaudible 01:22:32] do it in front of microphone, just so we can get it on
15 [inaudible 01:22:34].
16 Cameron: Good morning, You Honor.
17 Judge: Morning.
18 Clerk: Would you please raise your right hand?
19 Cameron: You want me to stand?
20 Clerk: Stand up. Do you solemnly state that the evidence you shall give at this
21 manner shall be the truth, the whole truth, and nothing but the truth, so help
22 you God?
23 Cameron: I do.
24 Clerk: Thank you.
25 Genser: Good morning, officer.
26 Cameron: Good morning.
27 Genser: Uh, I'm gonna talk to you a little bit about how you-
28 Judge: State, state his name and spell [inaudible 01:23:09]-

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1 Genser: Oh, I'm sorry. Could you say your name and spell your last name for the
2 record?
3 Cameron: Sure. Ryan Cameron, C-A-M-E-R-O-N.
4 Genser: Um, you're a police officer?
5 Cameron: Yes, sir.
6 Genser: Um, you want me to go through his whole resume or I will just stipulate
7 he's a police officer?
8 Court: I will stipulate that he's a police officer.
9 Genser: All right.
10 Judge: For San Diego Police Department?
11 Court: Yes.
12 Judge: Okay.
13 Genser: Okay. Um, let's just do a little bit... How long have you been a police
14 officer for?
15 Cameron: Just over 11 years.
16 Genser: Okay. Um, and you did the academy and all the training?
17 Cameron: Yes, sir.
18 Genser: Ah, okay. Um... On December 8, 2020, you and Officer Eysie were doing
19 proactive enforcement. Is that right?
20 Judge: Was it December or January?
21 Genser: It's December 8, 2020. I could be wrong.
22 Judge: I have it as January 24... Oh, no. I'm sorry.
23 Genser: Oh no, that's right. January 24. Uh...
24 Judge: But the people's response, I think, misstated the year. It say January 24,
25 2022. Is that the right year?
26 Cameron: Yes, it was 2022.
27 Judge: Oh, okay. All right. I'm sorry.
28 Genser: Yeah, I'm sorry. I've been talking about... I, I've said the wrong date a

1 couple of times also. I meant, uh... I, I think it's January 24, 2022. Does
2 that sound right?

3 Cameron: Yes, sir.

4 Genser: Okay. Um, do you're out doing proactive enforcement on that date. Is that
5 right?

6 Cameron: We're doing intelligence led policing. Yes, sir.

7 Genser: Okay. Um, is there a difference between proactive enforcement and
8 intelligence led policing?

9 Cameron: I would say so.

10 Genser: What is it?

11 Cameron: Intelligence led policing is using statistics, uh, crime patterns that bring us
12 to a certain area to conduct saturation patrol.

13 Genser: Okay. Um, it was officer... [inaudible 01:25:00] say Eysie, is that his
14 name?

15 Cameron: Eysie.

16 Genser: Eysie. Um, Officer Eysie wrote a report in this case. Did you have a chance
17 to look at it?

18 Cameron: Yes I did, sir.

19 Genser: Um, he states in his report that you're conducting proactive enforcement. Is
20 that wrong?

21 Cameron: That's what the report says. Yes.

22 Genser: Is that wrong?

23 Cameron: The report says proactive enforcement. Yes, sir.

24 Genser: And you are conducting proactive enforcement.

25 Cameron: Two terms. I call it intelligence led policing. It's not my report.

26 Genser: Okay. Uh, what I want to find out is, is it, is it your position that what
27 Officer Eysie wrote is wrong?

28 Cameron: No.

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1 Genser: No? Okay. Are you part of the street gang unit or what used to be a street
2 gang unit?

3 Cameron: Uh, we're the Special Operations now.

4 Genser: Okay, but you used to be the street ga- gang unit.

5 Cameron: Used to be the crime suppression team or the gang suppression team.

6 Genser: Okay. Um, and so you have changed names since being the gang
7 suppression team to, um... What... What's the new name?

8 Cameron: Our Department changed it to the Special Operations Unit.

9 Genser: Did your job functions change as a result of the name change?

10 Cameron: Yes it did.

11 Genser: How?

12 Cameron: We, um, we conduct our enforcement on, like I stated, statistics, in areas
13 where they're experiencing high volumes of vi- violent crimes. So that's
14 our new mission.

15 Genser: Okay. Um... When you spotted miss... Well, firstly, on, on, the date that
16 this incident occurred, you were driving. Is that correct?

17 Cameron: Yes, sir.

18 Genser: Okay. And when you first spotted Mr. Bonds' car, you were on El Cajon
19 Boulevard. Is that right?

20 Cameron: Yes, sir.

21 Genser: And El Cajon Boulevard runs east-west.

22 Cameron: Correct.

23 Genser: And you were traveling west at the time. Yes?

24 Cameron: Yes, sir.

25 Genser: And Mr. Bonds was traveling east?

26 Cameron: That's correct.

27 Genser: Okay. Um, I'm going to, uh, mark in exhibit. It will be a defense.

28 Judge: Next in order, I believe, would be C.

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1 Genser: C, yeah. The... One of my pens doesn't work on this exhibit.
2 Judge: [inaudible 01:27:02] read the exhibit.
3 Genser: The exhibit is a map of the area.
4 Judge: Oh, one-page document?
5 Genser: One-page document and it is a map of the area in question.
6 Judge: Right.
7 Genser: And I have highlighted the, uh, gas station where the incident occurred
8 using a red pen.
9 Judge: All right.
10 Genser: May I approach?
11 Judge: Yes, just have the record reflect the Defendant C for identification.
12 Genser: Defendant C, yeah. Okay. Thanks.
13 All right. Thank you. Okay, and do you have Defend C in front of you?
14 Cameron: Yes, sir.
15 Genser: Is that a map of the area where this incident occurred?
16 Cameron: That's correct.
17 Genser: And there is a red pen in the gas station where the stop of Mr. Bonds.
18 Cameron: Yes, sir.
19 Genser: Um... Okay. So as you're driving west and he's driving east, you guys pass
20 each other?
21 Cameron: Correct.
22 Genser: Um, and then you make a decision to do a U turn and get behind him?
23 Cameron: Correct.
24 Genser: Okay. Um... When you made that U turn, you had observed that there were
25 two Black men in the car. Is that correct?
26 Cameron: No.
27 Genser: That's not true.
28 Cameron: No, sir.

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1 Genser: Okay. You understand you're under oath, right?

2 Cameron: Yes, sir.

3 Hearnberger: Objection, argumentative.

4 Judge: I'll leave the last answer. Overruled [inaudible 01:28:21].

5 Genser: What's a pretext stop?

6 Cameron: Pretext stop is an investigative stop or is what is called you see something
7 and you pull something over for another reason.

8 Genser: Okay. So you want to stop a vehicle for one reason, and you look for some
9 other reason like a traffic violation in order to make contact. Is that
10 accurate?

11 Cameron: Sure.

12 Genser: Um... When we're talking about proactive enforcement, that includes
13 making pretextual stops, is that correct?

14 Cameron: I wouldn't say so. No.

15 Genser: Okay. Do you make pretextual stops?

16 Cameron: No, we don't.

17 Genser: Never?

18 Cameron: No.

19 Genser: Okay. And you did not make a pretextual stop in this case, right?

20 Cameron: No, I did not.

21 Genser: Okay. Mr. Bonds at some point pulls into a gas station. Is that right?

22 Cameron: That's correct.

23 Genser: And you followed him to the gas station?

24 Cameron: Yes, I did.

25 Genser: And when you pulled in behind him, you activated your blue and red
26 flashing lights.

27 Cameron: Yes, sir.

28 Genser: Okay. Um... And that was to signal to him that he was being detained,

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1 right?

2 Cameron: Correct.

3 Genser: Um, and he was detained at that point. Correct?

4 Cameron: Yes, he was.

5 Genser: Not free to leave.

6 Cameron: Correct.

7 Genser: Um... Your Honor, at this point, I would normally play the video but I
8 know the court has already seen the video and read the transcript.

9 Judge: I have.

10 Genser: Does the court want me to play the video for the record or [inaudible
11 01:29:52]-

12 Judge: Well, it's in evidence, so unless there's some reason for your examination,
13 you want to play it. I mean, I, I know what's on and I've watched it several
14 times.

15 Genser: No, we just do it for the benefit of the court. So if the court doesn't want
16 me to do it, I will dispense with playing a video.

17 Judge: No, that's fine. I...

18 Genser: Okay. Um... You get out of your vehicle and you approached Mr. Bonds,
19 Bonds' vehicle, right?

20 Cameron: Yes, sir.

21 Genser: And Officer, uh, Eysie is on the other side.

22 Cameron: Correct.

23 Genser: Okay. Um... Did you hear Mr. Bonds say to you, uh, you turn your car
24 around because you saw two guys, two Black guys in the car? Do you
25 recall hearing that from Mr. Bonds?

26 Cameron: He said that.

27 Genser: Okay. Um, and you heard that?

28 Cameron: Correct.

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1 Genser: And you responded to him? Is that right?

2 Cameron: I did.

3 Genser: And you told Mr. Bonds that in fact, part of the reason you stopped him is
4 because you saw two Black guys in a car.

5 Cameron: That's [inaudible 01:30:44]-

6 Hearnberger: Objection, leading. Misstates the testimony.

7 Judge: Well, I could quote exactly from the transcript.

8 Genser: Sure. Mr. Bonds says to you, "I said you..."

9 Judge: You got page number and line?

10 Genser: Uh, page 2, uh, line 17. And we're going to go to, uh, 26.

11 Judge: Okay.

12 Genser: Um, Mr. Bonds said, "I said, you, you saw you turn around, like you saw
13 two guys, like two Black guys in the car, obviously." And you said, "Well,
14 part of it. The hoodies up and stuff." Just then. Mr. Bonds sort of
15 interrupted and said, "I mean, it's cold outside." And after the interruption,
16 you continued, "The climate of everything that's going on in the city these
17 days." So... And then Mr. Bonds then said, "Now, that makes sense. I
18 wasn't... I'm not trying to pull a... I'm not tripping at all. I just, like..." Um...
19 And you said, "Yeah, I know. I got you." Is that accurate?

20 Cameron: What you just read?

21 Genser: Yeah.

22 Cameron: Correct.

23 Genser: That's what you said.

24 Cameron: Correct. I was referring to, about the Black marks. It has nothing to do with
25 anything. When he passed by, both the hoodies being up absolutely
26 because both their hoodies were up, which prevents a side profile. So I
27 cannot see who's inside that vehicle. And that's what I'm referring to then.

28 Genser: So what you're saying is when he says, "I saw you turn around because I

1 saw two Black guys in the car," and you said, "Well, part of it." What
2 you're saying is that that wasn't actually part of it?

3 Cameron: Part of it, excluding the Black part because I cannot see what race was in
4 that vehicle. I saw two hoodies up.

5 Genser: Okay.

6 Cameron: That if I'm passing the vehicle, as he's going east, I'm going west, I glanced
7 over, two hoodies up, which he said and they were up, I cannot see what
8 race that person is next split second that I pass. So I'm referring to the
9 hoodie up part that he said, and I was referring to that. Yes.

10 Genser: Did you not have your traffic lights, your, uh, lights on in your car?

11 Cameron: We had headlights on, yeah.

12 Genser: Um, what was the climate in the city that you were referring to?

13 Cameron: It's been very active and very violent.

14 Genser: Okay. What I mean... What does that mean?

15 Cameron: Sure. The last six months leading up to this, um, vehicle stop, just in a one
16 mile radius of where this traffic stop happened, there's approximately 1000
17 violent crimes in that area. Excuse me. Crimes reported in that area. Just
18 reported. Of those 1000 crimes reported, over 500 are violent crimes within
19 one mile of that traffic stop. And of those crimes, 200 arrests have been
20 made for violent crimes; for murder, shootings, stabbings, armed
21 carjackings, armed robberies, et cetera.

22 Genser: Okay. Uh-

23 Cameron: Not to mention the gang war that has been going on in the city leading up
24 to that point.

25 Genser: Now, Mr. Bonds is not, uh, to the best of your knowledge, was not in a
26 gang, right?

27 Cameron: That's correct.

28 Genser: Okay. He's just the guy driving down the street-

1 Cameron: Correct.

2 Genser: ... who happens to be Black and wearing a hoodie?

3 Cameron: That has nothing to do with it.

4 Genser: Okay. Um, the hoodie does though, right?

5 Cameron: Correct.

6 Genser: Okay. Um... Let me talk about your response. So after this part where you
7 say, you know, it's the climate in the city. Um, he goes on to ask you, you
8 pull over white people like that, you recall that?

9 Cameron: I do.

10 Genser: And your response was, "Listen, uh..." You know, you're white. Isn't that
11 true?

12 Cameron: Yes, sir. I am.

13 Genser: Okay. Your response is, "I get pulled over myself out in East County,
14 because I got a sleeve tattoo, and I got my snap back backwards and a
15 result of that, you also get racially profiled." Is that what you said?

16 Hearnberger: Objection, leading. Argumentative. Misstates testimony.

17 Judge: Well, he didn't... I don't think he mentioned racial profiling. I was... I
18 wanted to read the exact response.

19 Genser: Sure. So your response to Mr. Bonds was you say, "I get pulled over out
20 and..." Uh, then Mr. Bonds interrupts. You said, "No, I get it out in East
21 County." And you say you get pulled over because you're sleeved up. And
22 because you're wearing a snapback hat backwards. That's page 3, 2 through
23 30. Is that what you said?

24 Cameron: Yes, sir. It's a form of de escalation that I use. I've never been stopped in
25 East County. I've never been stopped in the county of San Diego. When
26 someone throws the race card out, I use that and I've developed it over my
27 career as a way to de escalate away from that situation because race has no
28 relevance, has no bearing on a traffic stop. And that conversation just goes

1 in the constant loop. So I nipped it in the bud by using that example.

2 Genser: Isn't that a good way to sort of nip that in the bud, be to say no, I didn't stop

3 you because of your race?

4 Hearnberger: Objection, leading.

5 Judge: Well, uh, I don't know that it's irrelevant what the alternatives would be.

6 The, the question is what happened here, so I'm gonna sustain it on that

7 ground.

8 Genser: So your de escalation technique is a lie to them that you also get racially

9 profiled.

10 Hearnberger: Objection, leading. Argumentative.

11 Judge: Overruled. I mean, the witness just said he made the story up, so...

12 Genser: Sure.

13 Cameron: Yeah. I mean, it's put him at ease. People like to be heard. Like, throw they

14 throw the race card out. We get that nonstop all day. So, you develop

15 techniques to deescalate that situation, because that, that scenario never

16 goes anywhere good. It nipped it right in the bud, right then and there, and

17 it was over.

18 Genser: Just to be clear, when Mr. Bonds brought that up, the race card so to speak,

19 you did not say, "I'm not stopping you because you're black." Right?

20 Cameron: No, I used that deescalation technique. When you straight up say that, it

21 oftentimes doesn't work. It doesn't go anywhere.

22 Genser: Is this your-

23 Cameron: I mean-

24 Genser: Have you been trained this way?

25 Cameron: May I finish?

26 Genser: Was this the way that you were trained, Officer?

27 Judge: Well, let, let him finish his answer, then you can ask.

28 Cameron: So, it's a technique that we've developed, that I've seen and I've used

1 multiple times, that deescalates the situation every time.

2 Genser: Is this the way that you were trained?

3 Cameron: It's a technique that I developed throughout my career.

4 Genser: Is this the way that you were trained?

5 Cameron: Can you specify that?

6 Genser: Yeah, did you receive training and experience in this deescalation... Uh,

7 excuse me. Did you receive training in this particular deescalation

8 technique?

9 Cameron: No, I did not.

10 Genser: Okay. It's something you came up with?

11 Cameron: I developed it over my career, yes.

12 Genser: Okay. During this initial stop, you actually never explained to Mr. Bonds

13 why you stopped him.

14 Hearnberger: Objection, leading.

15 Judge: Well, it is, but I'll allow it. Overruled.

16 Cameron: Can you rephrase the question? Or restate it?

17 Genser: Yeah, you don't tell Mr. Bonds the reason for the stop, right?

18 Cameron: Uh, we went right into a conversation and developed a rapport right out of

19 the bat.

20 Genser: Well, Mr. Bonds was accusing you of stopping him, of stopping him

21 because he was black, right? You understood that?

22 Cameron: I understood he was throwing the race card out there, yes, sir.

23 Genser: Okay. Did you at some point, prior to pulling him out of the car, explain to

24 him the reason for the stop?

25 Cameron: We discussed it, 'cause he mentioned the last interaction we had, and that

26 was for tinted windows, I believe. This was for the license plate cover. So,

27 it was mentioned during there. It wasn't flat out explained, "This is exactly

28 why I stopped you." We were in a conversation at that point.

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1 Genser: Okay. So, you never said to Mr. Bonds, "I'm stopping you because of, uh,
2 something on your license plate?"
3 Cameron: I believed it was understood between the two of us.
4 Genser: Okay. So, so, you decided that that was a good thing to just leave... You
5 know, don't make that specific?
6 Hearnberger: Objection, leading, argumentative.
7 Judge: Uh, overruled. You can answer.
8 Cameron: To my understanding, we understood why he was being pulled over.
9 Genser: Um, you asked Mr. Bonds whether or not he had any weapons in the car,
10 right?
11 Cameron: Yes, sir.
12 Genser: And he told you that he was in legal possession of a gun?
13 Cameron: He stated he had a firearm, yes.
14 Genser: Uh, he also told you that it was legally possessed?
15 Cameron: He stated that it was registered to him.
16 Genser: Okay. Um, based upon your training and experience, um, guns can be
17 legally owned in the State of California, is that right?
18 Cameron: Yes, sir.
19 Genser: And guns can be legally transported in the State of California?
20 Cameron: In the correct way, yes, sir.
21 Genser: And they can be legally transported in a car in California?
22 Cameron: Absolutely.
23 Genser: Um, did you have any information that led you to believe that the gun was
24 not legally possessed?
25 Cameron: Of course, it's always officer safety. I wanna make sure that it is legally
26 stored and legally poss- possessed for safety of myself, for Mr. Bonds,
27 everyone on scene.
28 Genser: That's not what I asked you. Um, the question was, did you have any

1 information that the gun that he mentioned was not legally possessed?

2 Cameron: I don't know. I don't know if it's legally possessed, I don't know if it's

3 illegally possessed. All I know is that there's a firearm in this vehicle.

4 Genser: Okay. And so, you had no information about whether or not that firearm

5 was legally, lawfully in the car?

6 Cameron: Well, I asked him where the gun was and he couldn't tell me where the gun

7 was. So, that weighs- raised my awareness that if he doesn't know where

8 this vehi- this gun is in the vehicle, that's kind of a concern.

9 Genser: Okay.

10 Cameron: When I'm in my vehicle, I know exactly where my gun is.

11 Genser: I'm not asking you what you would do and what your concerns were. I'm

12 asking you whether or not you had any concrete information that that gun

13 was possessed illegally.

14 Hearnberger: Objection, relevance.

15 Judge: I, I take it that before you began to conduct your investigation, you had no

16 information about, about, uh, the weapon, correct?

17 Cameron: Before he stated he had a weapon?

18 Judge: Right.

19 Cameron: I had no idea.

20 Judge: Okay.

21 Genser: And then, after he stated that he had a gun, you continued to still have no

22 information about the gun, right?

23 Cameron: Correct, 'cause he couldn't tell me where that gun was.

24 Genser: Just that it existed?

25 Cameron: He told me that he had a gun in the car, yes.

26 Genser: Okay. Um, you asked him whether, if it was in trunk or in the car compar-

27 uh, you know, in the backseat area, right?

28 Cameron: Correct.

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1 Genser: And he told you he wasn't sure?

2 Cameron: Correct.

3 Genser: All right. Um, at that point, you asked him to step out of the car?

4 Cameron: Correct.

5 Genser: Um, and the reason you did that was to conduct a search for the gun, is that
6 right?

7 Cameron: It was to make sure that that firearm was legally possessed and legally
8 stowed in that vehicle. In the totality of the circumstances, when someone
9 tells me that they have a firearm in the car and they can't tell me exactly
10 where it is, that's a concern.

11 Genser: I understand that that's a concern, but you understand that you're not
12 allowed to search cars for legal- legally owned and possessed guns, right?

13 Hearnberger: Objection, relevance, calls for legal conclusion.

14 Judge: Sustained.

15 Genser: Um, you told Mr. Bonds that, "When someone tells us there's a gun in the
16 car, we're gonna make sure it's legally yours." Is that what you said?

17 Cameron: Correct.

18 Genser: You said that, because that's what you do?

19 Cameron: Under the circumstances someone tells you they have a firearm and they
20 can't tell you where that firearm is, like I've stated several times, it's not a
21 search, it's a pat down for that weapon. Just like if I stopped a pedestrian on
22 the street and they say they have a gun, I'm gonna pat them down.

23 Genser: Okay. Well, you... I mean, you pulled Mr. Bonds out of the car, right?

24 Cameron: The same principle. It's not a search. It's a pat down for that weapon.

25 Genser: You pulled Mr. Bonds out of the vehicle, right?

26 Cameron: He willfully stepped out of the vehicle.

27 Genser: You asked him to step out?

28 Cameron: Absolutely.

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1 Genser: You ordered him to step out?
2 Cameron: Sure.
3 Genser: Okay. And you patted him down?
4 Cameron: Correct.
5 Genser: He did not have a gun on him?
6 Cameron: Correct.
7 Genser: Okay. At that point, did you know whether or not the gun in the car was
8 legally possessed?
9 Hearnberger: Objection, asked and answered.
10 Judge: Overruled. You can answer.
11 Cameron: Say it again.
12 Genser: At the point that you have patted Mr. Bonds down and you are certain that
13 he does not have a firearm on him, did you know whether or not the
14 firearm in the vehicle was legally possessed?
15 Cameron: Did not.
16 Genser: Okay. Um, you hadn't observed anything illegal in the car, is that correct?
17 Inside the car, is that right?
18 Cameron: Correct.
19 Genser: Did you handcuff Mr. Bonds when you pulled him out of the car?
20 Cameron: Yes, I did.
21 Genser: Um, and at this point, you're handcuffing him and detaining him for a...
22 The stop was for a license plate violation, right?
23 Cameron: It was a license plate cover violation.
24 Genser: Okay.
25 Cameron: And he's being handcuffed for officer safety, because he can't tell me
26 where that firearm is. It's not on his person, so now we have to figure out
27 where exactly it is, 'cause he can't tell me.
28 Genser: Wait a minute. I'll... Ju- you keep saying this officer safety idea. If I am

1 legally in possession of a gun and I am walking down the street lawfully,
2 you don't get to handcuff me in order to ask me questions, right?

3 Cameron: If it was-

4 Hearnberger: Objection, argumentative, leading.

5 Judge: This phrase, sustained.

6 Genser: Do you... Based upon your training and experience, if a person is in lawful
7 possession of a handgun and you wanna have an encounter or write a
8 traffic ticket to that person, does that always take place with them in
9 handcuffs?

10 Cameron: Those circumstances are different. If you could tell me where that firearm
11 was, if you could say, "Hey, it's in my front waistband right now or it's
12 locked away in that glove box," that takes the officer safety element out of
13 it. But when I don't know where this gun is, yeah, I'm gonna be concerned.

14 Genser: I- I'm not asking you about your concerns. I'm asking you whether or not in
15 your mind, based upon your training and experience, if someone is in
16 lawful possession of a gun and you stop them for either a consensual
17 encounter or for a traffic stop, does, does that traffic stop always happen or
18 the consensual encounter always happen with them in handcuffs?

19 Cameron: Not always.

20 Hearnberger: Objection, vague, compound.

21 Judge: Well, he answered, "Not always." So, I'll leave the answer.

22 Hearnberger: Okay.

23 Genser: When does it not happen?

24 Cameron: In this exact circumstance, sir, when a firearm cannot be articulated to that
25 officer where exactly that gun is. That's an officer safety concern.

26 Judge: I, I just wanna remind Counsel-

27 Cameron: So, you're-

28 Judge: ... that this is not a 1538.5 motion. The focus is on racial bias, so-

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1 Genser: Yes, it is.

2 Judge: And so, I, I don't wanna explore all the law relating to search and seizure
3 and... There's plenty of case law on when officers can investigate based on
4 their suspicion of weapons.

5 Genser: Um, I, uh, I believe this is relevant to that iss- issue, Your Honor.

6 Judge: Okay.

7 Genser: Okay. Um, at some point shortly thereafter, uh, Mr. Bonds says, uh, this to
8 you. Um, and I'm looking at page five and I'm on line 16. Mr. Bonds says,
9 "It just, it su- it, it just sucks to get pulled over by the same cop again,
10 'cause you're a black male. Just saying." And you say, "Well..." And he
11 says, "I'm just driving through." And then you say, "It's... This is the area
12 we work." Is that accurate?

13 Cameron: Yes, sir.

14 Genser: Okay. Now again, in that part you don't say, "Mr. Bonds, this has nothing
15 to do with your race." Right?

16 Cameron: I don't have to. It does nothing to do with it. What does me stating that
17 either way have to do with anything?

18 Genser: Well, I'm just talking about deescalation techniques, right? That was
19 something that was really important to you.

20 Cameron: Sure.

21 Genser: And at this point, you'd pulled Mr. Bonds out and he's still bringing up this
22 whole race issue. And in your mind, you're thinking, "I've gotta
23 deescalate." Right?

24 Cameron: Well, at this point, he's in handcuffs, he's calm, he's collected. There's no
25 need to address the race card again. It's done and over with.

26 Genser: No reason to deescalate at this point, right? And so, now you can just kind
27 of say whatever. Right?

28 Hearnberger: Objection, leading, argumentative.

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1 Judge: Well, I believe it's vague. So, sustained.

2 Genser: So, he's already in handcuffs at this point and you're not worried about
3 deescalation, is that accurate?

4 Cameron: In what form? I don't, I don't understand the question.

5 Genser: Sure. I think I just asked you whether or not you continue to deescalate
6 after a person's in handcuffs, and you said that that wasn't a priority for
7 you. Is that accurate?

8 Cameron: No, I'm saying that it was deescalated. Everything was calm, everything
9 was safe.

10 Genser: Okay. And sure, he is still bringing up that, that you're stopping him
11 because he's black, right?

12 Cameron: He has the right to say whatever he wants, sir.

13 Genser: And your response to that is to say, "This is where we work." Right?

14 Cameron: That's what I said, yes, sir.

15 Genser: Okay. Um, one other thing. After he's in handcuffs and you've, you know,
16 you've done the deescalation already, um, at the end you get back to it and
17 again, he sort of... Mr. Bonds is talking about race again and you again
18 point out that it's the same for you out in East County.

19 Hearnberger: Objection, misstates the evidence, leading.

20 Judge: Which evidence is misstated?

21 Hearnberger: The transcript.

22 Judge: Okay.

23 Genser: I, I think it's okay to paraphrase the transcript, Your Honor.

24 Judge: Well, as long as it's a... It's, it's much more accurate to read from it, but if,
25 if the paraphrase conveys a different meaning than the actual quote, it's
26 always better to use the actual quote.

27 Genser: I agree, but I don't think it does convey a different meaning.

28 Judge: Well, let, let him answer the question again.

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1 Genser: Okay. So, Mr. Bonds is again accusing you of racism and you say, "Trust
2 me, I get it, 'cause it's, it's the same, like I said, out in East County for me."
3 And again, even though he's already in handcuffs, he's already detained,
4 you're talking, the situation's deescalated. You thought to yourself, "I better
5 lie to this guy again."
6 Hearnberger: Objection, vague, argumentative, leading-
7 Judge: It is-
8 Hearnberger: ... compound.
9 Judge: It's argumentative. Sustained on that ground.
10 Genser: At that point, you chose to lie to Mr. Bonds again-
11 Hearnberger: Leading, argumentative.
12 Judge: Well, you told him the same story that you had told him earlier about being
13 stopped in East County, correct?
14 Cameron: That's... Uh, it's hard to say with the paraphrasing that he's doing.
15 Genser: No, that was reading. I wasn't paraphrasing.
16 Judge: The... Your reference to being stopped in East County, you indicated was,
17 was made up to deescalate, correct?
18 Cameron: Yes, Your Honor. Absolutely.
19 Judge: All right.
20 Genser: All right. That's a lie, right?
21 Cameron: Yes, sir.
22 Genser: Okay. Isn't it true that... Well, let me ask you this. How did you come up
23 with that as a deescalation technique?
24 Cameron: Like I told you, I just developed it over my 11 year career.
25 Genser: And so, over the course of your 11 year career, you've determined that
26 when someone is accusing you of race based policing, the best way to
27 respond to that is to say, "I experience race based policing also."
28 Hearnberger: Objection, misstates the testimony, leading.

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1 Judge: Overruled. You can answer.

2 Cameron: It's a technique that I developed that puts that person at ease. People wanna
3 be heard, right? They wanna be heard, so I'm acknowledging that he's
4 being heard and I deflect and move on, and that's a technique that I've
5 developed.

6 Genser: And, and you're not just acknowledging that they're being heard. You're
7 also saying, "I get it, 'cause it happens to me, too." Right?

8 Cameron: Sure, it's an exact technique. It's like a hostage negotiation, showing up to a
9 scene that someone has just shot somebody and they're barricaded. That
10 hostage negotiator often says, "Hey, it's okay. You're not in trouble, just
11 come out." It's a way to deescalate and move away from that. If-

12 Genser: Do you have-

13 Cameron: ... I can make that-

14 Genser: Do you have hostage training?

15 Cameron: No. I'm saying that that's what they do, sir. I'm a police officer. I've been
16 on many scenes of negotiations, yes.

17 Genser: Those people are specially trained though, right?

18 Cameron: They-

19 Hearnberger: Objection, argumentative, leading, relevance.

20 Judge: It's irrelevant. Sustained.

21 Genser: I, I just wanna make sure. You- you're talking... You're comparing what
22 you did to what hostage negotiators do?

23 Hearnberger: Objection, argumentative, relevance.

24 Judge: Sustained.

25 Genser: Okay. Um, just to be clear so I can understand what you're saying with
26 regards to this East County thing. Mr. Bonds says to you, "You're stopping
27 me because I'm black." Your deescalation technique is, is to say in
28 response to them, "I also get stopped based upon my race"?

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1 Hearnberger: Objection, asked and answered.
2 Judge: Well, I don't think he said because of his race.
3 Cameron: That's correct, sir. I said nothing about my race.
4 Genser: Right. You said because you-
5 Judge: Can I just... I, I just wanna shortcut this.
6 Genser: Sure.
7 Judge: So basically, your deescalation technique is to identify with the person who
8 is accusing of, of racial bias by saying, "I've been profiled-
9 Cameron: Correct.
10 Judge: ... in some way."
11 Cameron: Correct. It just brings... Lets them be heard and it just brings everything
12 down and we move past that, because it has no relevance, no bearing. It's a
13 non factor.
14 Judge: All right. All right, let's move on.
15 Genser: That's all I've got. Thank you.
16 Judge: Any, uh, questions?
17 Hearnberger: Yes. Thank you, Your Honor. Good morning, Officer Cameron.
18 Cameron: Good morning.
19 Hearnberger: I, um, I think it would be helpful, even though the Court has, um, has seen
20 the body worn recording, I think it'd be helpful to publish it. Um, so I have
21 a, I have a separate copy or I think it might be just easier to publish the, the
22 thumb drive at this point.
23 Judge: Okay, but what, what would the relevance of publishing it be?
24 Hearnberger: Well, I- I'd like to talk through the video with the officer.
25 Judge: Okay.
26 Hearnberger: Does... Madam Clerk, do you have the exhibit?
27 Clerk: I do.
28 Hearnberger: Defense A.

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1 Judge: So for the record, this is Defense A. It's been received into evidence, I
2 believe by stipulation. Um, playing the file entitled Cameron BWC1.
3 Video: What's going on, bro? How you doing?
4 Good, and yourself?
5 Good.
6 Can I take my seatbelt off?
7 Yeah. That's cool, man.
8 [inaudible 01:53:32].
9 I think I had... Were you over here parked on the curb [inaudible 01:53:38].
10 Hearnberger: For the record, I'm pausing the video at 40 seconds. Officer Cameron, is
11 that your body worn recording of this incident?
12 Cameron: Yes, it is, sir.
13 Hearnberger: Okay. Um, fair to say in that initial interaction you asked for his driver's
14 license, and then he provided it?
15 Cameron: Correct.
16 Hearnberger: Okay. Uh, how long did it take for you to realize that you had had contact
17 with the defendant previously?
18 Cameron: Seconds.
19 Hearnberger: Uh, was it your impression from your interaction with him that after you
20 started talking, he recognized you as well?
21 Cameron: Yes.
22 Hearnberger: Okay. And was it your impression that, uh, when he was acknowledging,
23 uh, "Actually, I got a ticket for it, so I'm taking it, it off," was he referring
24 to your prior interaction with him, in your mind?
25 Cameron: Correct.
26 Hearnberger: Okay. And based on your interaction, what were the two of you talking
27 about? Which violation were you talking about?
28 Cameron: We were talking about the tinted windows, which he referred to, and the

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1 license plate cover.

2 Hearnberger: And which license plate are we talking about?

3 Cameron: Uh, the rear license plate.

4 Hearnberger: For the record-

5 Video: Was the last time I pulled you over for the license plate cover [inaudible
6 01:55:37]? Well, probably with the hoodies up and stuff [inaudible
7 01:55:37]. 'Cause out in East County-

8 Yeah, yeah, East County [inaudible 01:55:37]-

9 Hearnberger: For the record, I paused the video at one minute and 24 seconds. Officer
10 Cameron, we just saw, um, your interaction with the defendant on the race
11 issue. Correct?

12 Cameron: Yes, sir.

13 Hearnberger: And you mentioned East County. Um, was it your impression that the
14 defendant was calm during this time?

15 Cameron: Yes, he was. He was actually laughing.

16 Hearnberger: Do you feel like it was effective... The, the tone and the manner in which
17 you were speaking with him, do you feel like that was effective?

18 Cameron: Yes, it was.

19 Hearnberger: In the past during other traffic stops when people feel like they've been
20 stopped unfairly, do they sometimes get agitated or worse?

21 Cameron: Yes, sir.

22 Video: [inaudible 01:56:24].

23 Hearnberger: My apologies. For the record, I'm beginning the video again at one minute
24 and 35 seconds.

25 Video: [inaudible 01:56:31]. And your first name again, man?
26 Tommy.
27 Tommy? [inaudible 01:57:14]. You have a gun?
28 Yes, sir [inaudible 01:57:19].

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1 Hearnberger: For the record, I'm stopping the recording at two minutes and 38 seconds.
2 Officer, would it be fair to say that you remained calm when the defendant
3 told you there was a firearm in the vehicle?
4 Cameron: Yes, sir.
5 Hearnberger: Um, do all... In your experience, in your 11 years, uh, is it fair to say
6 you've worked with a lot of different officers?
7 Cameron: Yes, I have.
8 Hearnberger: How do most officers or many officers react when someone tells them
9 there's a firearm in the vehicle?
10 Genser: Objection, relevance.
11 Judge: Well, the witness's knowledge of police practices is relevant. Overruled.
12 You can answer.
13 Cameron: Uh, they've gotten on edge. Um, they kinda... They show their, their
14 edginess or nervousness, um, oftentimes.
15 Hearnberger: Okay. What are some of the, uh, actions that officers often take when they
16 learn there's a firearm in a vehicle, as far as what orders they give?
17 Cameron: They- they'll often pull their firearm, tell them not to move, uh, you know,
18 keep their hands where they can see them and whatnot.
19 Hearnberger: Why didn't you do that?
20 Cameron: Uh, 'cause I had a rapport. He was being very cordial with me. He's
21 relaxed, he's not making any furtive movements. Um, in my 11 year career,
22 more specifically in the unit I work, we come into contact with people with
23 firearms every day, and, uh, you just learn to re- read body language and
24 develop skills to navigate thru when someone says that they're armed.
25 Hearnberger: I'm beginning the video at two minutes and 38 seconds.
26 Video: [inaudible 01:59:02].
27 He's got his card in one of those [inaudible 01:59:16]. Just to make sure
28 everything is on the up and up here, bro, and-

1 Because I remember last time [inaudible 01:59:23].
2 Yeah, I know. I got you.
3 It just sucks to get pulled over by the same cop again because you're a
4 black male, though. You know? That's [inaudible 01:59:31].
5 Can you put your satchel and phone up on the dash? That way it doesn't
6 fall off and whatnot. No other weapons on you [inaudible 01:59:51]? Yeah,
7 I'm gonna have you step out.
8 For what?
9 'Cause we're gonna make sure there's no illegal [inaudible 01:59:58].
10 You're just gonna be detained for now, man [inaudible 02:00:05]. Well,
11 when someone tells us there's a gun in the car, we're gonna make sure that
12 it's legal [inaudible 02:00:21] and make sure it comes back to you, it's
13 registered to you and everything. [inaudible 02:00:30] it's for your safety
14 and for our safety [inaudible 02:00:38]. Just face the car. I'm just gonna pat
15 you down [inaudible 02:00:48]. I understand, man. It's not-
16 Hearnberger: Paused the video at four minutes and 42 seconds. Uh, Officer, when you
17 said, "Have a seat. It's not that." What was, "It's not that" in reference to?
18 Cameron: It's the, referring to his race stuff, because of his race.
19 Hearnberger: I'm starting the video at four minutes and 44 seconds.
20 Video: [inaudible 02:01:31].
21 Hearnberger: Stopped the video at four minutes and 54 seconds. Officer, when you said,
22 "Well, we can agree to disagree," what was that in reference to?
23 Cameron: It's in reference to him throwing the reason was race, and it's me saying
24 that essentially I'm not gonna go down that road. We can agree to disagree.
25 Hearnberger: And we'll conclude the video with that, at four minutes and 54 seconds.
26 Now going back to the initial talk about the hoodies, why, why did you tell
27 the defendant about the hoodies?
28 Cameron: Just given the area that we're in, the crime that's occurring. Uh, oftentimes

1 people will use the hoodie to conceal their identity, if they're wanted or,
2 you know, it's a common practice that individuals will use.

3 Hearnberger: When you saw, when you first saw the defendant's vehicle, um, how many
4 people did you see that were in the car?

5 Cameron: Uh, two people.

6 Hearnberger: Okay. And how many of them were wearing hoodies?

7 Cameron: Both.

8 Hearnberger: Do you recall if the, uh, side windows were rolled up or rolled down?

9 Cameron: They were down, I believe.

10 Hearnberger: Okay. Your Honor, with the Court's permission, I'd like to mark People's 2,
11 which is a DVD and People's 2A, which is the corresponding transcript.

12 Judge: All right, People's 2 DVD and 2A, transcript. How many pages is the
13 transcript?

14 Hearnberger: The transcript is three pages. Now Officer Cameron, when you learn that
15 there's a firearm in the vehicle, um, I think you said that one of the reasons
16 is you wanna make sure it's properly owned or possessed by the driver,
17 correct?

18 Cameron: Yes, sir.

19 Hearnberger: Are you also seeking to make sure that the firearm is being legally carried
20 in the vehicle?

21 Cameron: That's correct, sir.

22 Hearnberger: And based on your training and experience, um, one can legally possess a
23 firearm, but they might not be legally carrying it in public, is that right?

24 Cameron: That's correct, sir.

25 Hearnberger: Okay. So after... We just watched the video and you were detaining Mr.
26 Bonds in handcuffs, did someone search the vehicle?

27 Cameron: Yes, they did.

28 Hearnberger: Who did?

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- 1 Cameron: Uh, my partner, Officer Ecee and I believe a cover officer.
- 2 Hearnberger: Okay. And did they... Did someone inform you that a firearm was found in
3 the vehicle?
- 4 Cameron: Yes, sir.
- 5 Hearnberger: Okay. What was your understanding of, uh, the legality of how the firearm
6 was carried?
- 7 Cameron: Illegally.
- 8 Hearnberger: How was that?
- 9 Cameron: Uh, the gun was unloaded, but inserted on the driver, in the rear passenger
10 seat pocket with the grip facing towards the driver.
- 11 Hearnberger: Okay. Was it concealed in that pocket?
- 12 Cameron: Correct.
- 13 Hearnberger: Okay. So at that point, did someone place, uh, the defendant under arrest?
- 14 Cameron: Yes.
- 15 Hearnberger: And what, what is your role on scene at that time, once an arrest is made?
16 What other things need to be done?
- 17 Cameron: Uh, we need to document it with pictures, uh, document the scene, the
18 vehicle, uh, collect the evidence and secure the, uh, prisoner in our vehicle.
- 19 Hearnberger: Okay. Did... Who took, who, who handled that? Who put the defendant in
20 the back of your patrol vehicle?
- 21 Cameron: I did.
- 22 Hearnberger: Did you have subsequent discussions with the defendant after he was
23 placed under arrest and put in the control- patrol vehicle?
- 24 Cameron: Yes, I did.
- 25 Hearnberger: How did that come about?
- 26 Cameron: Uh, he was asking me questions. He was concerned about the, uh, I guess,
27 severity of the, the crime.
- 28 Hearnberger: I'm sorry, the severity?

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1 Cameron: Of the crime, yes.

2 Hearnberger: Okay. With the Court's permission, I'd like to play People's Exhibit 2 for
3 the witness.

4 Judge: What is it?

5 Hearnberger: It's a body worn camera recording of, uh, Officer Cameron and the
6 defendant's interaction.

7 Judge: Okay. What- what's the relevance of that? I, I thought the Defense was
8 focused on the stop.

9 Hearnberger: Well, it, it shows that Officer Cameron treated the defendant like a person.
10 He was respectful, he took the time to talk with him and calm him down.
11 The Defense is alleging that this officer is biased and this officer showed
12 the defendant a great level of respect during the course of this encounter,
13 and that's with the People are presenting this for.

14 Judge: All right. Do you have a copy for the Court?

15 Hearnberger: The... For the-

16 Judge: The tran- a copy of the transcript?

17 Hearnberger: Yes.

18 Judge: Thank you.

19 Video: Yes [inaudible 02:07:31]. Uh, it's gonna say you've been arrested, but it...
20 Listen, Tommy. Listen to me for a second, man. Tommy, I do this a lot.
21 I arrest guys who have extensive criminal history. I don't think you have
22 much to worry about, but I'm not the judge.
23 [inaudible 02:08:07]
24 [inaudible 02:08:08] it's going to be super low. It's a misdemeanor charge.
25 [inaudible 02:08:13] definitely low?
26 Yeah.
27 [inaudible 02:08:16]
28 I'd do that. I'll bring my own [inaudible 02:08:16]. I'd bring my whole

1 wallet. [inaudible 02:08:20]
2 Okay, listen. I don't want to jam you up more than that. I don't want to
3 have to tow your car. Do you want me to park it on the street? [inaudible
4 02:08:26] Do you have a license to [inaudible 02:08:26] after that, or?
5 [inaudible 02:08:26]
6 So, what I can do, is I can park it on the street. Lock it up. You take the
7 keys with you and you can release the keys to whoever you want in jail.
8 All right? And I can guarantee you, before that even happens, you're
9 probably gonna be out on bail.
10 It's gonna be a matter of how crowded it is down there. Getting your
11 fingerprints processed. I mean.
12 [inaudible 02:08:26]
13 I highly doubt it. If you work hard to get bailed out, you're probably gonna
14 get bailed out by tomorrow.
15 [inaudible 02:08:26]
16 All right. So, I'm gonna bring this... listen. Listen, bro.
17 I know it's hard to live through right now, but it's not the end of the world.
18 You're a smart kid.
19 Ah.
20 You're still gonna finish school.
21 [inaudible 02:09:15]
22 That's gonna be up to the court. Yeah, you- you can essentially petition to
23 get that back. Just say look, whatever happens, right when the judge says,
24 "Hey, bring your license for this," they'll give you your firearm back. But
25 that's gonna be through the court. That's not through us.
26 All right? We're just, unfortunately- listen, unfortunately, our hands are
27 tied. We have to do what we have to do. But it's gonna be just- just roll
28 with me, and let this be a learning lesson. Bro, that's it.

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1 [inaudible 02:09:43]
2 So, you want me to lock it? Lock it, lock it?
3 Yeah, [inaudible 02:09:52].
4 Does he have anything else in there that- that you might need it? He just
5 has his cell phone, probably?
6 [inaudible 02:09:58]
7 I just don't want him to take anything that's yours.
8 [inaudible 02:10:00]
9 All right. Hang tight.
10 Hearnberger: That was [People's 2 02:10:12], for the record. Officer Cameron, is that an
11 accurate recording of your conversation with the defendant?
12 Cameron: Yes, it is.
13 Hearnberger: At this time, the people would move to admit [People's 2 and 2A 02:10:21]
14 into evidence.
15 Judge: Any objection?
16 Genser: No.
17 Judge: All right, [People's 2 and 2A 02:10:27] are received.
18 Hearnberger: Officer Cameron, what ultimately became of the defendant's vehicle?
19 Cameron: Uh, I drove it around, looking for a parking spot on the street. Uh,
20 ultimately didn't find a parking spot. So, I essentially made a deal with the
21 clerk at the gas station to allow me to park it there for a short term, until
22 one of Tommy's friends could come pick it up.
23 Hearnberger: Did you- how did- how was the defendant able to contact that friend to
24 come pick up the car?
25 Cameron: Uh, I got the number from, uh, Tommy and [Mr. Bonds 02:10:53], and I
26 called that, uh, friend to come down to HQ. I gave him the keys on [Mr.
27 Bonds' 02:10:58] [inaudible 02:10:59].
28 Hearnberger: Thank you. Nothing further.

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1 Judge: All right. Any redirect?

2 Genser: Yes. Um, are you familiar with the, uh, policy and procedure manual for
3 the San Diego Police Department?

4 Cameron: Yes, sir.

5 Genser: Are you familiar with section, uh, seven- uh, 7.01, which discusses, uh,
6 enforcing traffic laws equally and fairly?

7 Cameron: I don't know the specifics of that.

8 Genser: Wanna look at it?

9 Cameron: What's that?

10 Genser: Wanna look at it?

11 Cameron: Sure. Thank you. The highlighted section?

12 Genser: Yep.
13 Are you familiar with that section?

14 Cameron: I am now.

15 Genser: Okay. You weren't before?

16 Cameron: It's a long manual, sir. I try to be familiar with everything.

17 Genser: Okay. Are you familiar with the, uh, SDPD's policy on non- non-biased-
18 based police, uh, policing?

19 Cameron: Yes, sir.

20 Genser: What is it?

21 Cameron: It's a very vague question, sir. Can you narrow it down?

22 Genser: Yeah, what's the policy of SDPD about- about, uh, race-based policing?

23 Cameron: That race has no base in our policing.

24 Genser: Okay. Um, if it were determined that your behaviors were race-based, what
25 are potential punishments that could [inaudible 02:12:31]?

26 Hearnberger: Objection. Relevance, argumentative.

27 Judge: Well, I- I assume he means it to relate to credibility, so overruled. You can
28 answer. If you know.

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1 Cameron: I have no idea. I'm not a supervisor. I'm just a police officer.

2 Genser: Isn't it true that you could be demoted?

3 Hearnberger: Objection. Ob- objection, asked and answered. Lacks personal knowledge.

4 Judge: It was asked and answered, sustained. He said he doesn't know.

5 Genser: You don't know what potential punishments are for police misconduct?

6 Hearnberger: Objection, asked and answered, argumentative.

7 Judge: Sustained. He said he doesn't. You can't repeat the question.

8 Genser: Is it possible to fire a police officer?

9 Hearnberger: Objection, relevance.

10 Judge: Well, I can take judicial notice. It's possible to fire a police officer, if that'll

11 help.

12 Genser: That does help, thank you. Um, polices can be- police officers could be

13 fired for misconduct, isn't that true?

14 Hearnberger: Objection, relevance, argumentative.

15 Judge: Yeah, I think at this point, the- the- I- I- I get the point. But I don't think

16 pursuing it is going to assist me in my decision.

17 Genser: Your honor, it goes to bias, and I think it's important.

18 Judge: Well, I- I- I- I think, in general, you can assume, if you don't know the

19 specific consequences, that there could be negative consequences. You

20 understand that, correct?

21 Cameron: Yes, your honor.

22 Genser: And you understand those negative consequences could be up to, and

23 including, termination?

24 Hearnberger: Objection, asked and answered, argumentative.

25 Judge: Sustained.

26 Genser: That's all I've got.

27 Judge: All right, thank you, officer. You can step down.

28 Cameron: Thank you, your honor.

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1 Judge: All right, now, um, there was one other witness on the witness list, Dr.
2 Glover.
3 Genser: Yes, there is.
4 Judge: Okay. Do you want to call her now?
5 Genser: I do.
6 Judge: All right.
7 Genser: Uh, defense calls Karen Glover.
8 Hearnberger: Your honor, I'd ask for an author of proof. I became aware of this witness
9 just before the hearing this morning. I have no author of proof or any
10 indication of her qualifications or what...
11 Genser: I intend to establish her resume [inaudible 02:14:28].
12 Judge: L- let's just call her and then you can object if you're not satisfied. I have
13 no idea what her testimony's going to be.
14 Dr. Glover: [inaudible 02:15:17].
15 Thank you, sir.
16 Genser: It's full of water. [inaudible 02:15:17].
17 Dr. Glover: Thank you.
18 Clerk: [inaudible 02:15:17] please stand and raise your right hand. Do you
19 solemnly state that the evidence you shall give in this matter shall be the
20 truth, the whole truth, and nothing but the truth, so help you God?
21 Dr. Glover: Yes.
22 Clerk: Thank you.
23 Genser: Good morning, Doctor Glover.
24 Dr. Glover: Good morning.
25 Genser: Could you, uh, state your name and spell your last name for the record?
26 Dr. Glover: Karen S. Glover, G-L-O-V-E-R.
27 Genser: Could you briefly tell us about your educational background?
28 Dr. Glover: I have a PhD in sociology from Texas A&M.

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1 Genser: Um, and do you have a specialization in your PhD studies?

2 Dr. Glover: I do.

3 Genser: What's that?

4 Dr. Glover: Race studies having to do with law enforcement.

5 Genser: Um, how are you currently employed?

6 Dr. Glover: I'm a professor at Cal State San Marcos.

7 Genser: And could you describe the sort of classes that you teach?

8 Dr. Glover: Sure. I teach, um, a race class, specifically. I teach a upper division class,
9 uh, [inaudible 02:16:14] was the last class that our criminology major
10 takes, uh, analyzing the criminal justice system.
11 And I teach, on occasion, not since COVID, a class on racial profiling.

12 Genser: Um, are you published in the area of criminology and ethnic relations?

13 Dr. Glover: I am, yes.

14 Genser: Um, are you specifically published in the area related to racial profiling?

15 Dr. Glover: Yes, I am.

16 Genser: Could you describe some of your publications?

17 Dr. Glover: Sure. I have a book called "Racial Profiling: Research, Racism, and
18 Resistance." I have, um, um, an article based on interviews with law
19 enforcement officers about racial profiling. Uh, and a book chapter related
20 to some of the same data.
21 Those are some of the main publications.

22 Genser: Um, are you also in the process of further research on these same issues?

23 Dr. Glover: Yes, I am.

24 Genser: Um, could you b- briefly describe your current research?

25 Dr. Glover: One project is, um, police accountability model based upon the RIPA data.
26 RIPA is the Racial and Identity Profiling Act of 2015 in California, and it
27 mandates data collection and I'm hoping to be able to use some of that data
28 collection in a- what I call "accountability model."

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1 Genser: Um, do you stay abreast of the goings on within the industry? Um, reading
2 literature, attending meetings, government organizations, that sort of thing,
3 related to this issue?

4 Dr. Glover: I- I do. I'm always tapping into that literature, yes.

5 Genser: Um, I want to sort of chat specifically about one of those organizations. Do
6 you regularly attend the meetings of the RIPA Board?

7 Dr. Glover: I do. I attend as a community member. Um, I'm not on the Board, but I
8 attend the meetings regularly, yes.

9 Genser: Um, what is the RIPA Board?

10 Dr. Glover: The RIPA Board is, um, based upon the law I just mentioned, Racial and
11 Identity Profiling Act of 2015 in California. Uh, basically the RIPA law
12 mandates that a advisory board be seated.
13 They have seated an advisory board. It consists of law enforcement
14 practitioners, of community advocates, of, uh, academics, and they work in
15 conjunction with the California Department of Justice in their goal, their
16 shared goal, uh, to eliminate racial profiling and other types of profiling.
17 Um, they are mandated to- they release an annual report each year. They're
18 about to release their- their, uh, next one. And the main thrust of the
19 board's work is to work with law enforcement agencies across California to
20 collect data on profiling issues, including racial profiling issues.

21 Genser: Um, as you have attended meetings, have you noticed, um, sort of some
22 issue that the RIPA Board has with police officer training?

23 Dr. Glover: There's a lot of different issues that come up at the RIPA Boards. I've
24 attended almost all of them since COVID and, prior to that, I attended them
25 when they were in San Diego, when they weren't online.
26 Um, recently, in, I want to say, in their last meeting and they've brought it
27 up, uh, prior to that, but in the last meeting, they were specifically, uh,
28 expressing some concerns about training through POST, which is Peace

- 1 Officer Standings & Training that offers officers training in issues of
2 diversity, for instance.
- 3 And they were concerned about the content of the training, how it hadn't
4 been updated in- in, uh, 20 years, I believe is one of the markers that
5 they're raising. That's one of the things that they're talking about.
- 6 Genser: Um, before we get into the facts related to this case, I want to define some
7 terms with you. Um, what is racism?
- 8 Dr. Glover: Racism is, um, a relatively easy way to understand it is it's a system or a
9 collection of practices in society, including actions and communications,
10 what I call "discourse," uh, that facilitate [whites 02:20:44] and the same
11 practices, actions, communications, disadvantage our communities of color
12 in economic, political, and social realms.
- 13 Genser: Could you describe how race and ethnicity has "content?"
- 14 Dr. Glover: Yes. Uh, that term "content" is something that I, um, learned from some
15 race scholars, Omi and Winant, and...
- 16 Genser: Sorry, could you spell that?
- 17 Dr. Glover: Sure. Uh, Omi, O-M-I, and Winant, W-I-N-A-N-T. And it's- it's a- it's a
18 similar idea to stereotyping but, for me, it's more of a sophisticated
19 understanding where it made kind of me, uh, understand the concept a bit
20 better.
- 21 Basically, what it means is when we think about race or racial groups,
22 we're also thinking about what those groups are made of, what their content
23 is.
- 24 Genser: Um, is there a difference between modern racism and, say, pre-Civil Rights
25 racism?
- 26 Dr. Glover: There is.
- 27 Genser: Um, what is that?
- 28 Dr. Glover: Racism can change. It can shift, depending on social times, social

1 conditions, and, um, some of the- the main research of our era, what we
2 would call the "colorblind racism era," is that, in the pre-Civil Rights era,
3 uh, racism was much more overt, much more explicit, much more, for
4 instance, easier to, um, uh, call out in official ways, if you will.

5 And, um, the Civil Rights era, the '50s and '60s in the United States,
6 ushered in a fair amount of law having to do with discrimination based
7 upon race. And there was, if you will, a promise that that law would
8 eliminate racism.

9 Um, but what scholars who've studied these issues, um, demonstrate is
10 racism didn't go away with the introduction of these laws. It changed form,
11 it became, generally speaking, uh, with some exceptions, of course, uh,
12 more overt, more subtle, um, less easy to explicitly call out, um, it- it's
13 changed its nature. It's- it's more subtle.

14 Genser: Um, what is bias?

15 Dr. Glover: An easy description of bias is having, um, we use the term "preference" for
16 a group, affiliation for a group, uh, versus, uh, having animus or, um,
17 aversion to a group.

18 Genser: Um, how is implicit bias different from explicit bias?

19 Dr. Glover: Well, they're basically embracing the terms that those two words mean.
20 And it- it's suggesting that implicit bias is, uh, you may have, for instance,
21 an affinity, a preference for a group, but you don't necessarily articulate it.
22 It's not necessarily, um, what I call "front of mind" for you, but it's just
23 something that generally you would associate with that group, uh, and- and
24 make associations of positivity with that group, for instance.

25 It, um, explicit means you would explicitly be calling out your affinities or
26 your aversions to those groups.

27 Genser: And then, so, sort of the counter of that is that, implicitly, you might not
28 even recognize your own bias?

1 Dr. Glover: Yes.

2 Genser: Um, what is coded language?

3 Dr. Glover: Coded language, uh, can mean a- a variety of things. Part of my work is
4 studying discourse or communication in society. That's part of what I do in
5 my- in my qualitative studies.

6 Coded language can mean, um, basically that you are using terms and
7 language, um, in indirect ways, that you- you may not be doing it
8 intentionally, but you turn, uh, you turn to the use of particular words, uh,
9 rather than be- r- rather than using other words that are more explicit and
10 things.

11 Genser: Um, can you give me an example of the way that language might be coded
12 in a police encounter?

13 Dr. Glover: Language could be coded in a police encounter, uh, talking about the social
14 space around, uh, around where the stop takes place, for instance. Calling it
15 an "inner city space," for instance. Inner city, we don't have to say anything
16 about anyone's race or social class, but that word, in and of itself, signals
17 that, to many people, that they would- they would associate that term with,
18 uh, a raced group.

19 Genser: Um, what is racial profiling?

20 Dr. Glover: Racial profiling is a complex issue that, um, generally is defined by saying
21 that law enforcement officers use race as a reason to make traffic stops or
22 to intervene with an individual [inaudible 02:26:36].

23 Um, it could be outside of any behavioral, um, actions of the individual
24 being stopped. Or it could be racial profiling also entails decision making
25 about who to stop, if there are- are lots of speeders, for instance. Who
26 would the law be enforced against? It's also part of racial profiling. Um...

27 Genser: In- in your research, you, uh, you talk about the- the doing and the being of
28 racial profiling. Um, could you explain that?

1 Dr. Glover: Uh, just to clarify, that's, um, kind of new theorization in my head. Um, I'm
2 actually writing on it right now. Uh, so it's not anything that's out there in
3 my research, just to clarify that.
4 But it really is this idea that, uh, when we talk about racial profiling, we
5 really need to make sure that we're talking about, if you will, both entities
6 involved.
7 Um, the doing is the actions and processes of the law enforcement officer
8 involved and the actual actions and such.
9 And then the being of racial profiling is what the experiences of the- of the
10 person have the- having the criminal identity imposed upon them and- and
11 their experience, um, is very important to recognize, study, and consider
12 in- in these issues of racial profiling.

13 Genser: Um, when it comes to racial profiling, you discuss the issue of- of
14 microaggressions and macroaggressions. What are those?

15 Dr. Glover: In a simple way of putting it, microaggressions are, um, it's often used
16 when discussing issues of race and racism. Microaggressions will be that
17 one-on-one encounter where some kind of, um, devaluing of a person of
18 color, uh, happens in a one-on-one, uh, encounter.
19 And then macroaggression, and these have kind of larger, more, um,
20 complicated, um, ideas to- to go with them as well, but the macro
21 encounter would be when you really dev- having the devaluing, um, the
22 putting down of a whole group, as opposed to the individual that's a
23 member of that group.

24 Genser: Can you describe how a microaggression and a macroaggression might
25 both come into play during a police traffic stop?

26 Dr. Glover: Yes. In, um, when we think about the- the theorizations, they help us
27 understand, really, the weight in the- in the, um, the power and the burden
28 of racism in society.

1 So, part of how we understand it is, if there's a traffic stop with a person of
2 color, and they are, for instance, in s- in some of my work, immediately
3 criminalized, like, the first question that, you know, some of my interview
4 respondents received was, "Do you have any contraband on you?"
5 They, even prior to saying, you know, "Hello, where's your driver's
6 license?" So, the immediacy of that criminalization, um, would be
7 considered a microaggression.
8 And then, in the larger context of things, as a sociology, we're always
9 looking at the larger [inaudible 02:30:14] as well. Uh, it's also a reflection
10 of that person of color as a member of that group, getting criminalized and
11 how that group, uh, draws criminalization.
12 Genser: Um, could you also talk a little bit about the difference in racial profiling
13 studies between quantitative and qualitative analysis?
14 Dr. Glover: I can. Um, I'm a qualitative researcher. I, uh, research people, uh, generally
15 with interviews and I also do, as I mentioned earlier, discourse analysis,
16 which is looking at, for instance, texts and books, um, and those types of
17 things.
18 Um, and quantitative work is working, really, in- in the number side of
19 things, doing statistical analysis. A lot of our racial profiling research is
20 quantitative and it is, if you will, um, going back to the RIPA Board and
21 the- the mandate of the RIPA law, officers have to document who they're-
22 who they're making traffic stops on and that is quantified.
23 And a lot of our racial profiling research is- is quantit- uh, quantified.
24 Genser: Uh, you- you ran into Dr. [Chanin 02:31:27] out in the hallway, is that...
25 Dr. Glover: I did.
26 Genser: Um, he is a quantitative researcher, is that right?
27 Dr. Glover: Yes. But he, uh, I would also argue, we don't know each other that well,
28 but, uh, I think he's also a theorist.

1 Genser: Um, have you done research into the harmful effects of racial profiling?
2 Dr. Glover: I have.
3 Genser: Um, in your research, could you- uh, did you talk about the idea of a
4 double consciousness?
5 Dr. Glover: Yes. Double consciousness is a term from W.E.B. Du Bois, and it is this
6 reference to... Du Bois was talking about the black community, but it- it
7 applies to other communities of color as well.
8 Uh, double consciousness is this idea that people of color are aware that
9 they have a self identity, if you will, of being due rights and protections,
10 for instance, that's a- the Constitution offers fourth amendment protections,
11 14th amendment protections.
12 Their self identity understands and knows that they are due those
13 protections. But in their everyday-ness, in their- in their practical lives,
14 encountering folks, uh, including law enforcement officers, those
15 protections, for instance, the fourth and 14th amendment, are not extended
16 to them in- in real ways.
17 And- and they are having to live their lives with that knowledge and- and,
18 really, the burden and weight of that.
19 Genser: Um, have you done sort of research into the ar- idea of how the experience
20 of being racially profiled can be sort of like a watershed moment in
21 people's lives?
22 Dr. Glover: I have. Yes.
23 Genser: If you could describe that a little bit?
24 Dr. Glover: Yes, in my book, um, when I interviewed, um, people of color about the
25 experience of being racial profiled, earlier I had done research interviewing
26 law enforcement officers about racial profiling.
27 Uh, but I was interviewing, for my book, uh, people of color who'd been
28 profiled and, uh, the one dominant theme, which is what happens with

1 qualitative work, is themes emerge, one dominant theme emerged, and that
2 was, uh, really, how the incident was, uh, very memorable for them, a
3 watershed moment. They were changed by that particular moment.
4 Part of what racial profiling is about is its capacity to really change
5 people's lives, in part by, uh, introducing them to the criminal justice
6 system in a formal way. Um, and, um, larger issues.
7 So, they- um, the way that I captured it in my book was they have a break
8 from, I use the term "citizenship," I wouldn't necessarily use that term
9 today. Um, but it really meant a break from, someone who gets rights and
10 protections from the state.
11 And- and what a moment that is for them. It's not an inconvenience, it's not
12 a, um, something that is soon forgot. It's actually very important in their
13 lives, according to the folks that I've studied.
14 Genser: And that sort of centers around the idea of rights that are- are due to them,
15 but not received in practice?
16 Dr. Glover: Yes.
17 Judge: I think we're going to have to break. Um, do you a rough estimate for your
18 direct- the rest of your direct?
19 Genser: 15 minutes?
20 Judge: And a rough estimate from cross?
21 Hearnberger: I- I don't know what our conclusion's going to be, but I think my cross will
22 be brief.
23 Judge: Okay, um, if we can take five minutes, we can finish the witness up
24 without taking a lunch break. I don't know how you feel about that.
25 Hearnberger: Is this- is this the remedy [inaudible 02:35:30]?
26 Judge: I- I don't know about my staff, how my staff feels about it.
27 Clerk: It's fine.
28 Judge: Okay.

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1 Genser: Oh, keep going.
2 Judge: Um, I need a five-minute break.
3 Genser: That's fine.
4 Judge: All right, let's take a few minutes and we'll resume.

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1 **JUDGE: HOWARD H. SHORE, JUDGE**
HEARNSBERGER: TAYLOR HEARNSBERGER, PROSECUTION
2 **GENSER: ABRAM GENSER, DEFENSE**
DR. GLOVER: DR. KAREN GLOVER, WITNESS 4
3 **CLERK: UNKNOWN NAME, COURT CLERK**

4 Clerk: ... to come to order, department 2102 [inaudible 00:00:02].

5 Judge: All right. We are back in session. Case of People versus Tommy Bonds
6 and we are in the midst of the direct examination by Mr. Genser of, uh, Ms.
7 Glover. You may continue.

8 Genser: Thank you. Um, could you explain the idea of spatial context?

9 Dr. Glover: Spatial context just refers to the importance of social space, in, uh,
10 criminological examinations, for instance.

11 Genser: Um, how might that come into play in a traffic stop?

12 Dr. Glover: It comes into play in a sense that, some areas in our communities, um, are
13 considered, either formally or informally, high crime areas, or not high
14 crime areas. Those types of things.

15 Genser: Um, does the idea of spatial context intersect with the idea of coded
16 language?

17 Dr. Glover: It can, yes.

18 Genser: How so?

19 Dr. Glover: Um, as I mentioned earlier, the, you know, the term, it's, kind of, a classic
20 when we're talking about this, uh, the term inner city refers to both the
21 social space, but it also has this content or this connection to a particular
22 demography or groups, and a living class.

23 Uh, another instance will be, uh, if an officer is stopping someone, and,
24 um, has the issue of racial profiling brought up, the officer might say, "This
25 is where we're deployed to. This is where we, uh, patrol," and, and so, it
26 seems like a common sense thing that they would be stopping particular
27 groups if they were patrolling in this particular area.
28

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- 1 Genser: Okay. Um, could you discuss the idea of procedural justice?
- 2 Dr. Glover: Procedural justice is a theory, uh, used a lot in, in police studies. It
3 emerged out of, uh, psychology, and, kind of that end of things. It centers,
4 it has various level, but it really centers on how law enforcement is, um,
5 legitimized.
6 In part, it's used in police studies to help understand the disconnect and
7 distrust with some communities and law enforcement. And one of the
8 mean ways that, uh, procedural justice is examined is, during traffic stops,
9 and whether the person being stopped feels a sense that they are treated
10 fairly by the law enforcement officer, um, is the, I would describe it as, is
11 the character relational as opposed to very authoritarian?
- 12 Genser: Okay. So, so how might procedural jus- the idea of procedural justice go
13 awry in, sort of, the context of a traffic stop?
- 14 Dr. Glover: I'm not sure if, uh, I would say it would go awry, um, but the idea of
15 procedural justice, which, again, has been adopted in a lot of police studies,
16 is, um, a, a critical look at the, at the theory is, that, you can still have racial
17 profiling going on, even though the stop itself is relational.
18 Um, in this, in this particular case, I believe, the, officer Cameron and Mr.
19 Bonds actually either, kind of, reference each other, being respectful to
20 each other. Um, so, even when the stop itself may be, uh, kind and no well
21 authoritarian approach from either side, uh, it can still be a racial profiling
22 stop.
- 23 Genser: So, the fact that an officer is being real nice doesn't necessarily mean that
24 it's not racial profiling?
- 25 Dr. Glover: Right.
- 26 Genser: Okay. Um, okay, let's turn your attention to this case. Uh, did you watch
27 the video associated with, uh, Mr. Bonds and officer Cameron?
- 28 Dr. Glover: Yes.

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1 Genser: Uh, did you have the transcript associated with that video?
2 Dr. Glover: Yes.
3 Genser: Uh, did you review the police report offered by officer Eysie?
4 Dr. Glover: Yes.
5 Genser: Um, okay. I wanna start by talking about the, the patrol. In officer Eysie's
6 reports, he states they were on "proactive enforcement". Do you recall
7 reading that?
8 Dr. Glover: Yes.
9 Genser: Based upon your training and experience, is that an example of coded
10 language?
11 Hearnberger: Objection, foundation.
12 Judge: Uh, overruled. I'll hear the answer.
13 Dr. Glover: When I hear something like, proactive enforcement, I think of pretextual
14 stops, which is the idea of, uh, law enforcement, for instance, making a
15 stop on a relatively low level violation, with the, um, anticipation that there
16 might be a larger criminality involved. And, and that's what I thought of
17 when I hear about, uh, proactive policing.
18 Genser: And that proactive policing that we talked about, in, in the specific
19 incidence with Mr. Bonds, does that coincide with that idea of spatial
20 context that we discussed?
21 Dr. Glover: Um, it, it can, in the sense that, the social space that they were in, uh,
22 could've been considered a, a high, high crime area.
23 Genser: Um, okay. I wanna talk about officer Cameron's stated reason for the stop.
24 Um, Mr. Bonds asked officer Cameron if he turned around because he saw
25 two Black guys in a car, and officer Cameron responded that, that was part
26 of the reason for the stop. Uh, do you recall hearing that on the audio?
27 Dr. Glover: I recall hearing something like that. I'm not sure if he was asked if he did
28 that, or if Mr. Bonds was stating that happened.

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1 Genser: W- would it help to take a look at the transcript?
2 Dr. Glover: Uh, sure.
3 Genser: I'm gonna show you, um, page two, um... and then it's, uh, it's starts right
4 around line 14.
5 You can just look at it.
6 Dr. Glover: I don't see the asking him, myself.
7 Genser: Um, Mr. Bonds says, I think, at one point, um, and I'll, I'll tell you the
8 exact parts I'm, I'm looking at. Um, he says, "I said, uh, you saw... uh, you
9 turned around, like, you saw two guys, like, two Black guys in the car,
10 obviously." That?
11 Dr. Glover: Yes.
12 Genser: And, when he's on the video, he's, sort of, phrasing that as a, as a question.
13 Dr. Glover: Okay. The, okay. So, on the video, it may have been obvious that it was a
14 question. Okay.
15 Genser: Um, and then, officer, um, Cameron responds, "Well, part of it. Um, the
16 hoodies up and stuff."?
17 Dr. Glover: Yes.
18 Genser: Um, you recall hearing that on the-
19 Dr. Glover: Yes.
20 Genser: ... on the video? Okay.
21 Um, based upon your training and experience, is this an example of racial
22 bias?
23 Dr. Glover: I would say, yes.
24 Genser: Um, how so?
25 Dr. Glover: The officer is agreeing with the statement or question having to do with the
26 stop, involving Black people in the car.
27 Genser: Is it an example of racial profiling?
28 Dr. Glover: I would say, yes.

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1 Genser: How so?

2 Dr. Glover: Racial profiling is about imposing a criminal identity upon groups of color,
3 uh, sp- specifically Black and, and mix folks, uh, in particular. And this
4 goes along, along those lines.

5 Genser: Um, along with saying that, that race was part of the reason for the stop, he
6 also explains that they had their hoodies up, um, do you recall that part?

7 Dr. Glover: Yes.

8 Genser: Um, based upon your training and experience, is this an example of racial
9 bias?

10 Dr. Glover: Yes.

11 Genser: Uh, how so?

12 Dr. Glover: A hoodie is a piece of clothing, and it has, what we would call in
13 criminology, that piece of clothing, um, has been criminalized. Depending
14 on who wears it, um, it, it can draw attention and, uh, invoke some
15 thoughts of threat, if you will, depending on who's wearing it.

16 Genser: A- and so, if an officer says, I, I see two guys with hoodies up, can that be
17 an example of coded language?

18 Dr. Glover: Yes.

19 Genser: How so?

20 Dr. Glover: The officer is not having to map out or describe what a hoodie means.
21 There's an assumption that the hoodie means something about criminality
22 when it's connected to pat- uh, people of color.

23 Genser: Um, we, we talked earlier about the doing and the being of racial profiling,
24 how does this, that idea fit into Mr. Bonds' stop?

25 Dr. Glover: Uh, well, uh, clearly we're, you know, we're seeing the doing of racial
26 profiling, based upon my expertise, and the explicitness of the statements
27 from the officer. Um, there's also, in the video transcript, you know,
28 indication that Mr. Bonds is, uh, feeling some, I'm not sure if I can speak to

1 this, you know, it sounds, kind of, psychological, but he is concerned about
2 getting out of the car, for instance.
3 He makes a connection between getting out of the car for a traffic stop, so
4 he's, um, similar to the people I interview, experiencing some stress, under,
5 under that encounter.
6 Genser: A- and how does that, the encounter, fit in with the idea of procedural
7 justice?
8 Dr. Glover: Can you put that in a different way, sir?
9 Genser: Yeah, I, I mean, so, I... I still think maybe a better way to, to put it is, we
10 talked about the idea of, of being due certain rights, and then not receiving
11 those certain rights. Does this stop fit into that, sort of, a category?
12 Dr. Glover: In the sense that, um, the folks would be pulled over for a relatively minor
13 stop, don't expect to have such a large, um, uh, intrusion, uh, by the state,
14 in a sense it does, that we would feel we'd be protected from that, if I'm
15 understanding that question.
16 Genser: What about the idea that officer, um, officer Cameron tells Mr. Bonds that
17 he also is racially profiled, or profiled in East County?
18 Hearnberger: Objection, vague.
19 Judge: I'm not sure. Lemme hear what the witness' answer is, subject to motion to
20 strike.
21 Genser: And I suppose my question is, how did that play into your analysis?
22 Dr. Glover: Well, if we connect it to earlier idea of procedural justice, procedural
23 justice, I think it turn- you know, serves two functions. Uh, procedural
24 justice is, you know, on one level about being relational in a traffic stop,
25 uh, and saying, the officer saying that they have shared experiences with
26 Mr. Bonds, in that way, would, on some level, go to build this, uh,
27 relational condition, if you will, in the stop.
28 Um, bringing another aspect to it, um, and that is, if the officer can also say

1 they've experiencing these, they've experienced profiling, then it has the
2 effect of diminishing Mr. Bonds' experience with racial profiling,
3 specifically, which is, uh, well documented, uh, process. We have a lot of
4 data about racial profiling happening with communities of color, relative to
5 White communities.

6 Genser: And so, based upon your training and experience, that, the sort of, s-
7 subterfuge of telling Mr. Bonds that he's also racially profiled, and the
8 being, you know, overly nice, is, sort of, a guise to minimize the fact that
9 he's being racially profiled, is that accurate?

10 Dr. Glover: Um, generally I would say, yes. I would say, I'm not sure [inaudible
11 00:13:26], uh, guys, but I would clearly say that, it is, based upon my
12 understanding in racial profiling, an attempt to, uh, minimize the
13 experience of racial profiling.

14 Genser: And so, based upon all of your training and experience, you've, uh, you-
15 your book, your, uh, research, your writing, is this stop an example of
16 racial profiling?

17 Dr. Glover: I would say, yes.

18 Hearnberger: Objection, asked and answered. Foundation.

19 Judge: Overruled. You can answer.

20 Dr. Glover: Yes.

21 Genser: Thank you. That's all I have.

22 Judge: All right. Cross examination?

23 Hearnberger: Good afternoon.

24 Dr. Glover: Hi.

25 Hearnberger: Do you recall how long the body worn video recording was that you
26 viewed?

27 Dr. Glover: Oh, goodness.

28 Genser: I will stipulate that it's five minutes, and eight seconds, and it's the one that

1 is on Exhibit A.

2 Hearnberger: Thank you.

3 And, you read a report offered by officer Eysie, is that correct?

4 Dr. Glover: Yes.

5 Hearnberger: What's your understandin- uh, understanding of the roles of officer
6 Cameron and off- officer Eysie during this stop?

7 Dr. Glover: Um, officer Cameron taking the... and if I say something technical, I don't
8 really mean to say something technical here, but I would say he's taking the
9 lead in the traffic stop, uh, with the other officer, uh, kind of, all along the
10 periphery, from what I can tell. Um, I'm not sure if the other officer was...
11 well, I'll leave it, I'll leave it there.

12 Hearnberger: Okay.

13 Did you talk to officer Cameron about this case?

14 Dr. Glover: No.

15 Hearnberger: Did you talk to officer Eysie about this case?

16 Dr. Glover: No.

17 Hearnberger: No further questions.

18 Judge: Any redirect?

19 Genser: No. Thank you.

20 Judge: I, I will ask just a couple of questions here, um-

21 Dr. Glover: Yes, sir?

22 Judge: ... you defined, uh, if my notes are correct, and I'm paraphrasing, 'cause I
23 don't write down exactly, but, when you were asked by Mr. Genser to
24 define racism, you said, a system of practices that essentially benefit
25 Whites to the disadvantage of minorities?

26 Dr. Glover: Yes, sir.

27 Judge: Um, now, my understanding of the dictionary definition of racism is that,
28 it's the unfair treatment of people belonging to a different race, so that

1 anyone can be a racist, is that correct?

2 Dr. Glover: No.

3 Judge: Explain why.

4 Dr. Glover: Racism is about power, and power is about being able to, um, get interest
5 met, even in the face of, um, contestation to that. It's really about being
6 able to have, um, access to resources, and it's not something that each
7 group holds equally. In our society, Whites hold power, have access to
8 resources, et cetera, in different ways than people of color.

9 Judge: So, I, and I, also, I know there's a tendency today to blur the definition of
10 racism, I mean, from an anthropological standpoint, racism refers to race
11 rather than ethnicity or nationality, correct? So, that-

12 Dr. Glover: Well-

13 Judge: ... if a person says, "I hate Japanese," or, "I hate Jews," or, "I hate
14 Christians," that's not racism, because they're referring, it's a form of
15 bigotry. Racism is one sub-class of bigotry, correct?

16 Dr. Glover: It's a complicated issue, but I'm agreeing [inaudible 00:17:09] with what
17 you're saying.

18 Judge: Yes. So, going back to, to what you just said, um, are you saying that, if a
19 person from a minority, let's say, his- uh, Hispanic-

20 Genser: Your honor, could the, could the court pull the [inaudible 00:17:22] closer?

21 Judge: ... I'm sorry, Hispanic or, or Black, or Asian says, "I hate all Whites."
22 That's not racism?

23 Dr. Glover: In the formal sense that racism involves issues of power, a person who is
24 not in the dominant group, which is the White group, they can say, I hate
25 the White group, but in their everyday-ness, they don't have the ability,
26 through their actions, to impact the lives of White people, in the sense that
27 White people, [inaudible 00:18:01] everyday actions, especially in, for
28 instance social institutions, like law enforcement, uh, to impact the lives of,

1 of people of color.

2 Judge: Okay. Uh, I mean I, I, I'm just surprised, because the dictionary definition,
3 for example, I have here the Oxford, uh, Dictionary, "racism: the unfair
4 treatment of people belonging to a different race."

5 Genser: Now, could the court cite the year?

6 Judge: There's no year there. But I'll give you another definition, American
7 Heritage Dictionary, discr- uh, "racism is discrimination or prejudice based
8 on race." And another, uh, uh, definition is that, the [inaudible 00:18:39]
9 race accounts for differences in human character or ability, and that a
10 particular race is superior to others.

11 So, I mean, none of the different, no dictionary that I'm familiar with,
12 defines racism as belonging to one class of people. Just, it's just
13 discrimination or, or hatred of another race, so that's why I asked the
14 question.

15 Your definition appears to be different from the dictionary definition.

16 Dr. Glover: I, I study racism, sir. Yes.

17 Judge: Yeah?

18 Dr. Glover: Mm-hmm.

19 Judge: Okay. No, I mean, I've, for example, I've had gang cases-

20 Dr. Glover: Mm-hmm.

21 Judge: ... where Hispanics and Blacks are fighting each other, and the Hispanics
22 refer to, if you excuse my language, niggers, and, and the Blacks use, um,
23 discriminatory language against Hispanics. Neither of them would be
24 considered Caucasian. But, um, it seems to me that, that kind of language
25 would fall under the classification of, of bigotry, would it not?

26 Dr. Glover: Bigotry, yes, sir.

27 Judge: Okay. All right. Um, anything else from either side?

28 Hearnberger: No, Your Honor.

1 Genser: Yes, Your Honor. Um, in my brief I, I, uh, supplied the court with Exhibit
2 A, which is an excerpt from a book, uh, written by Ms. Oluo, O-L-U-O. In
3 that book, she defines racism as, "being prejudice against somebody
4 because of their race, when those views are reinforced by systems of
5 power."
6 Would you agree that, that's an accurate definition?
7 Dr. Glover: Yes, that's more full definition.
8 Genser: Um, it sounds a little bit like, what the judge was talking about, is the idea
9 of prejudice versus the idea of racism. A, a person of any race can have
10 prejudice against a person of another race, would you agree?
11 Dr. Glover: Yes.
12 Genser: But not any race can, can be racist?
13 Dr. Glover: Correct.
14 Genser: That might be a double negative. I suppose I should be more specific.
15 Judge: Well, actually, it's an interesting discussion, but the statute refers to bias,
16 not racism.
17 Genser: It's racial bias. Would you agree that racism and bias are similar situated
18 topics? Racism ex- is an example of bias?
19 Dr. Glover: Yes, and I would, if I may, make the distinction that, discrimination is
20 action, prejudice is, having an attitude, I hate all Japanese. Those are
21 distinct issues. One is action, that can actually impact the everyday lives of,
22 of people of color.
23 Judge: I mean, the language, while the witness is still here, I just wanna... ha- have
24 you read the language of penal code, section 745? With regard to what it
25 prohibits?
26 Dr. Glover: No.
27 Judge: Okay. So, let me just read it, 745(a) says, "The state shall not seek or
28 obtain a criminal conviction, or seek, obtain, or impose a sentence on the

1 base of race, ethnicity or national origin. A violation is established if the
2 defendant proves, by a preponderance of the evidence any of the
3 following;"

4 And then what's an issue here, uh, is sub-paragraph one, um, it starts out
5 the judge and attorney in the case, and this is the critical language here, "a
6 law enforcement officer involved in the cases, and expert witness or a
7 juror," and then it says, "this is the conduct, exhibited bias or animus
8 toward the defendant because of a defendant's race, ethnicity, or national
9 origin." So, that's the language the statute uses.

10 Now, I'm not sure if the legislature was in tune with all of the sociological
11 research when they wrote that, but-

12 Dr. Glover: Okay. And correction. I have read that, sir. I'm sorry.

13 Judge: Okay.

14 Dr. Glover: ... once you started reading it, I realized that's... Okay.

15 Judge: Yeah. No. So, so, I'm saying, it doesn't mention the term racism per se, it
16 just says, a bias or animus, because of race, ethnicity or national origin.
17 Um, and that was your understanding?

18 Dr. Glover: Yes. My understanding is, they're referring to communications or actions
19 based upon racial bias.

20 Judge: All right. So, someone, this is a hypothetical, I'm not suggesting this
21 applies in this case.

22 Dr. Glover: Mm-hmm.

23 Judge: But somebody, hypothetically, could express a bias against someone based
24 on race... I'm sorry... based on race or ethnicity or national origin in one
25 situation, and not express it in another situation, and that person would not
26 be labeled a racist. A racist implies a very sweeping character, um, um,
27 trait, right?

28 Somebody who's a racist, usually is not a racist one day and not a racist the

1 next day?

2 Dr. Glover: I would agree with the last part of that, yes. In my work, we're not so much
3 interested in identifying racists, we're interested in understanding the
4 system of racism, as it applies to our everyday-ness.

5 Judge: Okay. All right. Okay. Thank you.

6 Genser: I, I have some-

7 Dr. Glover: Thank you, sir.

8 Genser: ... I have some concerns about the court's line of questioning, that I just,
9 sort of, wanna clear up. And I wanna, sort of, talk a little bit about the idea
10 of race. Um, and, and by and large, people identify their race as it's based
11 on the U.S. census, isn't that accurate?

12 So, we have, so the censuses... I'm gonna [inaudible 00:24:03] sort of, clear
13 about my question. The U.S. census does not have a section for Hispanic,
14 is that right? That's an ethnicity.

15 Dr. Glover: I, I don't remember the last form, but, uh, I know that we have many
16 options now that we can, were actually expanded. I think in 20-uh, 2020
17 they may expanded the numbers of identities people could mark. Uh, but,
18 Hispanic, Latino is an ethnicity, yes.

19 Genser: Right. But, Hispanic, traditionally, has not been considered an
20 individualized race?

21 Dr. Glover: Correct.

22 Genser: And so, often people of Hispanic background will identify as White?

23 Dr. Glover: Yes, the, because they weren't given another option, yes.

24 Genser: Right. And then, as the sub text to be, to identifying as White, they will
25 say, I am Hispanic, or they will say, depending upon, Hispanic implies
26 coming from Spain, I believe? It doesn't fit Brazil. Brazil people are Latin.

27 Judge: That's Portuguese.

28 Genser: Right. It, so, Brazil people are Latin, Mexican, Ecuadorian, Colu- people

- 1 from Colombia are Hispanic, is that accurate?
- 2 Dr. Glover: Well, um, I don't know if you want to go into a whole lecture here, but, uh,
3 part of what we do is, identify what, with some exceptions, um, cultural
4 practices of a group that we call Hispanic, or Latinx, and Spanish language
5 being one of the, kind of, collective measures, even though, as you're, uh,
6 distinguishing all those countries, they could have, be in cultural
7 experiences and histories, but, uh, uh, somewhat, unfortunately, they all get
8 looped together.
- 9 Genser: And so, sometimes this phrase, racist, that the judge was using, can it, can
10 be, can refer to disparaging a person of a certain ethnicity, not necessarily
11 race as well?
- 12 Dr. Glover: Yes.
- 13 Genser: So, you can be racist against a Hispanic person, who identifies as White, is
14 that correct?
- 15 Dr. Glover: Yes, if I'm understanding your question.
- 16 Genser: Or, for example, people from... there's no option a- among the list races for
17 people from, like, Saudi Arabia, but that is a very specific ethnicity, right?
- 18 Dr. Glover: Yes.
- 19 Genser: And the statute that the judge read to you, covers both race and ethnicity.
- 20 Dr. Glover: Which is what we, we do sometimes, is, we sometimes are using those
21 words interchangeably, and because we, we'd say that, ethnicity has been
22 racialized.
- 23 Genser: Here is part of my concern with the court's line of questioning that I wanna
24 ask you about. The question of, like, can White people be ra- can Black
25 people be racist against White people? I think your response to that was,
26 no?
- 27 Dr. Glover: Right. In my understanding of what racism actually is, no.
- 28 Genser: And it is one of the theories, sort of, offered, by White supremacy, that

1 Black people are being racist against them, isn't that accurate?

2 Dr. Glover: We do have, uh, the notion of reverse discrimination. I'm not sure if that's
3 what you're referring to, but...

4 Genser: Yes. Um, but based upon the definition we discussed today, reverse
5 discrimination is, it's not a thing?

6 Dr. Glover: I would say it is not a thing, based upon the expertise.

7 Genser: Thank you.

8 Judge: I, I just wanna make clear, since the witness is here, that, um, I understand
9 the language of the statute, and I'm just trying to correlate the witness'
10 testimony with what the statute says. So, a- a- according to my
11 understanding, where it says, this is an example of bias, "The judge, an
12 attorney in the case, a law enforcement officer involved in the case, an
13 expert witness or juror exhibited bias or animus toward the defendant,
14 because of the defendant's race, ethnicity or national origin." That statute
15 would apply, for example, to a Black judge, sh- discriminating against the
16 White defendant.

17 There's nothing in the statute that limits the application of this to any
18 particular race or ethnicity or national origin. Anyone is capable of
19 violating it.

20 Genser: While I think academically that might be true, I, I don't think that, that's
21 particularly pithy to this hearing.

22 Judge: Well, no. I mean, I have to go by what the words of the law say. So-

23 Genser: I-

24 Judge: ... and it's not going affect my ruling in this case, because we don't have
25 that issue raised, but I'm only exploring it because of the wit- witness'
26 interesting testimony. So, I'm not suggesting it's relevance in my ruling.
27 But, I don't see anything in the statute that, that precludes any person, of
28 any ethnicity, from violating it.

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1 Anyway.

2 Genser: I, I think that might be true. And I also note, you know, that the court
3 asked, previously, about whether or not it would matter if the officer were
4 Black or White, and I don't think it would, under the statute.

5 Judge: Yeah. No, I, I, I agree. I agree.

6 Okay. Thank you, very much. I'm sorry to keep you through the lunch
7 hour, but, at least we finished. We don't have to have you come back this
8 afternoon.

9 Dr. Glover: Okay. [inaudible 00:29:08] sir, thank you very much.

10 Judge: All right. Thank you. You may step down.

11 All right. Any other witnesses from the defense?

12 Genser: No, the defense rests.

13 Judge: Any-

14 Genser: I'm sorry, rests subject to the admission of exhibits.

15 Judge: Yeah, let's go through that, and I wanna make sure nobody walks out with
16 any of the exhibits. I wanna make sure I know where everything is.

17 All right, let's start [inaudible 00:29:30]. We received A, where is
18 defendant's A?

19 Genser: I have it right here.

20 Judge: Okay. Um, defendant's B-

21 Genser: I think B and C are up there. Don't worry, I'll grab 'em.

22 Judge: Defendant's B is a bibliography, where is that?

23 Genser: [inaudible 00:29:46].

24 Judge: For, um-

25 Genser: Here. And map C is here, I just get those to you.

26 Judge: Ye- yes. Any objection to B? Bibliography?

27 Hearnberger: No objection. Well, yeah. No objection.

28 Judge: Defendant's B is received.

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1 Um, any, let's see, the next one is defendant's C, which is the map. Any
2 objection?

3 Hearnberger: No objection.

4 Judge: All right. That's received. And, let's see, people's one is the transcript. Any
5 objection to that?

6 Genser: No.

7 Judge: All right. That's received. And where is that? People's one?
8 Okay.

9 People's two and three have been rec- uh, two and two A, have been
10 received. The DVD and the, a different transcript. You have those there?

11 Judge: Where is two A? Maybe I have it. Let's see. Yes, I do. Here's two A.
12 Let's see...

13 Okay. Um, and that covers all the exhibits. All right, so, defense rests?

14 Genser: Yes.

15 Judge: And, any additional evidence from the people?

16 Hearnberger: Uh, Your Honor, I would just ask the court to take judicial notice of penal
17 code, section 25850, sub B, which talks about the authority to search a
18 vehicle when there's a firearm involved.

19 Judge: What's the section again?

20 Hearnberger: 25850, subdivision B.

21 Judge: I don't know if it's necessary to take judicial notice of it, since it's a statute,
22 you can simply argue with... there's plenty of case law, um... I do all the
23 15385 motions, so I'm familiar with all the case law in the area of, of
24 searching for weapons. Michigan vs. Long, and there's a whole list of
25 cases, so, I'm not sure that it's necessary. But, let me take a look at the
26 statute.

27 Genser: Wait, what, what's the code section?

28 Hearnberger: 25850.

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1 Genser: Vehicle code?
2 Hearnberger: Penal.
3 Genser: Oh.
4 Judge: All right, it's entitled carrying a loaded firearm in public. Examination of
5 firearm by a peace officer.
6 All right, I, I will look at that statute, I don't wanna take... it's a lengthy
7 statute, I don't wanna take the time to read it now.
8 Uh, any other evidence from the people?
9 Hearnberger: No, Your Honor.
10 Judge: All right. So, the normal practice I follow, um, is I have the party with the
11 burden of proof argue first, and also have a last word in rebuttal. So, um,
12 feel free to address the court, Mr. Genser and then I'll hear from, uh,
13 defense co- uh, the people.
14 Genser: Um, here's what I wanna talk about, as far as it goes with this, uh, this
15 hearing, and I wanna start by, sort of, giving the court, what I think is an
16 example.
17 Um, when I was a kid, when I was, I don't know, 16 years-old, I was, I got
18 in trouble in school, I got in-school suspension. Um, I grew up in
19 Connecticut, sort of, a bastion of liberalness, um, and when I got in trouble,
20 my school had 1,200 kids, I got in-school suspension, and there were four
21 Black kids at the school, and all four of them were in-school suspension.
22 And, at the time, I thought nothing of it. I said, that's that. That's the way
23 life goes. And it has, many years have passed since then, where I have
24 since realized the obvious racism of it. The obvious racism of it. And, what
25 I needed, at 16 years-old, was an expert. I needed an expert to come in and
26 point out that this is clearly, obviously racist.
27 Now, I understand that the school could come in and make up some BS
28 story about why these kids are bad, and what they did. And, they're gonna

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have a story. They always have a story. But the fact of the matter is, we rely on expertise in order to tell us what's what.

The court has heard three un-contradicted experts. I wanna go back to, um, penal code, section 745 for a second, where it talks about the presentation of evidence, um, under c-1. And it says, both sides are permitted to present experts. The, the prosecution has the opportunity to come in and bring in their own experts. They have an opportunity to present their own reports, showing what a great non-biased job the police have.

But, the fact of the matter is, there aren't any. And there are no experts out there that are gonna say what the prosecution would like for them to say. Um, this court should rely on the experts. They are professionals in their field. In police practice, you heard that this was a biased stop. Statistically, you heard that this was a biased stop. And, from a racial profiling expert, you heard that this was a biased stop.

And, contrary to that, you have officer Cameron, who is testifying up there with an absurd, shaking voice, looking like he was about to cry, because he's being questioned about the things that he did, about the choices he made, about his own poor behavior. His own racism.

And that's what it is. What, what we saw on that video, from officer Cameron, is racism. Plain and simple. Clear as day. When someone tells you who they are, believe them. Officer Cameron told you who he was on the video, and he has had months between our last hearing and today, to come up with some absurd, absurd story.

Um, I did a hearing in front of Your Honor, where a BOLO went out, a, a be on the lookout went out for a person from a car jacking, and the BOLO was looking for a Black woman, with a blond weave, wearing purple plaid pants. And the officers used that BOLO to stop my client, who was a Black woman, with a black weave, wearing black pants. And the court ruled in

1 that case that there was absolutely no evidence of racism.
2 But what the court said was, if I saw racism, I would come down hard on
3 that person. Everyone knows what this is. Everyone knows what it is. The
4 question becomes, do we have the courage to do the right thing? The city
5 does not. For a long time in this trial, we had Mr. Doyle in the back seat, in
6 the back row, with the, the District Attorney's office, trying to see how this
7 court is gonna rule on a motion like this, where the cop tells us he's
8 stopping this guy for bias, and he wants to know whether or not he can go
9 back to his officers and say, "Guys, it's okay. Business as usual."
10 It's not business as usual anymore. That's what this law is. It's not business
11 as usual in San Diego. It is not the era of Wren. It's the era of justice, and
12 this court should start leading that. This court has to do the right thing. The
13 court should grant the motion.
14 Um, I wanna talk about one final thing, um, since the court has indicated it
15 does not intend to rule today, and I wanna talk about remedy. Um, the
16 court has indicated that, under the remedy section, uh, subsection one talks
17 about what happens before a judgment, and subsection two talks about
18 what happens after a judgment. And, what the court has intimated in the
19 past is that, in the court's mind, because there's these two options, you have
20 to choose one of those.
21 Judge: Well, no. No. Let me stop you there. E, E four says, the remedies available
22 under this section do not foreclose any other remedies available under the
23 United States Constitution, the California Constitution or any other law.
24 Genser: I agree. And what the court has stated in the past, actually at the prima
25 facie hearing, was that, well, this is a h- this hearing is taking place before
26 judgment, so I must apply the remedy from subsection one. If that were
27 true, the c- there would never be a situation where subsection four applies.
28 And that would mean that the, the legislature has, essentially, written in a

1 nullity.
2 That cannot be the case.
3 Judge: No, I agree. I, I, I, I agree. I didn't mention four, but it was a passing
4 thought at the prima facie hearing, but I understand that four-
5 Genser: There is-
6 Judge: ... had just as much power as the other sub sections.
7 Genser: Any remedy, short of dismissal, is going to be a message from this court
8 that, this will be a slap on the hand. That, we're not gonna punish you for
9 what is obvious racism.
10 Judge: What other remedies would there be at this stage?
11 Genser: I, I, I can, I could think of other ones that I could fashion, to be perfectly
12 honest with you.
13 Um, but, I don't think that, that's my role. I think that the remedies are
14 defined in there, and I think that the court should consider dismissal. I
15 think the court should grant it. I'll submit.
16 Judge: Okay. Thank you, Mr. Genser. Let me hear from the people.
17 Hearnberger: Thank you, Your Honor. It's the defense burden in this case, and, given the
18 testimony we heard today, I don't see that we're in a much different
19 position than we were at the initial hearing.
20 We still have the defense insisting that, what officer Cameron said was an
21 explicit, uh, explicit evidence of his bias. And it's simply not the case. So,
22 first of all, starting with, the, the experts we heard from today, did not...
23 well, let's start with, uh, Ms. Mohr.
24 She wasn't even sure which officer was which, she didn't speak with the
25 officers about the case, she was unsure of the actual words that were used.
26 So, her, and obviously she can't read officer Cameron's mind. So, she really
27 didn't add anything, uh, anything to what we already had in the record,
28 from the prior hearing.

1 Um, she, she's talking about her opinion of how she would take the
2 statement. Um, she doesn't know anything about officer Cameron and other
3 stops that he's been involved with.

4 Um, she didn't recall sp- specifics about them mentioning the license plate.
5 Both the defendant and officer Cameron, what they both recognized each
6 other, and recalled that this had come up before. They had interacted about
7 it before.

8 So, her review of the case was limited. She had, didn't have a full
9 understanding of the facts of the case, and she certainly can't opine on
10 officer Cameron's, uh, state of mind.

11 Uh, the last expert we heard from talked about her research, and a lot of, a
12 lot of terminology, and a lot of things that she has found when she's talked
13 to people. But that does nothing to inform us about this traffic stop.

14 She also didn't speak with officer Cameron or officer Eysie, overview any
15 more than that initial five minute body worn clip. So, while she said it was
16 consistent with the research that she's done, and the folks that she's talked
17 to, um, it's, that's all that she said.

18 Um, and again, she wouldn't be able to offer an actual opinion as to officer
19 Cameron's, uh, thought process, at that time.

20 Uh, doctor Chanin provided some information about some other studies
21 that he has reviewed, but mostly talked about his study, which, I think, the
22 results of which were inconclusive, at best. They cer- shertainly, certainly
23 showed some disparate traffic stops in 2014, but 2014 and 2015 taken
24 together, um, didn't show, uh, much of a disparity.

25 And, at any rate, we're six years out from when that study was published.
26 So, the testimony of these three experts really has not added much, if
27 anything, uh, to the court's analysis here.

28 What we still have is, the five minute video of the a- initial reaction,

1 excuse me, between the defendant and officer Cameron, as well as officer
2 Cameron's testimony. And officer Cameron looked a little nervous on the
3 stand, I think anyone in his position would be, given the accusations that
4 the defense is throwing at him, that he's a racist.
5 He got on the stand, and he explained, we have some additional context for
6 this video. "When the defendant accused me of pulling him over because of
7 his race, I don't want that situation to escalate. I don't want people to get
8 agitated." So, he said, I think the term he used is, "I'm gonna nip it in the
9 bud right there."
10 So, he's, he deflects the comment, and he provides a different explanation
11 for that. And he explained his thought process, and the reasons he did
12 things today. He explained why he told the defendant, "Look, I get pulled
13 over too." It's a de-escalation technique. He's not trying to get the person
14 agitated or angry or upset with him. He's trying to keep the status quo, and
15 make sure everyone's safe, and the traffic stop goes smoothly.
16 Now, the defense is... there's been a, a fair amount of talk about, in this
17 case, about, when the defendant said, "You stopped us, or followed u-
18 followed us," at least, initially, "... you followed us because we're black."
19 And the officer doesn't say, "No, sir." He says, "Well, the hoodies up and
20 stuff, and, uh, part of the climate that's going on in the city these days."
21 Referring to a lot of violence in the area of this traffic stop.
22 It's easy to second guess, and say, oh well, if someone accused you of
23 stopping them cans, 'cause of their race, you would just say, "No, sir.
24 Absolutely not." Well, the officer explained why that wasn't, why he didn't
25 choose those words, because that's not going to probably be received well.
26 So, he answers in a little more of a gentle fashion, and he o- he gives his
27 explanation for why he followed.
28 Now, when we're looking at this traffic stop, we're looking at a, a polite

1 interaction, the defendant's calm and respectful, the officer is calm and
2 respectful. Uh, they talk about the traffic violation, they talk about, he
3 excha- or hands over his driver's license. It's all pretty routine. They make
4 some small talk about school, and the officer asks about firearms.
5 The defendants are honest and says, there's a firearm in the car. Now,
6 under... the defense didn't argue, uh, just now about it, but seemed to
7 suggest, in his questioning of the officer, that, he had no legal basis to go
8 into the car to get that firearm, but 25850 B, of the penal code, explicitly
9 provides that authority. Just because a firearm is, was lawfully purchased
10 or possessed, doesn't mean it's lawfully carried.
11 As in, it could be carried concealed in a vehicle, which is a misdemeanor,
12 or, loaded in a vehicle, which is a misdemeanor.
13 I think it's significant that, when the defendant tells officer Cameron there's
14 a firearm in the vehicle, officer Cameron stays completely calm, he doesn't
15 start yelling orders, he doesn't tell him to put his hands on the dash, he
16 doesn't pull out his gun and say, "If you move, I'll shoot."
17 Now, the defense wants this court to believe that officer Cameron is a
18 racist. And yet, when a Black man says, "I have a gun in the car," this
19 supposed racist doesn't bat an eye. He continues to remain calm, polite,
20 respectful. And he says, "Okay, where is it?" They talk about it. "Okay, put
21 your stuff on the dash, I'm gonna have you get out."
22 He doesn't haul him out of the car. Those are not the actions of a racist
23 officer.
24 Now, when he thinks the discussion about race is over, for the, at least for
25 the time being, the defendant is, gets out of the car, he's placed in
26 handcuffs, and there's a pat down. And then, the defendant brings race up
27 again. And this time, the officer says, "No, it's not that." He haso- he has
28 him, he pats him down, he's sitting him on the, uh, bumper of the patrol

1 car, and he says, "It's not that." He looks him in the eye, and he tells him
2 that.

3 And then, when the defendant brings it up again, the officer says, "Well,
4 look. We can agree to disagree." So, he's, we have this, at best, vague
5 statement at the outset of the traffic stop, in response to the accusation of,
6 of racial bias, and then we have two unequivocal denials.

7 Now, moving on to the subsequent conduct in the stop, and I thought it was
8 important for the court to hear that, because, again, the allegation in this
9 case is not that officer Cameron doesn't know any better, and he has
10 implicit bias, and it was a subconscious thing. The allegation in this case is
11 that, officer Cameron is racist.

12 And the way he treated the defendant throughout this traffic stop is,
13 absolutely shows that, that is, the defense allegation is not true.

14 Judge: I, I'm going to correct one thing, you, you said that a couple of times, and I
15 think I made clear, earlier, and in my discussion with doctor Glover, that,
16 the statute focuses on a particular course of conduct in a particular moment
17 in time. So, my ruling is not, in any way, whether or not the officer is a
18 racist, only whether or not I believe it's been proven that he exhibited bias
19 because of the defendant's race on this particular occasion.

20 So, I just wanna make that distinction. I'm not labeling anyone.

21 Hearnberger: I understand, Your Honor, but I, I do, I am addressing the defense
22 allegation, and, um, they, they were stating that his actions showed that
23 he's racist, and obviously bias would fall under that category.

24 I'm focused on the way he treated the defendant during his stop, and that it
25 shows he's not bias. He takes the time... the defendant wants to talk, once
26 he's been arrested, he takes the time to talk to the defendant, and you can
27 see in the recording, he's saying, "Look, it's not that big a deal, you're still
28 gonna be able to finish school. You're gonna be able to bail out. This is not

1 the end of the world. I'm gonna take care of your car for you."
2 Those are not the actions of a, of someone that's biased. Of someone's,
3 that's racist. If he was biased, if he was racist, and the defendant wanted to
4 talk, he'd say, "No, you're under arrest because you had a concealed
5 firearm, we don't need to talk. You're, we're going downtown."
6 He took the time to talk to h- with him, he took the time to explain things
7 to him, he showed him respect. Then he also says, "I'm gonna make sure
8 your car is taken care of." He lets them make arrangements for his car.
9 These are not the actions of a racist officer, of a biased officer.
10 All the de- when, this all comes down to, what, what is, evidence the
11 defense has, is some experts that know nothing about this officer, know
12 nothing about his day-to-day, uh, what he's doing on a day-to-day basis, in
13 the line of duty, haven't talked to this officer about this stop. The defense is
14 still driving home this theory that, when he says, "Well, the hoodies up on,
15 and everything," is a statement of, an admission of explicit bias. And the
16 evidence is just not there.
17 The court has heard officer Cameron's testimony, is able to observe the
18 context in the video, observe his actions, and how he handled this stop.
19 And defense has not met their burden, it's not more likely than not that
20 officer Cameron acted with any bias due to the defendant's race.
21 Judge: All right. Thank you.
22 Hearnberger: Thank you.
23 Judge: As I promised, I'll give you the last word, Mr. Denser.
24 Genser: Submitted.
25 Judge: Okay. Um, I will do my ver- I have a lot to think about, a lot to re-read. I
26 will do my best to get a ruling out as quickly as possible. I can safely say,
27 it's not gonna be this week. Um, but hopefully by next week I will be able
28 to issue a written ruling.

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DECLARATION OF VANESSA ESTRELLA

I, Vanessa Estrella, declare:

The preceding transcription is a true and correct transcription of RJA Hearing on Unknown Date in reference to People v. TOMMY BONDS Case No.: M280282, to the best of my ability.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 29th day of November, 2022, at San Diego, California.

Vanessa Estrella
Declarant

Exhibit G



December 20, 2023

To Whom It May Concern:

In 2022, I testified as an expert witness on racial profiling in Judge Shore’s courtroom. My credentials include that I am a full professor of Sociology, Criminology and Justice Studies at California State University San Marcos. In addition to other publications, I am the author of a 2009 book titled *Racial Profiling: Research, Racism, and Resistance* (Rowman & Littlefield) that has been cited 154 times including several recent cites since 2020. For about the last 17 years, I teach a course specifically on racial profiling in addition to courses on law enforcement and racism in the U.S. One of my specific areas of study is how people talk about racism. I consider the study of and education about racial profiling my life’s work.

I will share with you what happened in Judge Shore’s courtroom during my several-minutes long testimony on my scientific knowledge of racism and racial profiling. After listening to my testimony, Judge Shore began talking to me and the court and used the n-word directly to make a point about the use of language and, I believe, the protections of speech. As someone I turned to to reconcile my painful experience in Shore’s courtroom put it, he said it because he *could* say it. I recall turning my body to face him directly as he began talking and being completely stunned when he uttered the n-word directly. It was not necessary for him to speak the term to make whatever point he was attempting to make – he could have said “n-word” to signal his own understanding of the deep and painful damage that particular term embodies but he chose to speak it directly in a public setting as an officer of the court. It was wholly inappropriate and very distressing to witness. I immediately sickened at the thought of the people of color in the courtroom having to witness a judge invoke such a painful term when an alternative term is available. I was astonished that such behavior would come from a judge in 2022. If Judge Shore was uninformed/uneducated about using “n-word,” that signals a huge void in how judges are trained and educated in our court system. That the hearing was about a Racial Justice Act case makes this issue even more concerning because the law is an attempt to ensure racial justice.

Additionally, after sharing my racism and racial profiling expertise under oath with the court, the judge spoke about how a dictionary definition of racism was different than how I discussed racism. He remarked on how the definition he was focusing on did not emphasize that people of color were the primary recipients of racial discrimination but rather that racism is when any racial group discriminates against another racial group. This is a misleading and deceptive engagement of the term – all markers of social life economically, politically, and socially indicate that people of color as groups experience racial

discrimination. The same does not hold true for Whites as a group based on scientific data. Judge Shore's remarks suggested the experiences of people of color and Whites are equivalent when the science on racism demonstrates they are not equivalent. Indeed, the creation of the Racial Justice Act in CA is an attempt to remedy such injustice.

Judge Shore's behavior indicates he is biased, uninformed, and uneducated on racial justice matters. He should not be in a position to make legal judgements on Racial Justice Act cases because of the clear limitations he has in understanding racial justice.

/s/ Karen S. Glover, Ph.D.
Professor of Sociology, Criminology & Justice Studies
California State University San Marcos

Exhibit H

June 2017

Curriculum Vitae

Karen S. Glover, Ph.D.

Associate Professor

Department of Sociology – Criminology & Justice Studies
California State University San Marcos -- San Marcos, CA 92096-0001
(760) 750-4170 kglover@csusm.edu

EDUCATION

Texas A&M University

Ph.D. in Sociology, 2007 -- Emphases: Criminology/Racial and Ethnic Relations

Dissertation Title: *'Racing' Racial Profiling Research: Complicating the 'Trust of Rights and Powers' Through an Analysis of Racial Profiling Narratives*

Texas A&M University

M.S. in Sociology, 2003 -- Emphases: Criminology/Racial and Ethnic Relations

Thesis Title: *The Thick Black Line: An Analysis of Police Officer Views on Racial Profiling and the Police-Minority Relationship*

Texas A&M University at Corpus Christi

B.A. in Sociology, 2000, Magna Cum Laude

RESEARCH/SCHOLARSHIP/CREATIVE ACTIVITIES

Refereed Publications

Journals

Work-in-Progress. "The Racial Projects of *Procedural Justice* and *Implicit Bias* Frameworks in Police Studies."

Work-in-Progress. "Finding Color-blind Racism Constructs in Criminology and Criminal Justice textbooks: A Theoretical Analysis"

Roussell, Aaron, Katheryn Henne, Karen S. Glover, and Dale Willits. January 2017 online. "The Impossibility of The Reverse Racism Effect: A Rejoinder to James, James, and Vila." *Criminology & Public Policy*.

Glover, Karen S., Miguel Penalosa and Aaron Scharlmann. August 2010. "Racial profiling and traffic stops: An examination of research approaches and findings in the War on Drugs." In *Sociology Compass*. (invited work)

Glover, Karen S. August 2007. "Police Discourse on Racial Profiling." in *Journal of Contemporary Criminal Justice* Vol. 23:239-247.

Poston, Dudley L., Jr., and Karen S. Glover. 2005. "Too Many Males: Marriage Market Implications of Gender Imbalances in China." *Genus*. LXI. No. 2:119-140.

Non-refereed Publications

Books

Glover, Karen S. 2009. *Racial Profiling: Research, Racism, and Resistance*. Rowman & Littlefield.

Book Chapters/Book Reviews/Encyclopedia Entries

Work-in-progress: Chapter in book on critical criminology and justice studies.

Glover, Karen S. 2014. Review: Crime as Structured Action: Doing Masculinities, Race, Class, Sexuality, and Crime by James Messerschmidt. *Critical Criminology* Vol. 22.

Glover, Karen S. 2008. "Hyper-Surveillance and Double-Consciousness: Racial Profiling as Panoptic Governance." in *Governance and Surveillance: Crime Control and Beyond*, edited by Mathieu Deflem. Sociology of Crime, Law and Deviance, Volume 10. Elsevier.

Glover, Karen S. 2007. *Battleground: Criminal Justice*, edited by Gregg Barak. Encyclopedia entries on police-minority relations and racial profiling. Greenwood Press.

Poston, Dudley L., Jr., and Karen S. Glover. 2006. "China's Demographic Destiny: Marriage Market Implications for the 21st Century" in *Fertility, Family Planning, and Population Policy in China*. Edited by Dudley L. Poston, Jr., Che-Fe Lee, Chiung-Fang Chang, Sherry L. McKibben, and Carol S. Walther. London: Routledge.

Bonilla-Silva, Eduardo and Karen S. Glover. 2004. "'We Are All Americans:' The Latin Americanization of Race Relations in the United States." in *The Changing Terrain of Race and Ethnicity*, edited by Maria Krysan and Amanda E. Lewis. Russell Sage. New York.

Papers and Contributions at Professional Meetings (2005+)

1. Invited Organizer. 2016. "Author Meets Critics – *Pulled Over: How Police Stops Define Race and Citizenship*." American Sociological Association 2017. Montreal, CAN
2. Invited Sub-chair/section organizer. 2016. "Policing Race, Ethnicity, and Other Dimensions of Inequality." American Society of Criminology. New Orleans, LA.
3. "A Race Conscious Critique of Procedural Justice Theory." American Society of Criminology. Washington DC. November 2015.
4. "This Time We Call It Ferguson: Racial Shootings, The State, and Resistance." Conversations That Matter Series, California State University San Marcos. October, 2014.
5. "Profiling Racialized Faces/Bodies: The State and Resistance." About Faces conference. University of California-Berkeley. (Invited Presentation.) April 2014.
6. "The Scope of Critical Criminology: From Theoretical Critique to Lived Experience." Critical Criminology & Justice Studies Conference. Spring 2011 Vancouver, CAN

7. "Author Meets Critics" – *Racial Profiling: Research, Racism, and Resistance* (Glover). American Society of Criminology, San Francisco, CA, Fall 2010. (Invited Session)
8. *Organizer/Facilitator*, "Race and Law Enforcement." Two sessions. Pacific Sociological Association, San Diego, CA, Spring 2009.
9. "Racial Profiling and Racial Oppression" American Society of Criminology, St. Louis, MO, 2008.
10. "'Racing' Racial Profiling Research -- Is a Qualitative Approach the Answer?" American Society of Criminology, Los Angeles, CA 2006.
11. "Race Consciousness in Research: A Look at Some of the Issues in Twine's *Racing Research, Researching Race*." Southwestern Sociological Association, San Antonio, TX 2006.
12. "Racial Profiling and the Pretextual Traffic Stop: A Critical Look at the U.S. Supreme Court's *Whren* Decision." American Sociological Association, Philadelphia, PA, August 2005.
13. *Organizer*, "Race and the Criminal Justice System." Annual meeting of the Southwestern Sociological Association, New Orleans, LA, March 2005.

SERVICE

Graduation Initiative Steering Committee (GISC)
Spring 2017 to present

Academic Success Center
Faculty Liaison for Social Sciences
Spring 2017 to present

Police Chief Search Committee
Fall 2016 to Spring 2017

Student Research Symposium Committee – Department of Sociology
Main organizer to cultivate research opportunities and presentation forums for our C/JS students.
Spring 2015 to present

CHABSS Curriculum and Academic Planning Committee (CAPC)
Fall 2014 to 2016

Search Committee – Chair – Department of Sociology
Fall 2013

Long-range Academic Master Plan committee (L.A.M.P.)
Fall 2012

CHABSS Interdisciplinary Program committee
Fall 2012

Ethnic Studies Program Coordinator
Fall 2012

Search Committee – Dept. of Sociology
Spring 2011

Student Grade Appeal Committee –CoAS
Summer 2011

Faculty Advisor, Justice Corps – student group
Fall 2010 to 2013

Assessment Committee
Department of Sociology
Member, Fall 2010 to 2012

Interim Faculty Advisor, S.T.A.N.D. -- Standing Together As oNe Dream (AB540 Student Group)
Fall 2010

Hiring and Academic Committee/HAPC
Member, Fall 2010 to 2012

Institutional Review Board
Committee Member – 2008--2010

Campus Connect
Participant --2008-2010

Master's of Sociological Practice (MASP)
Department of Sociology
2008 to 2014

Co-Organizer – “Are We Who We Say We Are?” Faculty Conversations on Diversity
Fall 2007 & Spring 2008

Co-founder and co-organizer- Critical Criminology & Justice Studies conference, Feb. 2013
(Berkeley, CA)
Critical Criminology & Justice Studies conference, Feb. 2012 –
(Irvine, CA)
Critical Criminology & Justice Studies conference, Feb. 2011
(Vancouver) –
Critical Criminology & Justice Studies conference, Feb. 2010
(Honolulu)

Critical Criminology & Justice Studies inaugural conference, Feb. 2009
(San Diego)

Co-Editor *Western Criminological Review* Spring 2011 to 2013
(Completed internal reviews of about 10 manuscripts to determine whether they should be sent for external review.)

Guest Co-Editor *Western Criminological Review*
(Spring 2010 – CC & JS '09 conference works)

Reviewer – *Race and Justice: An International Journal* – one article (Summer 2016)
Sociology of Race and Ethnicity – one article (Fall 2015)
Race and Justice: An International Journal – one article (Spring 2013)
Sage Open – one article (Fall 2012)
Criminal Justice Policy Review – one article (Fall 2011)
Sage Publications – methods book manuscript (Fall 2011)
Social Problems – one article (Fall 2011)
Social Identities – one article (Spring 2011)
Palgrave MacMillan – book manuscript (Summer 2010) recommended reviewer
Sociological Perspectives – one article, two reviews (Fall 2009/Spring 2010)
National Association of Women's Studies Journal – two articles (Spring 2008)
McGraw-Hill Publishers – Race/Ethnicity textbook (Fall 2007)

Advisory Council member -- El Grupo (North County community activism group)
2008 to 2015

Membership

American Sociological Association
American Society of Criminology

Grants, Awards, and Honors

Co-Curricular Funding, Spring 2017
Sociology Department Student Research Symposium
\$1,500

Co-Curricular Funding, Fall 2016
Sociology Department Student Research Symposium
\$1,000

Arts & Lecture Series Award for Spring 2012 panel on Convict Criminology
\$1,100

Faculty Development Grant
CoAS – Fall 2010 -- Travel Award to Critical Criminology & Justice Studies conference

\$575

California State University San Marcos

Arts & Lecture Series Award for Fall 2010 speaker on hate crimes (Wendy Leo Moore)

\$1,475

California State University San Marcos

All-Peoples Award – Faculty with *Passion* (Spring 2009) with *Dedication* and *Inspiration* (Spring 2010)

California State University San Marcos

Grant for Bonilla-Silva Lecture (Spring 2009)

Collaboration with Fredi Garcia, Graduate Student in Sociology

\$2,000 – Office of Arts & Lectures -- Spring 2008

\$250 – Social Justice & Equity Project – Fall 2008

\$500 – American Democracy Project (Dept. of Political Science) – Fall 2008

\$500 – Dept. of Communication – Fall 2008

California State University San Marcos

Social Justice & Equity Project

Collaboration with Dr. Sharon Elise, Dept. of Sociology

Mini-grant for “Whitening of the Curriculum” research project -- \$400 – Spring 2009

California State University San Marcos

Office of Educational Equity and Diversity

Mini-grant for faculty “diversity conversations”

Collaboration with Dr. Delores Lindsey, College of Education

\$750 -- Fall 2007

Exhibit I

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FILED
Clerk of the Superior Court
NOV 09 2022
By: C. Imperial

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

V.

TOMMY LEE BONDS,

Defendant.

Case No.: M280282

**STATEMENT OF DECISION ON
DEFENDANT'S MOTION FOR
RELIEF UNDER THE RACIAL
JUSTICE ACT (PENAL CODE
SECTION 745(a)(1))**

The Court, having conducted a hearing pursuant to Penal Code Section 745(c)¹, finds as follows:

I. INTRODUCTION

Defendant's pre-trial motion requires this court to determine whether defendant has proven a violation of subdivision (a) by a preponderance of the evidence. Specifically, Defendant alleges that a law enforcement officer involved in the case has exhibited bias or animus towards the Defendant because of Defendant's race, as set forth in Section 745(a)(1). Before addressing the merits, however, this court will make several observations regarding application of the statute.

¹ All further references are to the Penal Code unless otherwise noted.

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A. Timing and available remedies

This is a pre-trial motion. At the *prima facie* hearing on this motion, this court noted that Section 745(e)(1) sets forth available remedies for a violation found before judgment is entered, and that dismissal of the underlying charges is not included as a remedy. Defense counsel contends that section 745(e)(4), by not foreclosing other remedies, would in fact permit such dismissal in the furtherance of justice. Without resolving that issue here, this court simply notes that one of a number of issues of statutory interpretation that will have to be resolved in the appellate courts is whether the specific pre-judgment remedies set forth in Section 745(e)(1) are exclusive, or whether 745(e)(4) allows for additional pre-judgment remedies.

B. Application of Section 745(a) to certain law enforcement activity

The conduct prohibited by section 745(a) is set forth as follows: "The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin." Section 745(h)(4) defines "state" as the Attorney General, a district attorney, or a city prosecutor. It makes no mention of law enforcement. However, Section 745(a)(1) declares that a violation is established if the defendant proves by a preponderance of the evidence that "...a law enforcement officer involved in the case...exhibited bias or animus toward the defendant because of the defendant's race, ethnicity, or national origin." Thus, an additional issue for the appellate courts will be whether conduct by an officer before the "state" becomes involved can be a basis for a violation if there is no evidence of bias once a prosecutorial agency begins its participation.

This is the situation in the case before the court here, i.e., the challenged law enforcement conduct occurred before prosecutorial involvement. However, because the City Attorney has not raised this issue, this court will assume the statutory language applies to conduct occurring before state involvement.

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C. Rules of evidence

Section 745(c) provides that either party may present evidence "...including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses." However, the section does not provide any guidance to the court regarding criteria for admissibility. In contrast, former Section 1170.95 (now 1172.6), governing homicide resentencing hearings, specifically states that, with enumerated exceptions, the Evidence Code shall govern the admissibility of evidence at the hearing.

Without such statutory guidance, this court finds that Evidence Code section 300 applies. It states that the Evidence Code applies to every action in superior court except as otherwise provided by statute. In addition, Evidence Code Section 2 states that the Code's provisions "are to be liberally construed with a view to effecting its objects and promoting justice." Consequently, all of Defendant's proffered studies and articles were received without an extensive foundational hearing for each, with the court indicating it would simply weigh the evidence and give each study whatever weight it deserved.

II. THE EVIDENCE

Defendant's evidence can be classified in three categories: 1) Studies and articles containing statistical data, 2) expert testimony, and 3) the testimony of San Diego Police Officer Ryan Cameron, along with the body worn camera footage of his interaction with Defendant.

A. Defendant's exhibits

Defendant offered and the court received Defendant's Exhibit A, a thumb drive containing studies, articles, statistics, and the body worn camera footage of the

1 incident in question; Exhibit B, a three-page bibliography describing publications by
2 witness Beth Mohr; and Exhibit C, a map of the incident location.

3 Generalized statistics can lead to possible inferences regarding a law enforcement
4 officer's state of mind based on perceived patterns of behavior, but such statistical
5 evidence cannot by itself prove the state of mind of a particular law enforcement
6 officer on a specific occasion. The type of statistics that *can* assist the court in regard
7 to a particular officer, for example, might consist of that officer's past enforcement
8 activity. For example, if an officer's own history demonstrates a pattern of bias in
9 past encounters, such information might be useful in determining that officer's state of
10 mind on the occasion in question, as a form of character evidence. But there is no
11 way for a court to draw such conclusions from general statistics without speculating
12 whether a particular officer's conduct on a specific occasion falls within those
13 statistics and any conclusions based on such statistics.

14 B. People's exhibits

15 The People offered People's 1, a transcript of the body worn camera footage, and
16 People's 2 and 2A, a DVD and transcript of the officer's post-arrest interaction with
17 Defendant.
18

19 C. Testimony

20 Defendant called four witnesses. No additional witnesses were called by the
21 People. Beth Mohr testified as a police practices expert. Her testimony included her
22 opinion that the officer's behavior in this case was consistent with racial bias. Dr.
23 Joshua Chanin testified as an expert and discussed the significance of various
24 statistics, as well as recommendations he has made to law enforcement to avoid bias
25 in police contacts. Dr. Karen Glover testified as an expert and discussed various
26 terminology and concepts applicable to the subject of racial profiling and racism in
27 general. Defendant called Officer Ryan Cameron as a witness and questioned him
28 extensively about his interaction with Defendant.

1 Certain expert testimony expressing the opinion that Officer Cameron's behavior
2 toward Defendant was consistent with racial bias and profiling was based in part on a
3 review of the body worn camera footage and police reports of the incident that
4 resulted in Defendant's arrest. Because the expert testimony interpreting the available
5 evidence conflicts with Officer Cameron's testimony, and because the experts did not
6 speak with Officer Cameron personally before testifying to their opinions, it is
7 important to note those conflicts in reaching a decision here.

8 Ms. Mohr testified that, in her opinion, the initial interchange between the officer
9 and the defendant constituted an implied admission by the officer that the stop was
10 based in part on race. On page 2 of P's 1 (BWC transcript), line 13, Defendant says,
11 "But why you, pulled over, you turned around, like you saw two niggas in the car
12 probably." And at line 16, "...we saw you turn around like you saw two guys, like,
13 two Black guys in the car obviously." Officer Cameron responds at line 18, saying,
14 "Well part of it, the hoodies up and stuff..." At line 20, the officer continues, "...the
15 climate of everything that's going on in the city these days..." And at line 21,
16 Defendant responds, "...Nah, that makes sense..."

17 Ms. Mohr testified that the officer's response constituted an admission that part of
18 the reason for the stop was because of Defendant's race. Officer Cameron, on the
19 other hand, testified that when he conducted the stop, he did not see that the men in
20 the car were Black until he approached them after stopping the vehicle. He testified he
21 only saw the hoodies, and that there had been a great deal of violence during that time.
22 He testified that he had formerly worked in the gang suppression team, now renamed
23 the special operations unit. He testified he made the stop after observing a rear license
24 plate violation.

25 In reaching her conclusion that Officer Cameron was demonstrating racial bias and
26 engaging in racial profiling, Ms. Mohr also referred to Officer Cameron's statements
27 on page 3 of People's 1, where he responds to defendant's suggestion that he was
28 pulled over because he's Black, and asking if the officer pulls over white people like

1 that. The officer responds by telling defendant that he (Officer Cameron) gets pulled
2 over in East County all the time. Ms. Mohr testified that the officer's statements
3 implied that he too has been profiled in East County, and, therefore, he was impliedly
4 admitting that he was racially profiling the defendant when he stopped him.

5 However, Officer Cameron testified that what he told defendant about being
6 stopped in East County was not true, and that he made up the story in order to de-
7 escalate the situation. He testified that although this approach was not part of his
8 formal training, he has found from past experience that making up such stories when a
9 defendant "plays the race card" can be an effective way of letting the person know
10 you identify with what he's saying in order to avoid an escalation.

11 CONCLUSION

12
13 This court can only conclude Defendant has proven by a preponderance of the
14 evidence that Officer Cameron exhibited bias or animus because of defendant's race if
15 it concludes that officer Cameron lied when he testified that he didn't know the
16 occupants of the vehicle were Black before he stopped the vehicle. The record reflects
17 that the officer's interaction with defendant was courteous and respectful. His
18 interaction with Defendant after the arrest, as depicted in People's 2, was professional
19 and sympathetic with defendant's concerns about school. There is nothing in the
20 record that would support a conclusion that Officer Cameron committed perjury when
21 he testified at the hearing. Therefore, it is not more likely than not that Officer
22 Cameron exhibited bias or animus toward Defendant because of his race, ethnicity, or
23 national origin.

24 Accordingly, defendant's motion is DENIED.

25 This order is without prejudice to the defendant to allege a violation of the
26 provisions of Section 745(a) related to trial or sentencing, events which have not yet
27 occurred.
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IT IS SO ORDERED

DATED: November 9, 2022



HOWARD H. SHORE
JUDGE OF THE SUPERIOR COURT

Exhibit J

Evaluating Policing in San Diego

By Samuel Sinyangwe, Co-Founder, Campaign Zero

Executive Summary

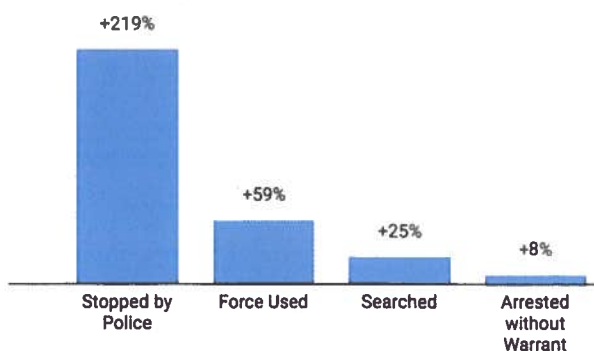
[Police Scorecard](#) evaluated the policing practices of San Diego Police Department (SDPD) and San Diego Sheriff's Department (SDSD) using data on police stops, searches, use of force, and arrests obtained through public records requests. Our analysis finds evidence of discriminatory policing by both departments. **San Diego police stopped black people at higher rates than white people in 85% of the police beats in their jurisdiction, while San Diego sheriff's deputies stopped black people at higher rates in every area of their jurisdiction.** Once stopped, San Diego police were 25% more likely to search, 8% more likely to arrest without warrant and 59% more likely to use force against black people than white people. Similar results were found for San Diego Sheriff's Department, where deputies were 21% more likely to search, 18% more likely to arrest and 47% more likely to use force against black people during a stop.

An analysis of use of force databases obtained from each department confirms and expands upon these findings - establishing that both departments not only use force more often but also use more severe forms of force against black people than other groups, even after controlling for arrest rates and alleged level of resistance. We also found evidence of anti-Latinx bias in the use of consent searches and evidence of anti-LGBT bias and bias against people with disabilities in both departments' search practices.

Finally, we reviewed each department's policy manual, use of force guidelines and police union contract and identified a range of policy solutions that would reduce police violence and discrimination, improve accountability and make San Diego safer for communities.

Anti-Black Bias in San Diego PD Stops

San Diego Police Department stopped black people at 219% higher rate per population than white people. Once stopped, black people were more likely to be searched, arrested, and to have force used against them.



Anti-Black Bias in San Diego SD Stops

San Diego Sheriff's deputies stopped black people at 130% higher rate per population than white people. Once stopped, black people were more likely to be searched, arrested, and to have force used against them.

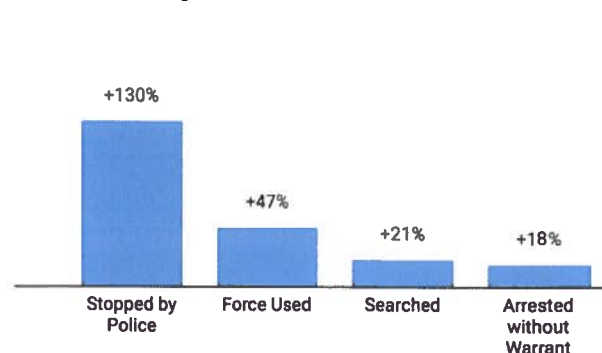


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Part 1: Analysis of San Diego Police Department

Analysis of San Diego Police Department RIPA Stops Data

Using data recently made available by San Diego Police Department under the Racial and Identity Profiling Act of 2015 (RIPA), we examined disparities by race, perceived disability status, sexual orientation and gender identity in the conduct of 158,757 police stops involving 179,710 person-stop combinations (in some cases officers stopped multiple people at once) during the 12 month period from 7/1/2018-6/30/2019.¹ During this period, San Diego police reported making 36,424 searches and 24,761 arrests during these stops and used force 3,122 times in 2,945 different encounters.²

Types and Locations of San Diego Police Stops

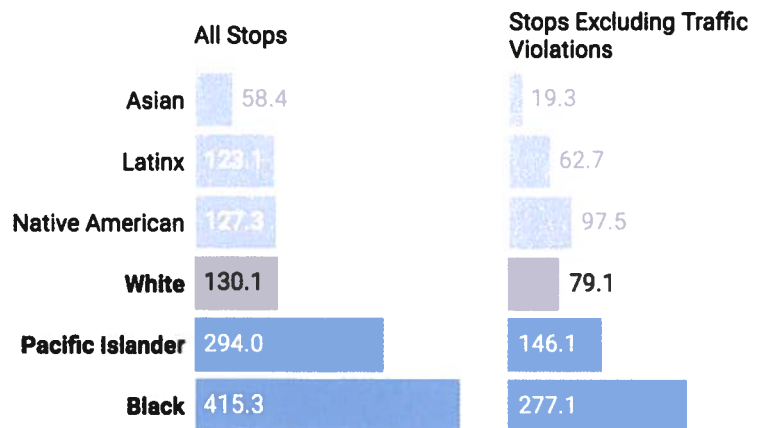
San Diego police reported “reasonable suspicion” as the primary reason for making half of all stops during this period (for a breakdown of the factors cited as “reasonable suspicion” in these cases, see Appendix C.1). 43% of stops were made for traffic violations and

2% were made due to “consensual encounters” resulting in a search.³

To understand which communities are most impacted by policing in San Diego, we mapped stop rates per population at the police beat level. San Diego police have 125 designated police beats throughout the city, each represented by a different beat number (as displayed on the map). The data show stop rates per population differ substantially by police beat. For example, police made 13,698 stops in the East Village (Beat #521), a rate 28x higher per population than the

San Diego Police Dept Stop Rates

San Diego Police Department Stops per 1,000 Population



¹ For this analysis, we used all of the SDPD stops data made available to date under RIPA - which includes data from July 1, 2018 - June 30, 2019.

² We used person encounters for the purposes of calculating searches, arrests and use of force. SDPD assigned a stop ID to each stop and person ID for each person stopped. So search, arrest and use of force numbers reflect the number of times any person was stopped, searched, arrested or had force used against them. Since the same person could've been stopped or arrested during two or more different encounters with police during this period, the number of searches, arrests or use of force is likely higher than the number of unique individuals who were searched, arrested or had force used against them during this period. Additionally, a single use of force encounter could include multiple uses of force against the same person in the same encounter.

³ RIPA defines a consensual encounter as “an interaction in which the officer does not exert any authority over, or use any force on, a person, and the person is free to leave.” Officers are instructed to select this “if a consensual encounter results in a search, regardless of whether the resulting search is consensual.”

median beat, Morena (#622). Core Columbia (#524), Mission Beach (#121), Logan Heights (#512) and Border (#714) had some of the highest stop rates, while San Pasqual (#235), Broadway Heights (#435), Rancho Encantada (#245) and Scripps Ranch (#241) had the lowest rates.

Racial Disparities in Police Stops

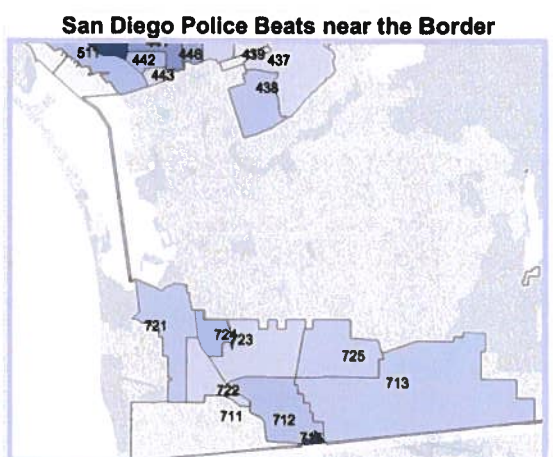
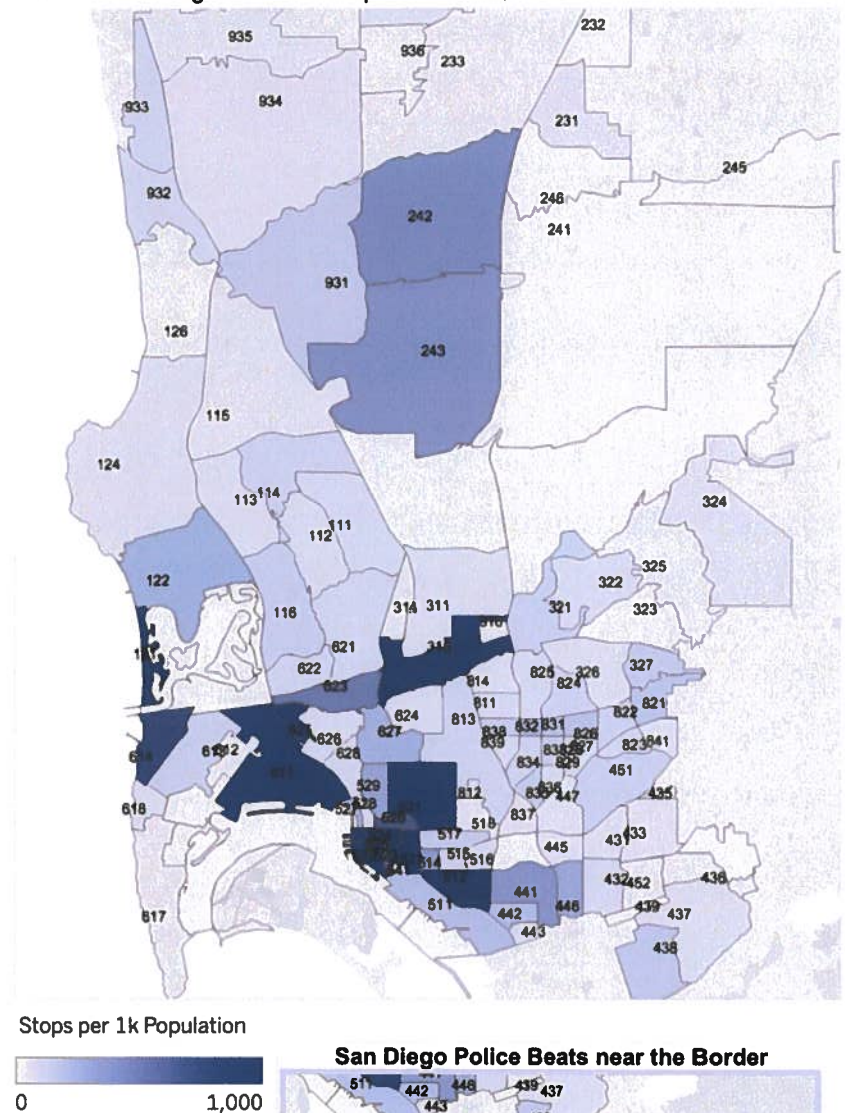
Racial disparities also varied by police beat. When we examine stop rates by race and police beat, we find that black people were stopped by San Diego police at higher rates than white people in 106 (85%) of the 125 San Diego police beats. Disparities in stop rates were particularly severe in some areas of the city - in 18 police beats, black people were stopped at rates more than **10x higher** than white people in the same area. Beats where black people are stopped at higher rates than white people are displayed in red on the map below. We've also provided a detailed list of beats a breakdown of stop rates by race and beat [here](#).

Among racial and ethnic groups, **San Diego Police stopped black people and Pacific Islanders at the highest rates per population**. Pacific Islanders were stopped by San Diego police at **126% higher rate** per population than white people. Black people were stopped at the highest rates of any other group - a rate **219% higher** per population than white people.⁴ Black people were more likely to be stopped by police for both traffic violations and also for pedestrian stops.

⁴ Population data were obtained via the [2013-2017 American Community Survey](#).

San Diego Police Stop Rates by Beat

Source: San Diego PD RIPA Stops Database, 7/1/2018 - 6/30/2019



Altogether, San Diego police made 35,038 stops of black people during a 12 month period in a city with a total of 88,774 black residents - an extreme level of policing impacting black San Diego residents.

“BLACK PEOPLE WERE STOPPED BY SAN DIEGO POLICE AT HIGHER RATES THAN WHITE PEOPLE IN 106 (85%) OF THE 125 SAN DIEGO POLICE BEATS.”

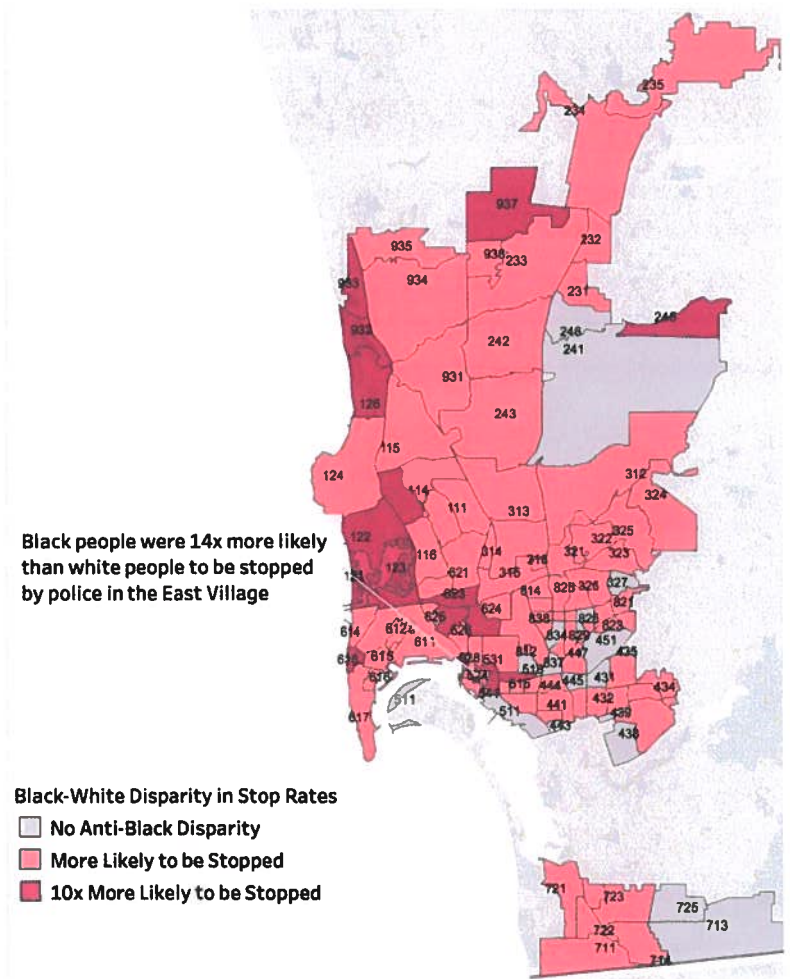
The vast majority of these stops, across all racial groups, were initiated by officers. Fewer than 15% of stops were initiated from civilian calls for service (i.e 911 calls). For example, only 4,911 of the 35,038 stops of black people by San Diego police were initiated from civilian calls for service. This suggests racial disparities in police stops are the result of police decision-making, rather than the product of officers simply responding to calls for service from communities.

Disparities by Officer Assignment

90% of these stops were made by officers who had an assignment classified as “Patrol, traffic enforcement, field operations.” The next largest assignment categories were officers with an assignment reported as “Other,” followed by Gang Enforcement. When we break out stops data by assignment and race we find stops by Gang Enforcement officers have the most severe racial

Black People were **More Likely** to be Stopped by Police in 85% of San Diego Police Beats

Source: San Diego PD RIPA Stops Database, 7/1/2018 - 6/30/2019



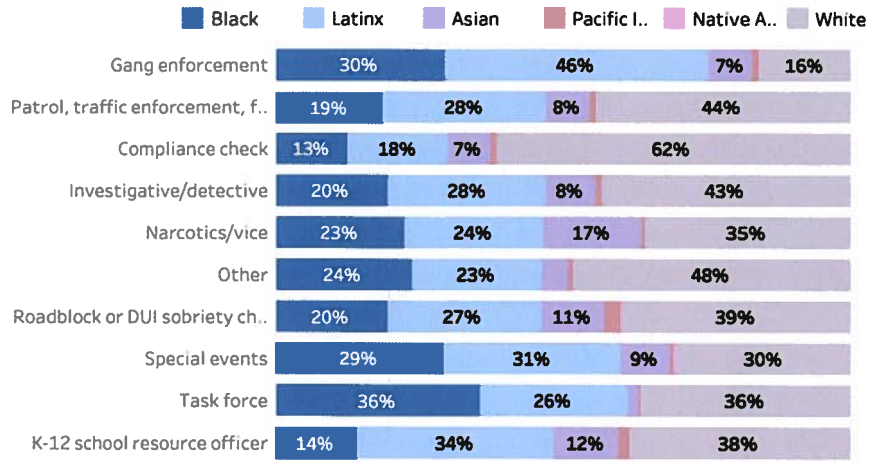
disparities. Black and Latinx individuals were 76% of the 4,128 people stopped by Gang Enforcement officers, compared to 47% of those stopped by officers with all other assignments.

Police Conduct during Stops

24% of people stopped by San Diego police were searched, arrested or were impacted by police use of force during the stop. When we examine these outcomes by race, we find substantial racial disparities in how police treated the people they stopped. Black people were not only significantly more likely to be stopped by San Diego police - they were also

25% more likely to be searched, 8% more likely to be arrested without a warrant, and 59% more likely to have force used against them during a stop. San Diego police were also 26% more likely to search and 61% more likely to arrest Native Americans than white people during stops.

San Diego Police Stops by Race and Officer Assignment

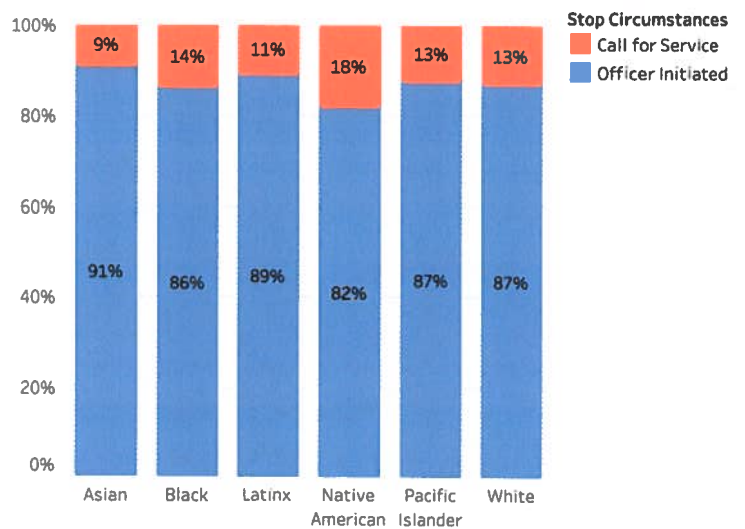


Evaluating Police Searches

In three-quarters of all SDPD searches, no contraband was found by officers. Moreover, when police did find contraband - it tended to have no impact on public safety. The largest category of contraband found was drugs or drug paraphernalia - representing two-thirds of all contraband found. By contrast, fewer than 1% of searches reported finding a gun. SDPD searches were only half as likely to find a firearm as searches by the LAPD in 2018. This suggests SDPD is engaged in excessive and intrusive search practices that do not appear to advance a public safety goal.

Evaluating Racial Discrimination

The contraband “hit rate” or “outcome test” has been established in the research literature as a useful, albeit imperfect measure of evaluating police searches for discrimination. Using this method, if police search a group at a higher



rate despite being less likely to find contraband during these searches (illegal guns, drugs, etc), it suggests police are discriminating against that group. Examining overall search outcomes by race yields mixed results initially: searches of Latinx people resulted in contraband being found at slightly lower rates than white people and searches of black people resulted in contraband being found at slightly higher rates. After accounting for the level of discretion officers had when making these searches, however, we find evidence of discrimination against black and Latinx people in circumstances where officers have the most discretion.

“BLACK PEOPLE WERE 23% MORE LIKELY AND LATINX PEOPLE WERE 60% MORE LIKELY TO HAVE SAN DIEGO POLICE CONDUCT A CONSENT SEARCH...AND WERE LESS LIKELY THAN WHITE PEOPLE TO BE FOUND WITH CONTRABAND DURING THESE SEARCHES.”

Consent Searches

To better understand how race may inform officer's decisions to search people, we examined the [types of searches](#) where officers have the most discretion - and therefore where officer bias may be most likely to occur. For example, officers have more discretion to conduct a search based on the consent of the person being searched than they do when conducting a search pursuant to a search warrant. The stops data provided by San Diego police includes 2,565 searches where the police reported no basis for the search other than consent being given. When we examine the data on this “high discretion” category of searches, we find evidence that officers are conducting consent searches in ways that discriminate against black and brown people. Black people were 23% more likely and Latinx people were 60% more likely to have San Diego police conduct a consent search on them during a stop.⁵ And while black and Latinx people were more likely to experience consent searches by SDPD, they were less likely than white people to be found with contraband during these searches - suggesting the presence of racial discrimination in the use of consent searches.

⁵ Consent searches were coded as searches where the only reported search basis was “consent given.”

Pretext Stops

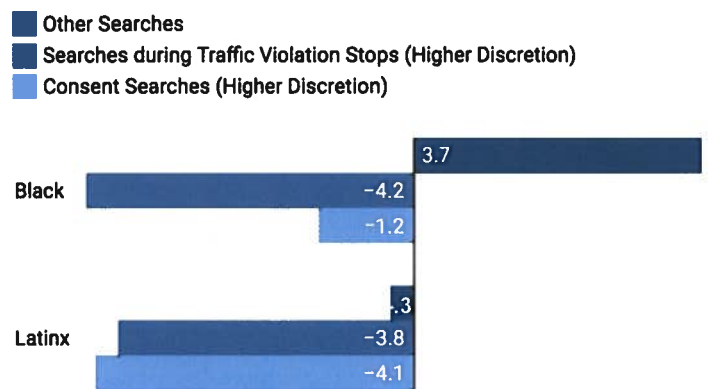
San Diego police searched 6,614 people after pulling them over for an alleged traffic violation. These types of searches are also more likely to be discretionary and vulnerable to racial bias. Because traffic violations are so common and often enforced inconsistently, officers could decide to pull someone over for a minor traffic violation as a pretext to search and investigate someone, without evidence, for an unrelated issue. The data show San Diego police were more likely to pull over people of color - especially black people - for equipment violations where police have substantial discretion (for example, driving with a brake light or plate light out).

After being pulled over for a traffic violation, San Diego police were then 44% more likely to search Latinx people and 133% more likely to search black people compared to their white counterparts. There appears to be no justification for these search disparities - police were less likely to find contraband from searches of black and Latinx people during these stops than white people.

These findings suggest officers are engaging in racially biased decision-making in situations where they have the most discretion - when conducting consent searches or when pulling people over for minor violations that can serve as a pretext to search people of color.

In situations where San Diego police had more discretion, racial disparities in search outcomes were more severe.

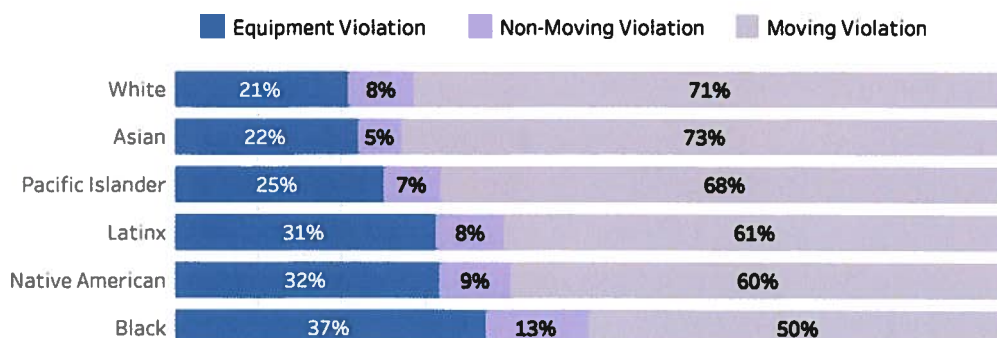
Police were less likely to find contraband on Black and Latinx people than White people during the types of searches where officers had the most discretion, indicating racial bias.



Displays the rate of contraband being found by San Diego police during a search relative to the rate for searches of white people.

People of color are more likely to be stopped by SDPD for equipment violations.

San Diego police stops for traffic violations, 7/1/18-6/30/19



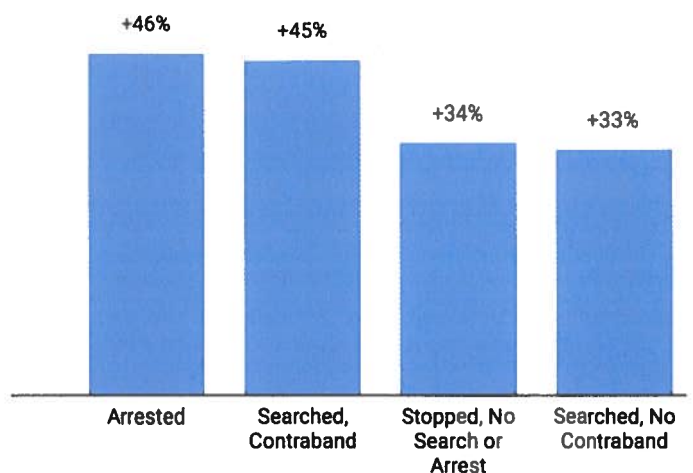
Evaluating Other Forms of Police Discrimination

In addition to search rates, there were other aspects of SDPD's conduct that show evidence of racial discrimination. San Diego police were more likely to use force against black people when making an arrest or conducting a search - whether or not contraband was found. In fact, racial disparities in the use of force *increased* for stops where San Diego police made an arrest and for stops where they found contraband following a search. Police were 46% more likely to use force against black people than white people during an arrest and 45% more likely to use force against black people found with contraband compared to whites found with contraband. This is consistent with [previous research](#) showing that police tend to punish black people more severely for the same suspected offenses (i.e. possessing contraband and/or being suspected of an arrestable offense). A deeper investigation into San Diego police use of force, which confirms these findings using a more extensive database of use of force incidents, is provided in the Use of Force section of this report.

Bias Against People with Disabilities

San Diego police were more likely to use force against Black people

San Diego Police Department were more likely to use force against Black people than White people - whether or not the person was arrested or found with evidence of a crime.



San Diego PD RIPA Stops Data, 7/1/2018-6/30/2019

“SAN DIEGO POLICE WERE MORE LIKELY TO SEARCH AND USE FORCE AGAINST PEOPLE WITH DISABILITIES DURING A STOP, DESPITE BEING LESS LIKELY TO FIND CONTRABAND”

When stops data are examined by disability status, we find that San Diego police were more likely to search and use force against people with disabilities during a stop, despite being less likely to find contraband during these encounters. Moreover, this trend persists across racial groups - white, black, and Latinx people with disabilities were all more likely to be searched than their peers despite being less likely to be found with contraband.

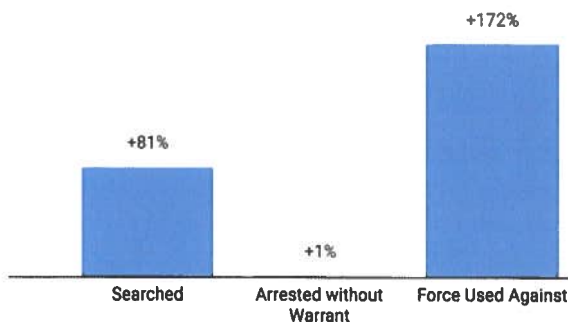
The largest disparities in searches and use of force involve encounters with people perceived to have mental disabilities. Specifically, people perceived to have mental disabilities were 81% more likely to be searched and 172% more likely to experience police use of force than people who were not perceived to have a disability. And while police found contraband 24% of the time when searching people who were not perceived to have disabilities, only 10% of searches of people perceived to have mental disabilities yielded contraband. This suggests San Diego Police Department have been engaged in biased policing towards people with disabilities, especially people perceived to have mental disabilities. And within this group, black and Latinx people perceived to have disabilities were searched at the highest rates (see Appendix C.6).

Bias Against LGBT and Gender Non-Conforming People

4,523 people stopped by San Diego police during this period were perceived by officers to be LGBT and 119 people were perceived to be Gender Non-Conforming. San Diego police were more likely to search, arrest without warrant and use force against people they perceived to be LGBT or Gender Non-Conforming. Police were more likely to search these groups despite being less likely to find contraband as a result - an indicator of police bias. This anti-LGBT bias intersected with racial bias - black and Latinx people who police perceived to be LGBT experienced the highest search rates (see Appendix C.7).

Bias Against People with Mental Disabilities in San Diego PD Stops

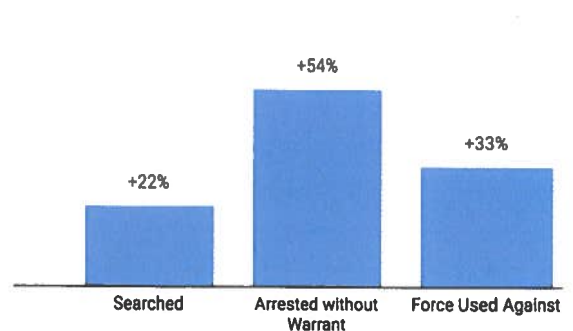
San Diego police were 81% more likely to search people with mental disabilities during a stop and more than twice as likely to use of force against them.



RIPA Stops Data, 7/1/18-6/30/19

Bias Against People Perceived to be LGBT in San Diego PD Stops

San Diego police were 22% more likely to search people they perceived to be LGBT during a stop and more likely to arrest and use force against them.

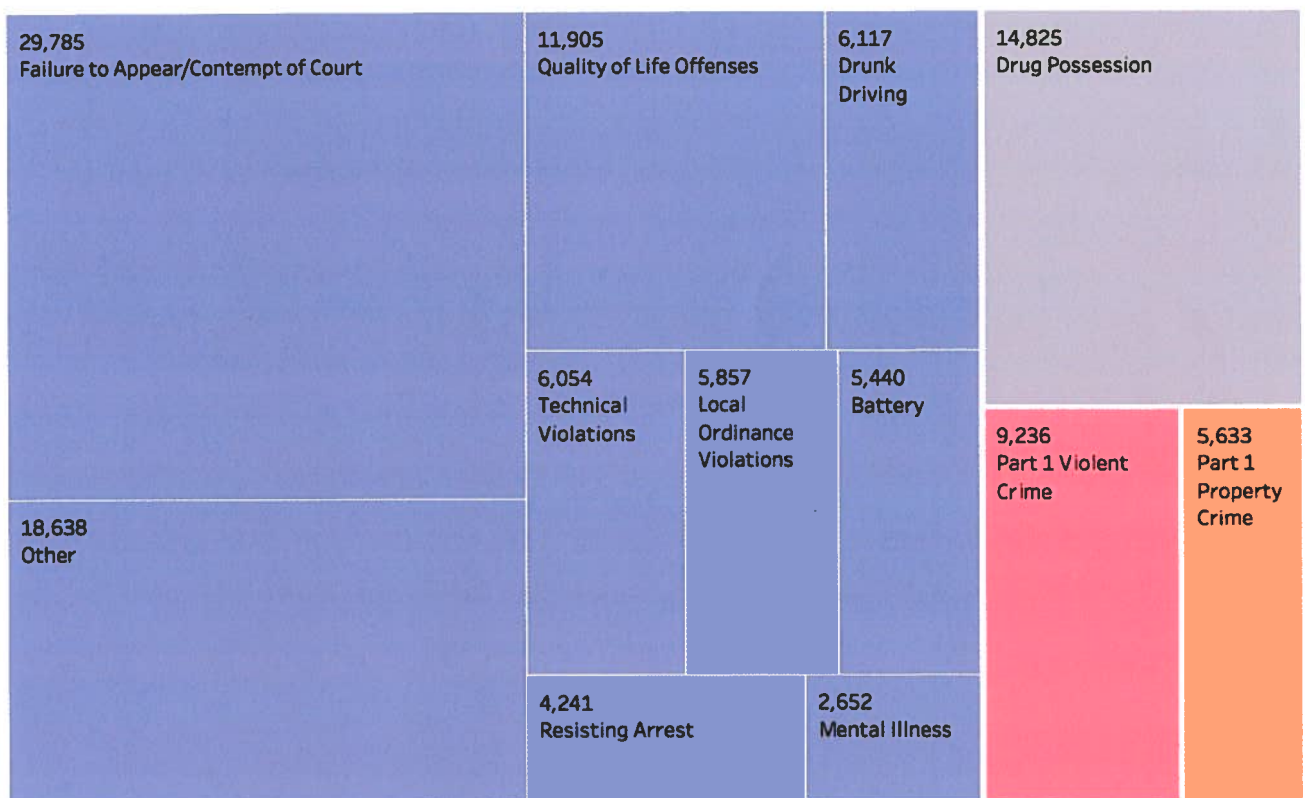


Arrests

We obtained individualized arrests data San Diego Police Department including 88,372 arrests made from 2016-2018, including the demographics of each person arrested and each individual offense or violation they were charged with. 7 in every 10 arrests made by San Diego police during this period were for misdemeanor offenses. Moreover, San Diego police made nearly as many arrests for drug possession alone as they did for all [Part 1](#) Violent and Property Crimes combined. This strategy of predominantly making low-level arrests disproportionately impacts black communities. Black people were 4.2x more likely to be arrested for misdemeanor offenses overall and 4.1x more likely to be arrested for drug possession, despite [research](#) showing black and white people use and sell drugs at similar rates. By contrast, San Diego police arrested Latinx and white people at similar rates in 2016 for drug possession and for misdemeanors overall.

San Diego police reported making 88,372 arrests from 2016-2018, charging people with over 120,000 offenses. Most were low-level offenses.

Source: Data obtained from San Diego Police Department

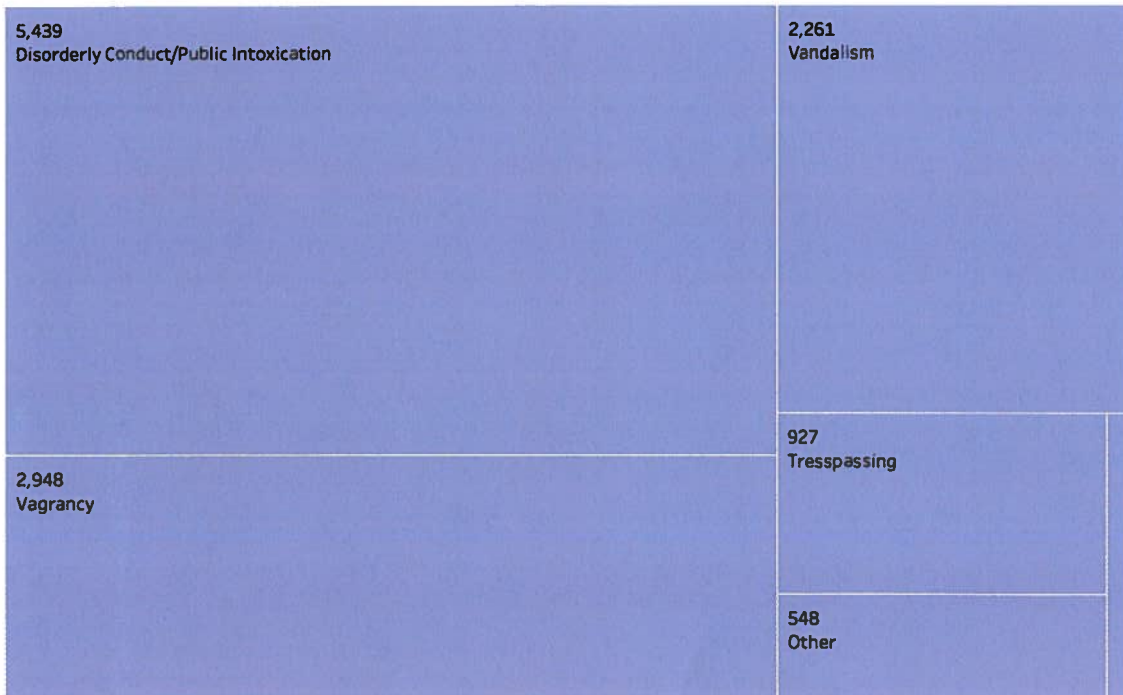


Examination of Arrests for Quality of Life Offenses.

Nearly 12,000 arrests from 2016-2018 were for Quality of Life offenses such as public intoxication, loitering, trespassing and prostitution. Of these, disorderly conduct/public intoxication made up the largest share of arrests. 2,948 people were reportedly arrested for vagrancy - living in a home or structure without consent of the owner - an issue disproportionately impacting homeless populations.

San Diego Police Department Quality of Life Arrests, 2016-2018.

Source: Data obtained from San Diego Police Department



An additional 5,857 arrests were categorized separately as municipal ordinance violations, though many were also consistent with Quality of Life arrests. For example, “encroachment” represented the largest category of arrests for municipal code violations, which has been [cited](#) in previous reporting as a tactic used by San Diego police to target homeless populations. Similarly, the code violations of camping, urinating/defecating in public, open container of alcohol, trespassing, rules to be followed;posting, and posting handbills in park are also consistent with Quality of Life arrests. Together, these categories made up 15,633 arrests - 18% of all San Diego police arrests from 2016-2018.

SDPD Municipal Code Arrests, 2016-2018

Code Section	Violation	Number of Arrests
54.011	Municipal Code: Encroachment	2,525
58.0102(A)	Juvenile Curfew Violation	947
58.05(B)(1)	Daytime Loitering - Compulsory Edu	845
63.0102B1	Posting Handbills in Park	588
63.20.13	Rules to be Followed; Posting	377
58.01	Curfew	234
58.05(B)(2)	Daytime Loitering - Alternative Edu	128
56.54(B)	Open Container of Alcohol	101
58.04	Minor in Possession of Tobacco	74
85.1	Parking Violation	73
52.80.01A	Trespassing on Private Business	67
56.55	Urinating/Defecating in Public	58
63.0102b12	Camping	12

Examining Youth Arrests

San Diego police reported making 8,200 arrests of people under the age of 18 from 2016-2018. These arrests disproportionately impacted black youth, who comprised 19% of all youth arrests despite being only [7%](#) of the population under 18 in the City of San Diego. Arrests of people for “Mental Illness” (i.e. code 5150) comprised a quarter of all youth arrests. Juvenile Curfew and Daytime Loitering - Compulsory/Alternative Education were the next most frequent offenses. Collectively, these offenses were associated with the majority of youth arrests. Moreover, these offenses are utilized almost exclusively to arrest youth. For example, the three most frequent arrest categories for youth each have fewer than 65 total adult arrests. The use of policing and arrest to address situations that overwhelmingly apply to youth should be reconsidered.

San Diego police youth arrests by race, 2016-2018.

Asian / Pacific Islander	6.9%
Black	18.8%
Latinx	47.5%
Other	1.9%
White	25.0%

San Diego police made 8,200 youth arrests from 2016-2018.

Offense categories with 100 or more SDPD arrests of people under the age of 18.

	Under 18	18-29	30+
MENTAL ILLNESS / 5150	2,590	24	39
JUVENILE CURFEW VIOLATION	1,174	7	
DAYTIME LOITERING - EDUCATION	971	2	
POSS MARIJUANA SCHL GRNDS	455	54	88
MOD COURT ORD:COMMIT/PROB	396	66	
BATTERY	257	590	785
POSS MARIJ OVER 28.5 GRAM	200	26	55
DELINQUENCY	186	2	
POSS WEAPON AT SCHOOL	173	2	3
OBSTRUCT/ETC PUB OFCR/ETC	173	1,613	1,973
VANDALISM	169	855	1,063
MINOR POSSESS ALCOHOL	148	18	
THEFT PERSONAL PROPERTY	118	86	146
BENCH WARRANT:FTA:MIS CHG	111	8,263	16,801
ROBBERY	108	232	155
DISORD CONDUCT:UI/DRUG	102	2,091	3,254

Use of Force

San Diego Police Department began collecting detailed, individualized use of force data on September 25, 2016. We conducted an analysis of this dataset, which includes all use of force incidents through December 31, 2018, to determine the extent to which there were racial disparities in the use of force and how these

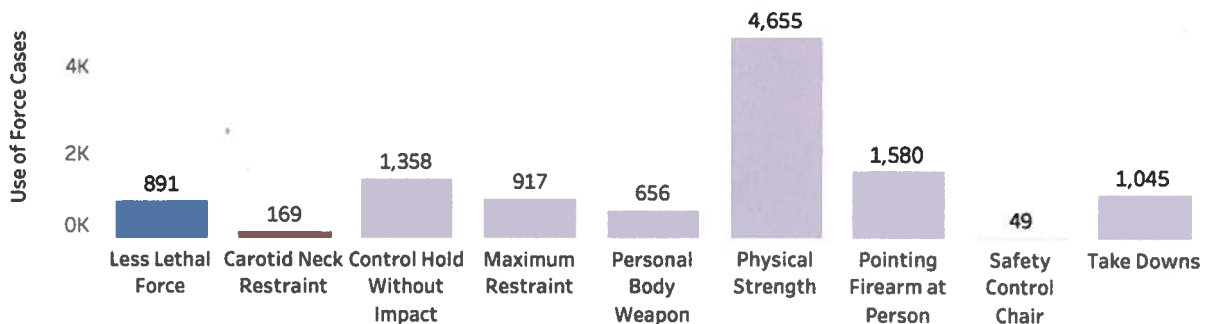
outcomes compared to other police departments in the state. During this period, San Diego police reported 13,553 uses of force⁶ in 8,660 encounters involving 8,280 different civilians.

Use of Force in Comparison to Other Departments

Among various use of force options, weaponless physical force and pointing firearms at civilians were the most frequent types of force reportedly used against civilians by San Diego police. To compare use of force by San Diego police with other agencies within the state, we developed a “use of force” index that includes the types of force that are most commonly reported across police agencies. This includes police use of batons, tasers, chemical agents, bean bag shotguns and potentially deadly tactics such as strangleholds against civilians. Collectively, the types of force in our use of force index include the most serious use of force incidents that do not involve the use of a firearm. There were 1,060 cases involving these types of force in 2017-2018 and 59,152 arrests reported by San Diego police during this period - a use of force index rate of 179.2 cases per 10,000 arrests.⁷

San Diego Police Use of Force Cases, 2017-2018

Source: Records obtained from San Diego Police Department



We obtained data on the number of uses of each of these types of force from 42 of the 100 largest California police departments via public records requests. Since SDPD’s use of force dataset begins in late 2016, we compared SDPD use of force outcomes from 2017-2018 to the number of these types of force used by the other agencies in California during this period and benchmarked use of force rates using 2017-2018 arrests data from the [FBI Uniform Crime Report](#). The data show that San Diego police used these types of force at a higher rate than 95% of the police departments in our analysis. San Diego police used strangleholds and weapons other than firearms against people at a rate 14% higher per arrest than San Jose police, 98% higher

⁶ There can be more than one use of force in a single encounter with a civilian.

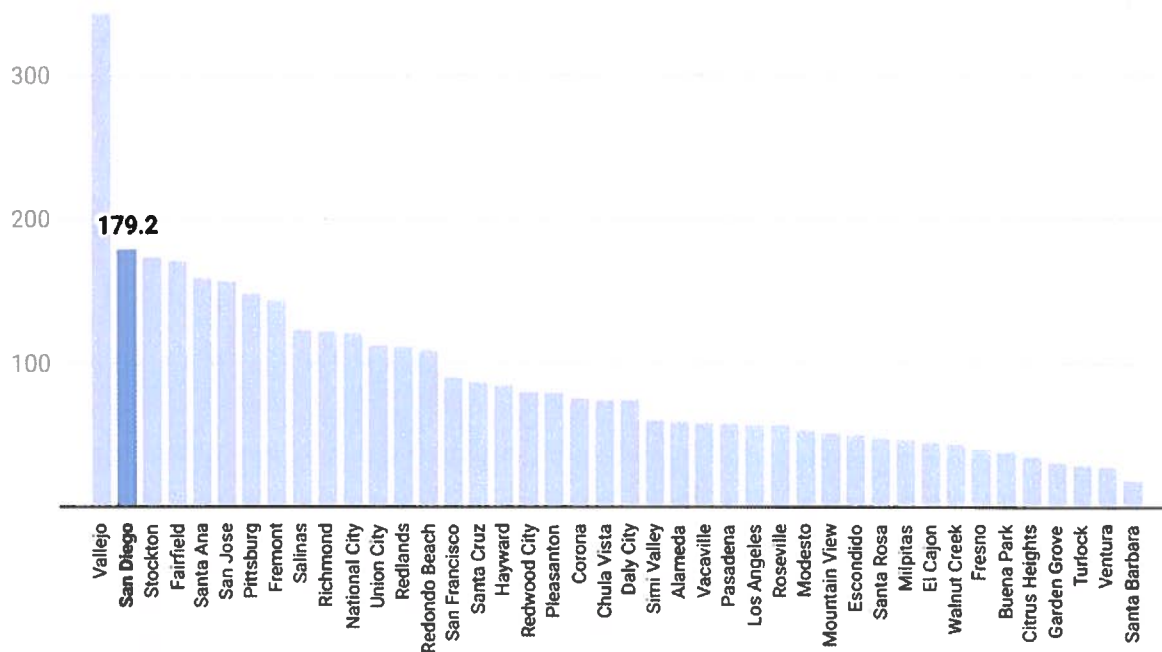
⁷ Using the number of unique cases involving the use of force yields a more conservative estimate of use of force rates consistent with the way use of force is reported in reports obtained from other large agencies such as LAPD and San Jose PD. For reference, we’ve included tables in Appendix C showing the use of force outcomes on both case and report levels. Use of force rates were benchmarked using arrest rates from the Monthly Arrests and Citations Register database.

than San Francisco police, 211% higher than Los Angeles police, and 341% higher than Fresno police (see Appendix C.10 for use of force calculations for all agencies).

SAN DIEGO POLICE USED FORCE AGAINST PEOPLE AT A HIGHER RATE THAN 95% OF THE 42 CALIFORNIA POLICE DEPARTMENTS THAT PROVIDED US USE OF FORCE DATA.

San Diego Police Department uses Force at Higher Rates than Most CA Police Departments

Use of Force Index Incidents per 10,000 Arrests, 2017-2018



The Use of Force Index includes all uses of tasers, batons and other impact weapons, projectiles, neck restraints and chemical agents reported by Agencies. Data obtained from Agencies via Public Records requests.

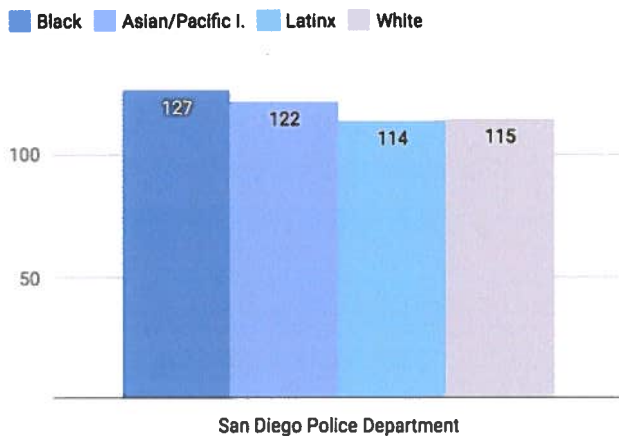
Source: Data obtained from Agencies via public records request. • Created with Datawrapper

Racial Disparities in Police Use of Force

To examine racial disparities in all use of force cases (both force involving weapons and weaponless force), we used the full SDPD use of force database spanning 9/25/2016 - 12/31/2018. We benchmarked these data by the total number of arrests made, by race, during this period. The data show that black people are 10% more likely to have San Diego police use force against them compared to white people, after controlling for arrests. Asian / Pacific Islanders were 6% more likely to have force used against them, though this was not statistically significant. By contrast, there were similar use of force rates per arrest between Latinx and white people. While there were racial disparities in the likelihood of experiencing *some form of police use of force once a person is being arrested*, the likelihood of being arrested in the first place varied substantially by race. Black people, in particular, had substantially higher arrest rates *and* more exposure to police use of force during arrest - resulting in a 5x higher use of force rate per resident than white people (see Appendix C.11).

San Diego Police Use of Force by Race

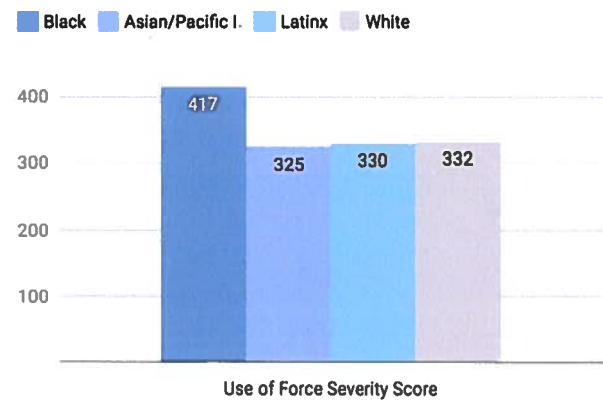
Use of Force Cases per 1,000 Arrests



Source: 9/25/2016-12/31/2018 Use of Force and Arrests Data from SDPD.

San Diego Police Use of Force Severity Score by Race

San Diego police used higher levels of force against Black people during Use of Force Incidents



Severity Score Displayed per 1,000 Arrests

Source: 9/25/2016-12/31/2018 Use of Force and Arrests Data from SDPD.

Evaluating Use of Force Severity

Overall use of force rates can mask differences in the types and severity of force that police use against different groups during use of force incidents. We calculated a weighted severity score to determine the severity of force used against each racial group by San Diego police. Using a methodology [developed](#) by the Center for Policing Equity, we assigned more severe forms of force a higher score while less severe forms of force received a lower score. This methodology assigns the following weights to each type of force:⁸

- Police shootings were assigned a weight of 6.

⁸ Incidents involving safety control chairs, maximum restraints and pointing a firearm were excluded from the force severity analysis consistent with the methodology used in the CPE report. For reference, we included the scores with all SDPD force types included in Appendix C, whereby pointing a firearm, safety control chairs and maximum restraints were assigned a score of 2 consistent with other weapon incidents.

- Beanbag Shotguns, Strangleholds and Taser Incidents were assigned a weight of 5.
- Canine incidents were assigned a weight of 4.⁹
- OC spray incidents were assigned a weight of 3.
- All other weapon incidents were assigned a weight of 2.
- Hands and body incidents were assigned a weight of 1.

The results reveal that San Diego police are not only more likely to use force against black people overall, but also use more severe forms of force on average during these encounters. Generally, San Diego police used force 25% more severe per arrest when encountering a black person compared to a white person. After controlling for the subject's level of resistance, black people were still more likely to have a more severe level of force used against them for all levels of resistance except for the most extreme (life-threatening resistance) - which represented only 1% of use of force incidents (See Appendix C.12).

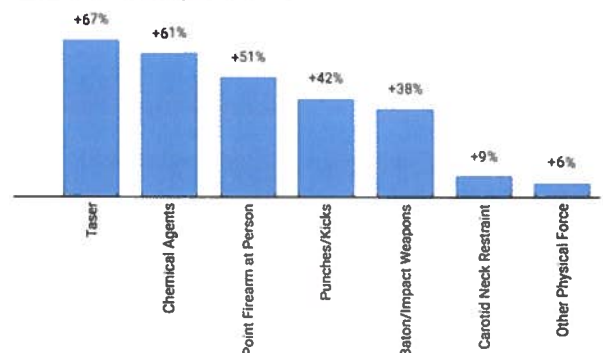
“THE RESULTS REVEAL THAT SAN DIEGO POLICE ARE NOT ONLY MORE LIKELY TO USE FORCE AGAINST BLACK PEOPLE OVERALL, BUT ALSO MORE SEVERE FORMS OF FORCE ON AVERAGE DURING THESE ENCOUNTERS.”

Types of Force Used

Among the various force options available to San Diego police, physical force¹⁰ and pointing a firearm at a civilian were used most frequently. After controlling for arrest rates, San Diego police were more likely to use most of these force types on black people, including the use of physical force, pointing firearms, pepper spray, tasers and impact weapons. Police were also more likely to point a firearm at Latinx people than white people, though Latinx people were not more likely to experience other forms of police use of

San Diego police were more likely to use weapons and other types of force against Black People

Likelihood of using type of force against Black people compared to White people, after controlling for arrest rates.



San Diego PD Use of Force and Arrests Data, 9/25/2016 - 12/31/2018

⁹ SDPD did not report any canine incidents in its use of force database during the 2016-2018 period.

¹⁰ Physical force includes weaponless force such as “physical strength,” take downs, control holds, punches and kicks.

force. Only the use of restraints and safety control chairs were more likely to be used on white people, types of force that tend to be used in the context of mental or emotional health crises.

Use of Deadly Force

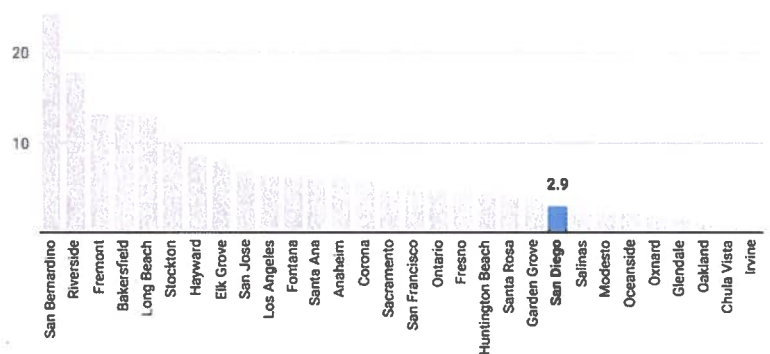
San Diego Police Department reported 26 deadly force incidents to California Department of Justice’s URSUS database from 2016-2018, including - 19 police shootings and 7 other force incidents causing death or serious injury. Altogether, 10 people died and 9 were seriously injured in these incidents.¹¹ San Diego police made 88,372 arrests during this period, resulting in a deadly force rate of 2.9 incidents per 10,000 arrests. As such, San Diego police used deadly force at a rate slightly below the statewide average - using it *more than 37% of*

California’s 100 largest municipal departments from 2016 through 2018. Nevertheless, we identified several issues in these cases that suggest further changes to department policies and procedures could significantly reduce the use of deadly force in the future:

- In at least 8 of the 26 incidents (31%), the person was unarmed. By contrast, there were 7 incidents (27%) where the person was reportedly armed with a gun.
- At least 8 of 26 incidents (31%) involved people who had mental health issues or who were under the influence of drugs/alcohol at the time of the encounter. Six of these people reportedly had signs of mental illness and the other two reportedly were under the influence of drugs/alcohol at the time.
- 4 of the 19 police shootings (21%) involved San Diego police shooting at someone who was in a moving vehicle and not presenting any threat to officers or the public other than the vehicle.
- In 16 of the 19 police shootings (84%), San Diego police officers shot at the subject *without first attempting to use non-lethal force to resolve the situation.* This suggests a need for stronger deadly force policies and better enforcement of these standards to emphasize alternatives to deadly force whenever possible.

San Diego Police Department uses Deadly Force at Lower Rates than Most CA Departments

Deadly Force Incidents per 10,000 Arrests for the 30 largest CA Police Depts, 2016-2018



Analysis includes the Police Departments for the 30 largest CA cities. Deadly force incidents include all firearms discharges and other force causing death or serious injury. Data obtained via CA DOJ URSUS database.

¹¹ In one of these cases, a man died after being shot by police multiple times and then shooting himself.

Police Accountability

When civilians come forward to report police misconduct, it rarely led to accountability in San Diego. Of 226 reported civilian complaints in 2016 and 2017, only 11% were ruled in favor of civilians.¹³ Moreover, complaints alleging the most serious misconduct were never sustained. For example, of 21 civilian complaints of police discrimination, 75 use of force complaints and 2 complaints alleging criminal misconduct, none of these complaints were sustained. Moreover, due to restrictions in state law preventing accessing police officer personnel files, most of the officers involved in these incidents remain undisclosed to the public and we cannot determine what discipline, if any, they received.

Due to the recent passage of California [Senate Bill 1421](#), records of police deadly force as well as sustained allegations of sexual assault and official dishonesty are now considered public record. However, the vast majority of complaints made against SDPD during this period are not included within the scope of that legislation and San Diego Police Department still has yet to release many of the records that are eligible for disclosure. For example, records of at least 8 of the 19 police shootings from 2016-2018 have [not yet been released](#) as of 11/20/2019. Among the records that have been released, the same officer - Richard Butera - is named in three different police shootings, suggesting a serious lack of accountability for police deadly force within the San Diego Police Department.

¹³ While we [requested](#) complaints data for 2018, San Diego Police Department indicated they had "no responsive records" on this subject.

Policy Review and Recommendations for San Diego Police Department

A review of San Diego police department's policy manual, procedures and police union contract identified a number of areas where new policies could contribute towards addressing the outcomes described in this report.

1. Expand Alternatives to Arrest for Low-Level Offenses

Our review of San Diego police arrest data identified a number of low-level offenses that could be decriminalized entirely or deprioritized for enforcement. These offenses tended to involve drug possession, status offenses, and quality of life offenses that posed no threat to the public or property. Instead of a policing-based response to these activities, alternative responses should be developed or expanded that send substance abuse counselors, mental health professionals and other civilian responders to the scene instead of armed police officers. In these cases, subjects should not be arrested or incarcerated but rather provided with community-based services and supports. For example, the [CAHOOTS program](#) in Eugene, OR deploys mental health providers instead of police officers to calls involving a suspected mental health crisis - responding to nearly 1 in 5 calls for service citywide. Similarly, the Los Angeles County Sheriff's Department's Mental Health Evaluation Teams have been credited with [preventing](#) as many as 671 use of force incidents and 4 police shootings in 2018 and 2019.

2. Implement More Restrictive Use of Force Policies

San Diego police policy manual and [use of force procedures](#) lacked a number of restrictions on the use force that have effectively reduced the force in other jurisdictions.

A. Require Officers to Use De-Escalation

Unlike [43 of the nation's 100 largest departments](#), San Diego police department policies do not explicitly require officers to use de-escalation when possible prior to using force. Instead, the policy states that de-escalation or disengagement "may" be used in some circumstances and cautions officers that this tactic "may not be possible" in some situations.

*"Disengagement or de-escalation is a tactic that an officer **may** employ in an attempt to resolve the situation. If an officer does not have adequate recourses to safely control a situation, or if disengagement or deescalation would assist in resolving a situation with a lower force level, an officer **may** disengage from the incident or de-escalate the force option. Disengagement or de-escalation **may** require an officer to move to a tactically sound position and wait for additional resources. Disengagement or deescalation **may not be possible.**"*

De-escalation requirements have been shown to significantly reduce the use of deadly force. San Diego police department should revise their use of force procedure to clarify that the use of de-escalation is a requirement for all officers whenever possible rather than the use of force.

B. Ban Shooting at Moving Vehicles

San Diego police department's use of force procedure allows officers to shoot at moving vehicles even if the vehicle is considered the only threat:

"H.6. Officers shall not discharge a firearm at an occupant of a vehicle unless:

- a. The officer has probable cause to believe that the subject or the vehicle poses an immediate threat of death or serious physical harm to the officer and there is no reasonable alternative for the officer to avoid the harm; or,*
- b. The officer has probable cause to believe that the subject or the vehicle poses an immediate threat of death or serious physical harm to other persons."*

This policy is inconsistent with the recommendations of the US Department of Justice and law enforcement groups such as the Police Executive Research Forum, which have recommended that police departments ban shooting at moving vehicles unless an occupant of the vehicle is using deadly force by means other than the vehicle (for example, shooting at someone from the vehicle). If such a policy was implemented in San Diego, it would likely have restricted officers from shooting at vehicles in 21% of San Diego police shootings from 2016-2018.

C. Ban the use of Carotid Restraints / Strangleholds

San Diego's use of force procedure allows officers to use Carotid Restraint Holds (a form of stranglehold) against civilians in situations where deadly force would not be authorized:

"IV. I. Greater Controlling Force – The force needed to control a subject who engages in Active Resistance. This level of force may involve the use of techniques such as takedowns, distractions techniques, chemical agents and the carotid restraint."

From 9/25/2016 - 12/31/2018, San Diego police used this dangerous tactic on 208 people. Only 6 of these cases (3%) reportedly involved a "life-threatening" level of resistance from the subject, while 153 cases (74%) involved someone who was reportedly "passively" or "actively" resisting. In departments such as San Jose, Los Angeles, San Francisco, Berkeley and Corona, the use of Carotid Restraints and Chokeholds are banned or limited to deadly force situations. By banning the use of Carotid Restraints, San Diego police can reduce the risk of injury or death to civilians.

3. Address Anti-Black Bias in Policing Outcomes

Our findings indicate that black people, in particular, had both high arrest rates *and* high exposure to police use of force as a population - experiencing 5x higher use of force rate per resident. As such, policymakers should consider measures designed to both reduce the overall number of black people arrested by San Diego police

as well as measures to address anti-black bias in police use of force during the process of arrest. At the assignment level, the Gang Unit, Narcotics, and Task Force officers stopped black people at higher rates than officers working other assignments. Policymakers and police leadership should re-examine the utility of continuing to assign officers to these units given their racially disparate impact. Moreover, given the new RIPA data collection requirements, the San Diego Police Department should already have all the data needed to identify which officers, specifically, exhibit a pattern of anti-black bias in stops, searches, arrests and use of force. This information should be used to hold these officers accountable and protect black communities from discriminatory policing.

4. Ban Consent Searches and Stops for Equipment Violations

When San Diego police officers had more discretion - during “consensual” encounters or stops for routine traffic violations - they tended to use this discretion to search black and Latinx individuals at higher rates despite being less likely to find contraband during these searches. Racial disparities were particularly high for traffic stops for equipment violations, suggesting San Diego police may be conducting these stops as a pretext to investigate black and Latinx drivers. As a strategy to protect residents - especially black and brown residents - from intrusive and unnecessary police contact, SDPD officers should be required to have probable cause to initiate a search and stops for equipment violations should be banned.

5. Remove Language in the San Diego Police Union Contract to Strengthen Investigations and Accountability

A review of San Diego’s police union contract identified contract language that imposes unfair and unnecessary limits on the department’s ability to investigate and adjudicate allegations of officer misconduct. For example, Section 41.D.1 imposes a 3 business day delay in interrogations of officers - a period that can only be reduced on a case-by-case basis by the Assistant Chief:

“Any officer or officers under investigation will receive at least three (3) working days notice prior to an interrogation except where a delay will hamper the gathering of evidence as determined by an Assistant Chief.”

Policing experts such as Professor Samuel Walker have [cited](#) provisions imposing delays in interrogating officers as “unreasonable” and inconsistent with “best-practices” including those articulated in DOJ consent decrees. Such language should be removed from the contract and replaced with a practice of interrogating officers as soon as possible following a misconduct incident/receipt of a misconduct allegation. For example, Washington D.C.’s police union Section 13.3 states that:

“Where an employee can reasonably expect discipline to result from an investigatory interview, or the employee is the target of an administrative investigation conducted by the Employer, at the request of

*the employee, questioning shall be delayed for **no longer than two hours** in order to give the employee an opportunity to consult with a Union representative.”*

6. Strengthen Community Oversight to Ensure Accountability

Low sustain rates for SDPD complaints, especially complaints alleging use of force violations, suggest changes to existing investigatory and oversight structures are warranted. For example, the current San Diego’s Community Review Board on Police Practices has the power to review internal affairs investigations but cannot independently investigate complaints of misconduct or subpoena witnesses. This board should be replaced with an independent community structure that has the power to conduct independent investigations, subpoena witnesses and documents, and impose discipline as a result of their findings. For example, San Francisco’s Department of Police Accountability has many of these powers and, in combination with the city’s police commission, gives civilians the power to impose discipline on officers in cases where the police department fails to do so.

7. Improve Data Transparency, Reporting and Compliance with the Racial Identity Profiling Act

A. Address Inconsistencies in the Use of Force Data Reported by San Diego Police Department:

There were notable inconsistencies between the use of force and arrests databases provided by San Diego Police Department and the data that SDPD reported to the RIPA program. During the period where these two databases overlap, from 7/1/18 - 12/31/18, there were 1,554 uses of force reported to the RIPA program¹ and 2,476 uses of force reported in San Diego Police Department’s use of force database. A few categories of force were required to be reported by SDPD that were not required by RIPA - for example the use of safety control chairs and maximum restraints. However, inconsistencies remained even among those types of force that were reported to both databases. Based on the number of cases in the department’s use of force database, use of force involving police pointing a firearm at people, using batons, chemical spray, or other forms of physical or vehicle contact² were under-reported to the RIPA program during this period.³ Additionally, while 13 canine incidents were reported to RIPA, they *weren’t* included within the department’s use of force database, indicating the

¹ There was also 1 firearms discharge which was reported to RIPA that did not show up in the SDPD use of force database because this information was stored in a separate database. This is excluded from the chart because it was reported and provided by SDPD separately.

² Consistent with RIPA guidelines, we used cases involving carotid restraints, control holds without impact weapons, take downs, personal body weapons and physical strength to compare to the number of “Physical or Vehicle contact” incidents. This is a conservative estimate since vehicle contacts are not included in the SDSA use of force database, but are included in this RIPA category. We also included batons, hard impact weapons and control hold with impact weapons to compare to the RIPA force reporting category of “Batons and Other Impact Weapons.”

³ For this analysis, we used the number of use of force cases reported in SDPD’s use of force database rather than the number of *instances* where force was used. This obtains a more conservative estimate, consistent with how force is reported to RIPA, that counts multiple uses of the same type of force against someone as one use of force. Still, there remained more cases in the SDPD use of force database than were reported to RIPA.

department's internal databases should be strengthened to incorporate data that is inclusive of all use of force types.

San Diego police reported different use of force totals to RIPA than are included in their use of force database

Total use of force cases reported in San Diego Police Department's use of force database compared to the number of cases SDPD reported to RIPA during the 7/1/18 - 12/31/18 period

SDPD Action	RIPA Database	Use of Force Database	Percent Reported to RIPA
Baton or other impact weapon used	11	34	32%
Chemical spray used	97	136	71%
Electronic control device used	48	87	55%
Firearm pointed at person	323	432	75%
Impact projectile discharged or used	11	8	138%
Physical or Vehicle contact	1,051	1,483	71%
Canine bit or held person	13	0	Not Reported
Safety Control Chair	0	20	Not Reported
Maximum Restraint	0	276	Not Reported

B. Improve Police Data Transparency in California: We conducted our analysis based on the data reported by California's RIPA, URSUS and CCOPA programs combined with data we were able to obtain from agencies via public records requests. Despite this, there remain aspects of policing that we could not obtain data on due to a combination of unwillingness by CA Department of Justice to provide data and existing limitations on police data imposed by state law. For example, we could not obtain detailed arrests data from the Monthly Arrests and Citation Register that was more recent than 2016 because the state's [OpenJustice database](#) does not provide this information at the agency-level. Instead, the OpenJustice database aggregates data at the county-level, making it difficult to determine how many arrests a single agency within a county made or how many of those arrests were felony, misdemeanor or status offenses. While we requested this data repeatedly from the CA Department of Justice, they did not provide it.

Additionally, the state's RIPA regulations should be revised to permit more comprehensive analyses of policing practices. For example, RIPA's regulations [don't require agencies to specify](#) whether a stop is a vehicle or pedestrian stop. Instead, departments indicate a "primary reason for stop" that can include either "traffic violation" or categories such as "reasonable suspicion." As such, both vehicle and pedestrian stops based on "reasonable suspicion" are grouped together, making it difficult to understand how officers may be approaching different types of stops. Additionally, RIPA's regulations

currently prevent the public from accessing data showing the ID numbers of the officers making each stop. **If we had such information, we could've evaluated which officers make the most stops - and which officers were engaging in a pattern of biased policing practices.** Despite the passage of SB 1421, which made it possible to obtain records of police misconduct in limited set of cases (for example, cases involving deadly force, sustained complaints of sexual assault and official dishonesty), further legislation is needed to allow the public to access the full range of data needed to effectively track, predict and prevent police misconduct. For example, [recent research](#) has shown that data identifying all the officers named in misconduct complaints (whether or not the complaints were sustained) in addition to all use of force incidents (whether or not the incidents involve deadly force) can be used to track the spread of misconduct through a police department over time and even predict which officers will likely commit misconduct in the future. California should make this information public, as has been done in many states already, so that it can be used to design targeted interventions at the officer level in order to protect communities from harm.

Our analysis was also limited by the quality of data provided by San Diego Police Department. The department only began collecting individualized use of force data on 9/25/2016, limiting the time period of our use of force analysis. Moreover, the information they provided had important data missing. For example, the `Weapon_Type` column was completely blank. Instead, it appears some or all of this information was placed within the `UoF_Resist_Type` column along with the Levels of Resistance reportedly posed by civilians who force was used against. As such, it's unclear whether NULL values in this column referred to the person's weapon type (meaning they were unarmed) or their resistance level (meaning they posed no resistance) or both. Only 436 cases in this column denoted a person who was "confirmed" to be armed with a weapon or other object, which either means 95% of all SDPD use of force cases involve unarmed people or this information is incomplete/missing from their database. As such, San Diego Police Department should improve the quality of their use of force database by providing complete data on weapon type within the `Weapon_Type` column to permit analyses of how the department uses force against people who are armed or unarmed.

Part 2: Analysis of San Diego Sheriff's Department

Analysis of San Diego Sheriff's Department RIPA Stops Data

Using RIPA stops data obtained from San Diego Sheriff's Department, we examined disparities in the conduct of 71,886 police stops from 7/1/2018 - 7/31/2019.¹⁷ More than 14,585 police searches, 8,710 arrests and 780 use of force incidents were reported during this 13-month period. Our analysis finds strong evidence of discriminatory policing within the San Diego Sheriff's Department. Black people were more likely to be stopped, searched, arrested and to have force used against them by San Diego sheriff's deputies. People with disabilities were also more likely to be searched, arrested and to have force used against them. Moreover, racial disparities in police searches and use of force remained even after controlling for arrest rates and contraband rates.

Types and Locations of SDSA Stops

San Diego Sheriff's deputies reported traffic violations as the primary reason for making two-thirds of all stops during this period, while 26% of stops were reportedly made for reasonable suspicion and 4% were "consensual encounters."

"BLACK PEOPLE WERE MORE LIKELY TO BE STOPPED, SEARCHED, ARRESTED, AND TO HAVE FORCE USED AGAINST THEM BY SAN DIEGO SHERIFF'S DEPUTIES."

64% of SDSA stops were made in 9 areas: Del Mar, Santee, Encinitas, Solana Beach, Imperial Beach, Poway, Lemon Grove, Vista and San Marcos. Another 23% occurred in Unincorporated San Diego County and the remaining 13% occurred in cities where another law enforcement agency has primary jurisdiction.¹⁸ Deputies in

¹⁷ For this analysis, we used all of the SDSA stops data made available to date under RIPA - which includes data from July 1, 2018 - July 31, 2019.

¹⁸ 66% of stops in places where another agency had primary jurisdiction were in San Diego City and El Cajon City.

Del Mar, Santee and Encinitas stopped people at the highest rates; while unincorporated San Diego County had the lowest stop rate.

Racial Disparities in Sheriff's Department Stops

Since most SDSD stops were traffic-related, overall stop rates may reflect levels of traffic flowing through a given area rather than how police are interacting with the residents living there. To better evaluate how SDSD interacts with residents living in each area, we examined pedestrian stop rates in each area. Results show SDSD is more likely to make

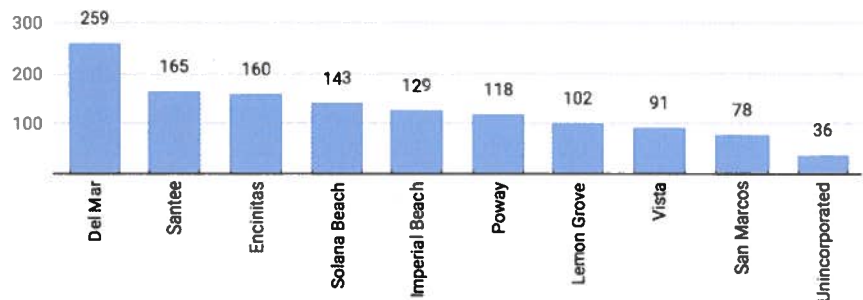
non-traffic related stops in black and brown areas. The two communities with the highest proportion of residents of color - Lemon Grove and Imperial Beach - had the highest rates of non-traffic related stops. Moreover, **black people were stopped at higher rates than whites in every area of the San Diego Sheriff's jurisdiction.**¹⁹

Among racial groups, **black people were stopped by San Diego Sheriff's Department at the highest rates overall (including both traffic and pedestrian stops) compared to their population within SDSD's primary jurisdiction.**²⁰ Black people were 130% more likely than white people to be stopped overall and 199% more likely to be stopped for reasons other than a traffic-violation.

These disparities were produced by deputy-initiated actions, rather than responses to 911 calls from communities. **9 in every 10 stops, across all racial groups, were initiated by officers rather than initiated in response to calls for service.**

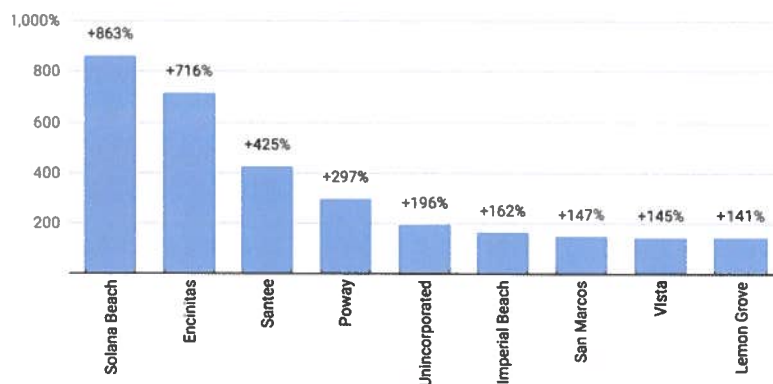
San Diego Sheriff's Department Stop Rates by City.

Rates per 1,000 Population.



SDSD Stopped Black People at Higher Rates in Every Area

Likelihood of a black person being stopped by police, relative to white people.



¹⁹ Del Mar's black population was too small to evaluate stop rates conclusively.

²⁰ Population data obtained via [SANDAG 2016 Demographic Report \(page 9 of that report\)](#). SDSD primary jurisdiction includes Del Mar, Imperial Beach, Poway, Santee, Encinitas, Solana Beach, Lemon Grove, Vista, San Marcos and Unincorporated San Diego County.

Sheriff's Deputy Conduct during Stops

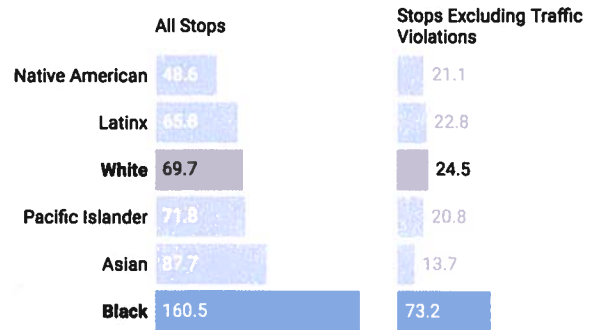
Once stopped, black and brown people were more likely to be searched, arrested and to have force used against them. Black people were 130% more likely to be stopped and 21% more likely to be searched, 18% more likely to be arrested without a warrant and 47% more likely to have force used against them during these stops.²¹

Latinx people were also more likely than white people to have property seized²² or have force used against them by San Diego sheriff's deputies during a stop.²³ Racial disparities remained after controlling for arrests - black and Latinx people were more likely to have force used against them than whites whether or not they were arrested during a stop.

Similarly, deputies were more likely to use force against black and Latinx people whether or not they found contraband/evidence of a crime (see Appendix F.2). To conduct a deeper investigation of racial disparities in use of force, we obtained a more extensive database of SDSA use of force from 2016-2018. The results of that analysis provide further evidence of racial disparities within SDSA use of force, even after controlling for crime/arrest rates, and are presented in the Use of Force section of this report.

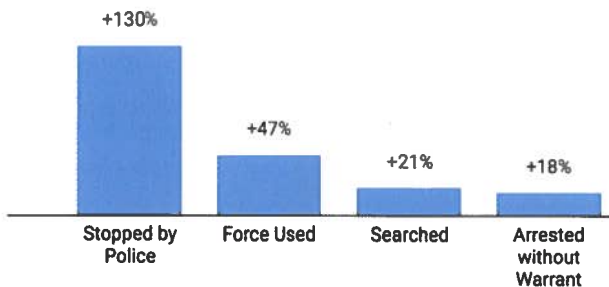
San Diego Sheriff's Dept Stop Rates

Stops per 1,000 Population in areas where San Diego Sheriff's Dept has primary jurisdiction.



Anti-Black Bias in San Diego SD Stops

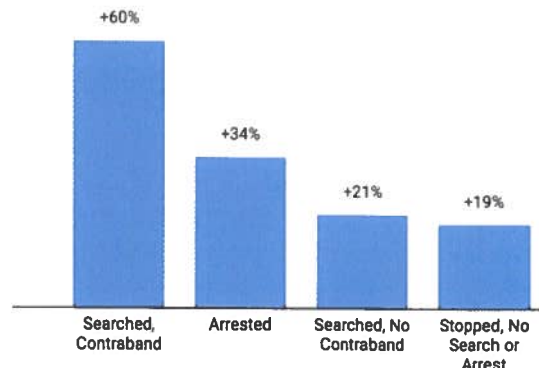
San Diego Sheriff's deputies stopped black people at 130% higher rate per population than white people. Once stopped, black people were more likely to be searched, arrested, and to have force used against them.



RIPA Stops Data, 7/1/18-7/31/19

San Diego Sheriff's deputies were more likely to use force against Black people

San Diego Sheriff's Department were more likely to use force against Black people than White people - whether or not the person was arrested or found with evidence of a crime.



RIPA Stops Data, 7/1/2018-7/31/2019

²¹ Use of Force included all stops coded as involving the use of impact weapons, electronic control devices, chemical spray, "other physical or vehicle contact", canine bites, firearms discharges and cases where a firearm was pointed at a civilian.

²² Property Seized included all stops coded as "Property Seized" or "Vehicle Impounded"

²³ Native Americans also experienced high rates of searches, arrests and use of force, though the sample size was not large enough to draw strong conclusions.

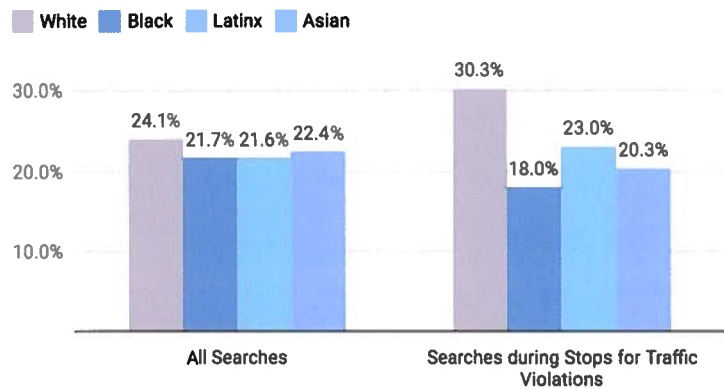
Evaluating Contraband "Hit Rates" and Racial Bias in SDDS Searches

In 77% of all searches by San Diego deputies, no contraband was found. And while San Diego Sheriff's Department searches people of color at higher rates, they are even less likely to find contraband during these searches. This suggests deputies may be engaging in biased policing practices. Moreover, two-thirds of all contraband found was either drugs or drug paraphernalia. By contrast, only 0.7% of searches found a gun. This suggests SDDS is over-searching people in general, with little to no public safety benefit, while engaging in biased policing towards communities of color in particular.

Evaluating Pretext Stops and Consent Searches

Racial disparities were also present in the use of "consent searches" - searches where officers report asking and receiving consent from the person being searched as the only reported basis for making the search. San Diego deputies made 2,553 consent searches from 7/1/2018 - 7/31/2019 - representing nearly 1 in 5 searches conducted. These searches were conducted disproportionately on black and brown residents - deputies were 7% more likely to conduct a consent search on a Latinx person, 13% more likely to perform a consent search on a black person or Pacific Islander, and 42% more likely to perform a consent search on a Native American person than a white person during a stop.²⁴

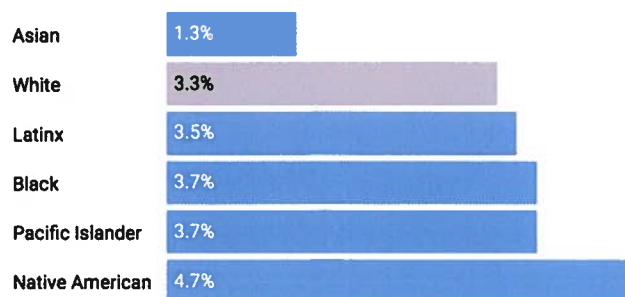
SDDS searches were less likely to find contraband on people of color, especially during traffic stops



San Diego Sheriff's Dept RIPA Stops Data, 7/1/2018-7/31/2019

SDDS Consent Searches per Stop

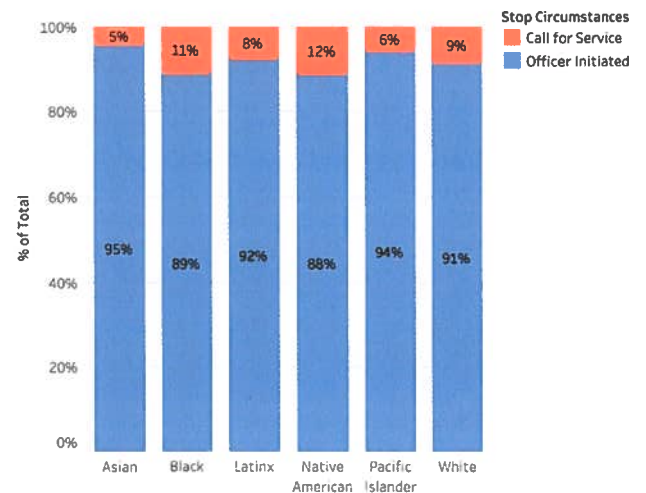
San Diego Sheriff's deputies were more likely to perform consent searches on Black and Latinx people during a stop.



²⁴ Searches where the only reported basis for the search was "consent given" were coded as Higher Discretion, while searches where the reported basis was "incident to arrest", pursuant to warrant and/or "vehicle inventory for search of property" were coded as Lower Discretion.

Deputies appeared to be engaged in biased practices regarding pretext stops. Pretext stops are when police stop someone for a minor infraction (i.e. traffic violation) as means to conduct a search and investigate unrelated issues. San Diego deputies ended up searching 2,629 people who were reportedly stopped for traffic violations. While black and Latinx people were more likely to be searched during these stops, they were substantially less likely to be found with contraband - a larger racial disparity in contraband rates than was found for other types of searches. This suggests the presence of racially biased decision-making by San Diego deputies conducting traffic-violation stops in particular.

San Diego Sheriff's Department reported Stop Reason by Race



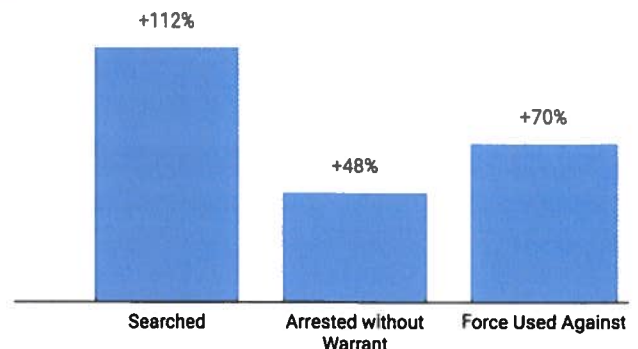
Bias Against People with Disabilities

In addition to evidence of racial bias in San Diego Sheriff's Department's stops outcomes, there's also evidence of bias against people with disabilities. Deputies reported stopping 2,489 people they perceived to have a disability. Perceived mental disabilities comprised 75% of these stops, 18% were reported as "other" or "more than one disability", and the remaining 7% were people perceived to have a physical disability such as blindness or deafness.

Once stopped, people perceived to have physical or other disabilities (not including mental disabilities) were 35% more likely to be searched, 17% more likely to be arrested without a warrant, and 51% more likely to experience police use of force during a stop. People perceived to have mental disabilities faced even more severe disparities - being searched 112% more often, arrested without warrant 48% more often and subjected to police use of force 70% more often than those who were not perceived to have a disability.

Bias Against People with Mental Disabilities in San Diego SD Stops

San Diego Sheriff's deputies were 112% more likely to search people with mental disabilities during a stop and more likely to arrest or use of force against them.



RIPA Stops Date, 7/1/18-7/31/19

These disparities intersect with racial disparities - black and Latinx people with disabilities were searched at the highest rates (see Appendix F.5). And while people with disabilities were more likely to be searched by San Diego sheriff's deputies, deputies conducting these

searches were 47% less likely to find contraband than searches of people with no perceived disability. **This suggests a pattern of biased policing by SDSD of people with disabilities - especially those perceived to have mental disabilities.**

San Diego sheriff's deputies were more likely to search, arrest without warrant, and use force against People with Disabilities.

Data from 7/1/18 - 7/31/19

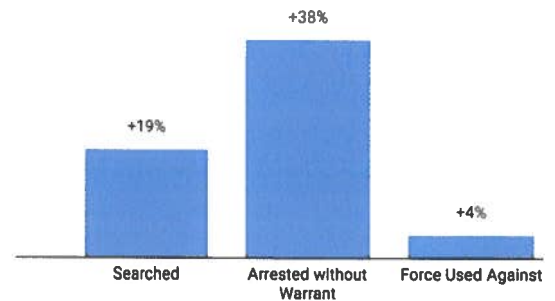
Perceived Identity	People Stopped	% Searched	% Searches Finding Contraband	% Stops with Property Seized	% Arrested Without Warrant	% Police Used Force
Mental Disability	1,874	38.2%	11.9%	3.7%	12.4%	1.7%
Physical/Other Disability	615	24.2%	14.8%	3.1%	9.8%	1.5%
No Perceived Disability	76,209	18.0%	23.7%	3.5%	8.4%	1.0%

Bias Against LGBT and Gender Non-Conforming People

1,169 people stopped by San Diego sheriff's deputies were perceived to be LGBT and 107 people were perceived to be gender non-conforming. Deputies were more likely to make an arrest or conduct a search during these stops despite there being lower likelihood of deputies finding contraband. Moreover, disparities by sexual orientation were present for all racial groups, with deputies more likely to search black and Latinx people they perceive to be LGBT than white people perceived to be LGBT.

Bias Against People Perceived to be LGBT in San Diego SD Stops

San Diego sheriff's deputies were 19% more likely to search people they perceived to be LGBT during a stop and more likely to arrest them.



RIPA Stops Data, 7/1/18-7/31/19

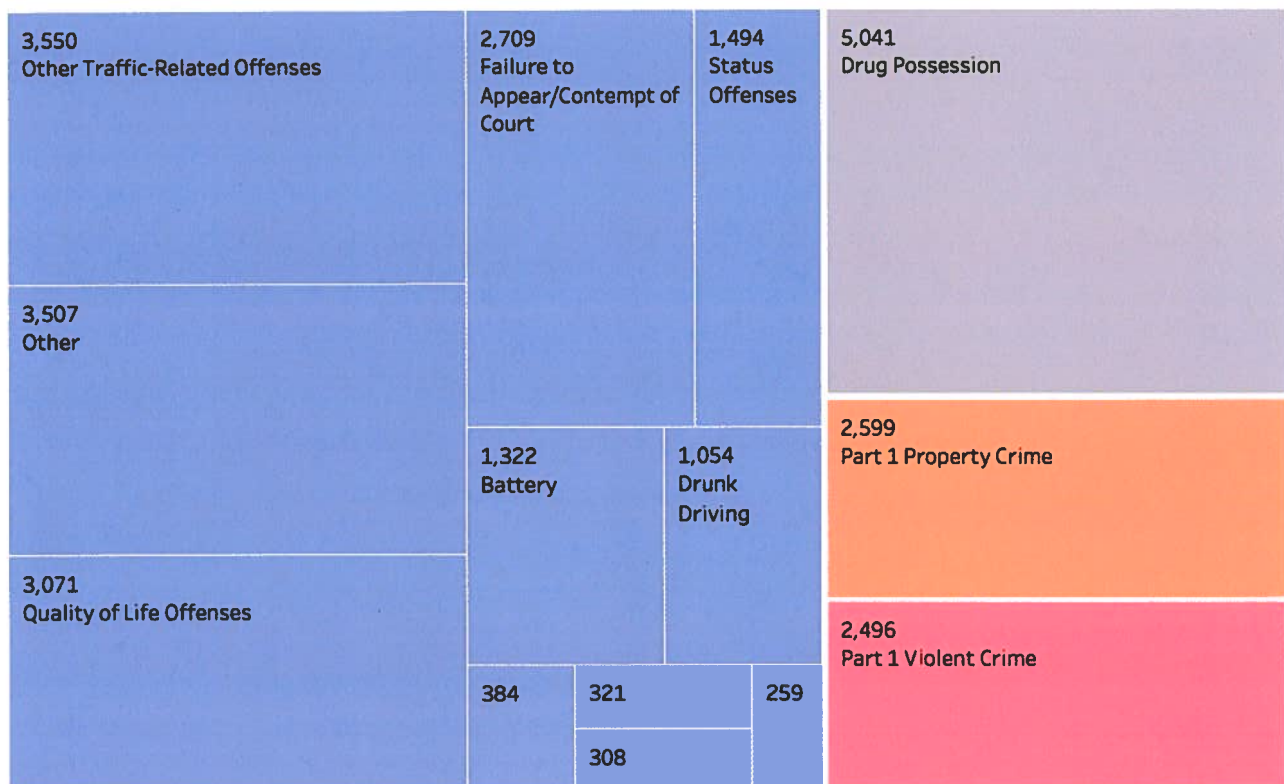
“DISPARITIES BY SEXUAL ORIENTATION WERE PRESENT FOR ALL RACIAL GROUPS, WITH DEPUTIES MORE LIKELY TO SEARCH BLACK AND LATINX PEOPLE THEY PERCEIVE TO BE LGBT THAN WHITE PEOPLE PERCEIVED TO BE LGBT.”

Arrests

We obtained data on San Diego Sheriff's Department arrests from the California Department of Justice's 2016 Monthly Arrests and Citations Register database.²⁵ This database shows San Diego deputies made 28,119 arrests in 2016, including arrests made by SDSA in cities that contract with the sheriff's department for law enforcement services. 67% of all SDSA arrests were for misdemeanor offenses. Moreover, San Diego sheriff's deputies made as many arrests for drug possession alone as for all Part 1 Violent and Property crimes combined. **Decriminalizing or deprioritizing arrests for status offenses, drug possession and quality of life offenses would reduce the overall number of arrests made by SDSA by 34%.**

San Diego Sheriff's Department made 28,119 arrests in 2016. Most were for low-level offenses.

Source: CA Monthly Arrests and Citations Register, 2016



Quality of Life Offense Arrests

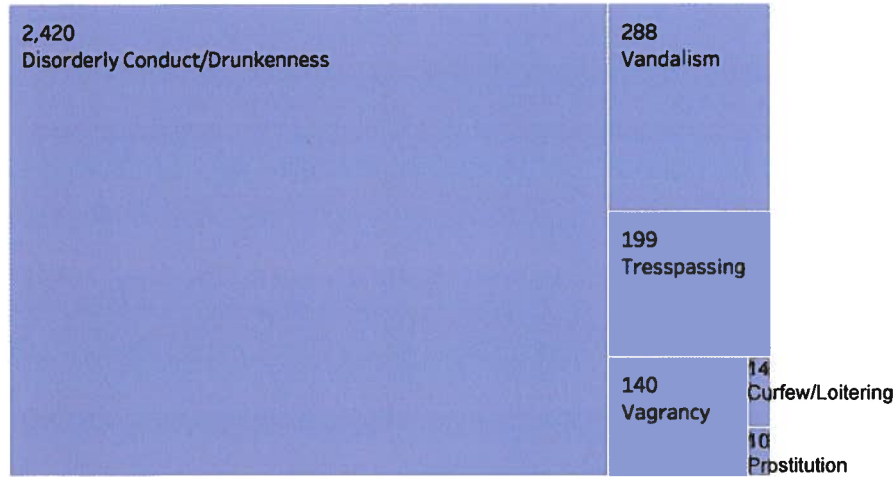
Disorderly conduct/public drunkenness represented most (79%) of the 3,071 "quality of life" offense arrests, followed by vandalism, trespassing and vagrancy. These arrests disproportionately affect black and brown

²⁵ While we also requested 2017 and 2018 arrests data from the California Department of Justice's Monthly Arrest and Citation Register database (and made multiple calls to follow up), we were not provided with these data. As such, we were limited to using 2016 data for our analysis of arrests.

communities. Black people were arrested by SDSD for quality of life offenses at a rate 2.9x higher than white people per population and Latinx people were arrested at a rate 1.2x higher than white people.

San Diego Sheriff's Department Quality of Life offense arrests in 2016.

Source: CA Monthly Arrests and Citations Register, 2016

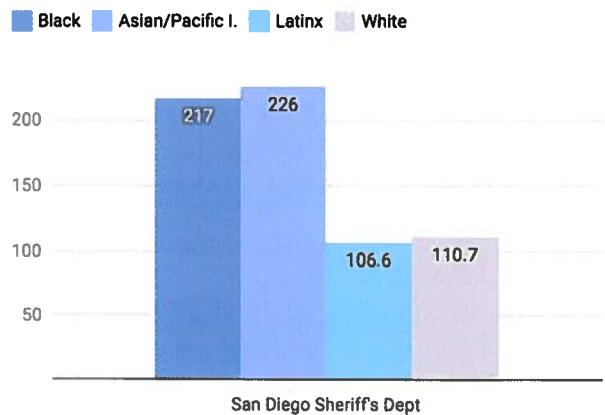


Use of Force

Our analysis of San Diego Sheriff's Department's RIPA stops data examined disparities within 808 reported use of force incidents, finding deputies disproportionately used force against people of color and people with disabilities. To expand upon these initial findings, we obtained a more comprehensive dataset from SDSD that includes 23,488 uses of force²⁶ spanning 9,543 incidents and 8,948 different civilians²⁷ from January 1, 2016 through December 31, 2018. This dataset includes information not only on the frequency and type of force used against civilians during this period, but also the reported level of resistance faced by deputies.²⁸

San Diego Sheriff Use of Force by Race

Use of Force Cases per 1,000 Arrests



Source: 2016-2018 Use of Force Data obtained from SDSD.

²⁶ There can be more than one use of force in a single encounter with a civilian.

²⁷ SDSD's dataset did not assign a unique ID number for each person force was used against. To determine the number of unique civilians whom force was used against, we assigned each unique race/sex/DOB combination as a different person. However, there may still be slight differences in our estimates of the total number of civilians impacted since there could be more than one person with the exact same race, sex and birthday (or alternatively birthday information could be entered in incorrectly/differently in different use of force reports, resulting in duplicate records).

²⁸ While we requested information on the armed/unarmed status of the subjects of SDSD force as well as whether they had a physical or mental disability, the San Diego Sheriff's Department reported they were unable to provide data on these issues for the incidents in their use of force database.

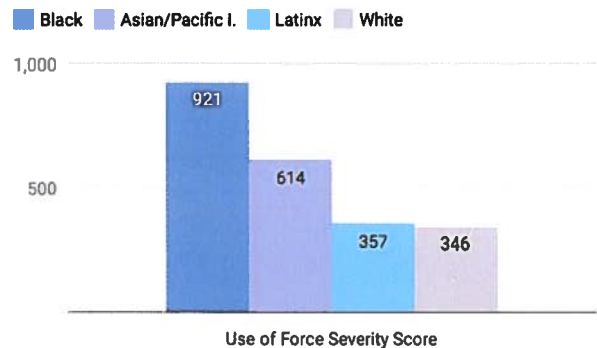
Use of Force Rates by Race

Roughly 1 in every 10 arrests made by SDSD involved the use of force during this period.

To evaluate these incidents by race, we calculated use of force rates benchmarked by arrest rates using arrest data reported by the Monthly Arrest and Citation Register (MACR). **The results show San Diego Sheriff's Department is substantially more likely to use force against black people²⁹, even after controlling for arrest rates.** Black people were 3% of the population within San Diego Sheriff Department's primary jurisdiction, 10% of people arrested by SDSD and 19% of people who had force used against them by SDSD. Asian / Pacific Islanders also had high use of force rates per arrest, while use of force rates were similar between white and Latinx populations. This suggests advocacy efforts should focus both on reducing high arrest rates experienced by black residents at the hands of San Diego deputies and addressing racial bias in the application of force during arrests of black and Asian / Pacific Islander residents.

San Diego Sheriff Use of Force Severity Score by Race

San Diego deputies used more severe levels of force against Black people and Asian / Pacific Islanders per 1,000 Arrests



Source: 2016-2018 Use of Force Data obtained from SDSD.

Use of Force Severity

Employing the methodology developed by the Center for Policing Equity to calculate the severity of force used by San Diego Sheriff's Department, we find **SDSD not only were more likely to use force against black people but also used higher levels of force during these encounters compared to other groups.** On average, when SDSD uses force against black people they use a level of force 2.7x more severe than when using force against white people. SDSD also used a more severe level of force against API and Latinx people than against whites. This suggests **stricter policy restrictions on the use of higher levels of force are warranted**, especially for encounters with black residents.

Types of Force Used

Of the force options available to San Diego sheriff's deputies, the use of weaponless physical force and pointing a firearm were used most frequently - collectively accounting for 90% of all reported uses of force. When these data are broken down by race, we find San Diego Sheriff's Department used almost every force option more often against black, Latinx and Asian / Pacific Islander populations, even after controlling for arrest rates. For example, Sheriff's deputies were 104% more likely to use impact weapons or projectiles; 130% more

²⁹ San Diego Sheriff's Department did not provide arrest data that distinguished between Asian and Pacific Islander arrestees. As such, we used a combined Asian / Pacific Islander category to evaluate SDSD use of force disparities.

likely to use tasers and strangleholds, 156% more likely to use weaponless physical force on black people compared with white people during arrest.³⁰ Deputies were also 292% more likely to use canines against, and 149% more likely to point firearms at Asian / Pacific Islanders during arrest.

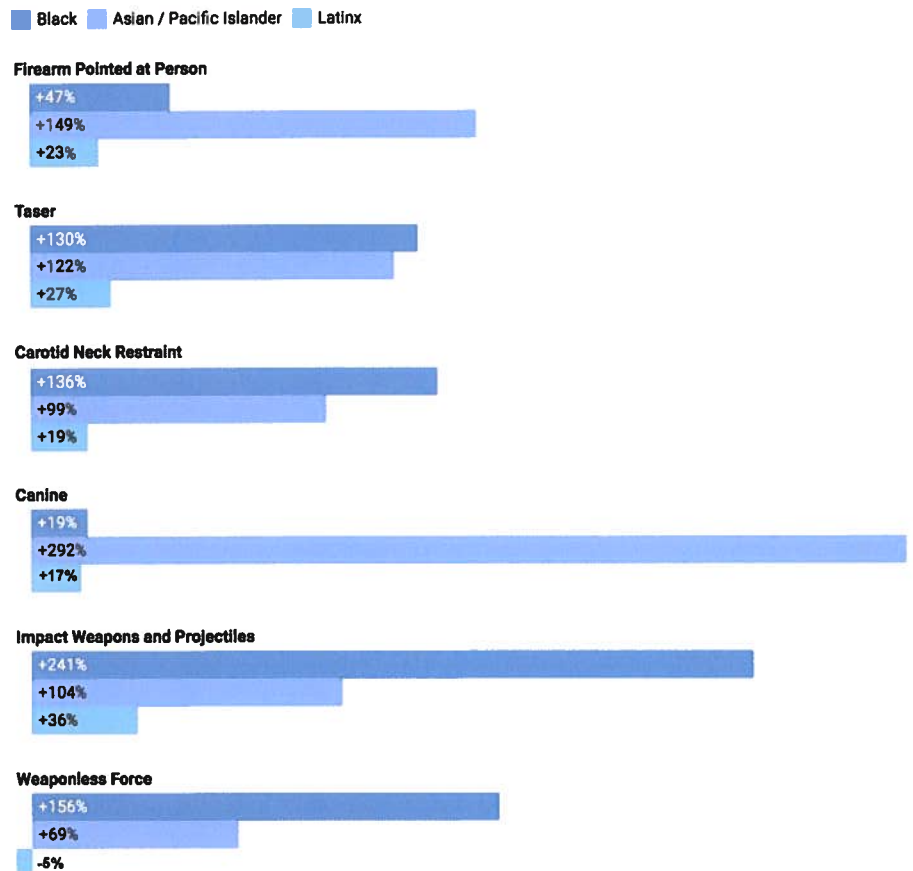
Deadly Force

San Diego Sheriff's Department reported 95 deadly force incidents from 2016-2018, including 22 police shootings and 73 other force incidents causing death or serious injury. 12 people were killed in these incidents and 83 were seriously injured. This is 4.6x higher deadly force rate per arrest than San Diego Police Department during this period and a higher rate than 26 of the 30 largest CA sheriff's departments.

- SDSD used force against 96 people during these 95 incidents. 68 of these people (71%) were unarmed. Only 8 of the 96 people (8%) were allegedly armed with a gun.
- Tasers, strangleholds and weaponless physical force made up 67% of incidents causing death or serious injury.
- At least 14 people SDSD used deadly force on reportedly had disabilities - 13 people had signs of mental illness and one person had physical disabilities.
- Of 22 people shot by SDSD from 2016-2018, 14 (64%) were Latinx. Latinx people were 5.5x more likely to be shot by SDSD than white people per arrest.
- 4 of the 22 police shootings (18%) involved San Diego sheriff's deputies shooting at someone who was in a moving vehicle.

San Diego deputies were more likely to use nearly every type of force against People of Color

Likelihood of using force against Black, Latinx, and Asian / Pacific Islander individuals compared to White people, after controlling for arrest rates.

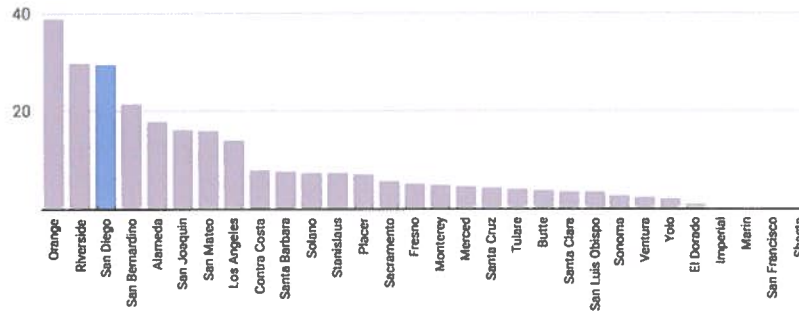


³⁰ Physical force includes weaponless force options which are categorized by SDSD as "grab/push/pull", takedowns, control holds, strikes, and "pressure point."

This suggests policy interventions should include a focus on addressing the excessive use of tasers, physical force and strangleholds while also addressing racial bias in decisions to use firearms, particularly against Latinx people.

San Diego Sheriff's Department uses Deadly Force at Higher Rates than Most Departments

Deadly Force Incidents per 10,000 Arrests for the 30 largest CA Sheriff's Depts, 2016-2018



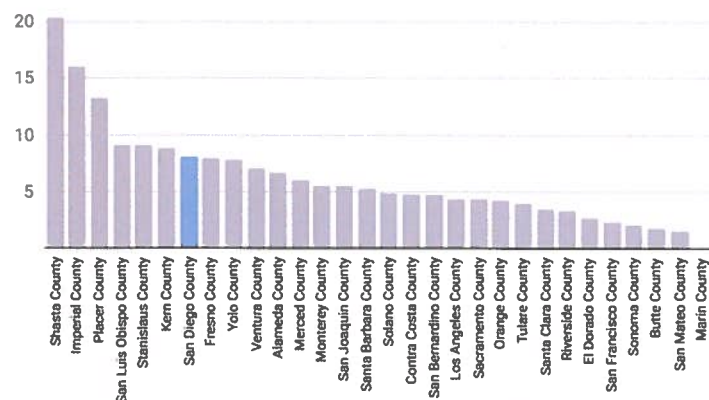
Analysis includes the Sheriff's Departments for the 30 largest CA counties. Deadly force incidents include all firearms discharges and other force causing death or serious injury. Data obtained via CA DOJ URSUS database.

Deaths in San Diego County Jail

In addition to use of force incidents, San Diego Sheriff's Department reported 44 in-custody deaths attributed to causes other than use of force from 2016-2018. This includes at least 10 deaths reportedly due to suicide, 2 death due to homicide committed by another person in custody, and 4 reportedly due to "accidental" causes. Another 15 deaths are attributed to natural causes and 13 remained under investigation at the time of the report. After accounting for the adult jail population in each county, San Diego Sheriff's Department had a rate of 8.1 jail deaths per 1,000 jail population. As such, people were more likely to die in jail in San Diego County than 18 of the 25 largest counties in California - suggesting the need for urgent intervention to address treatment and conditions within jail facilities in San Diego.

San Diego Sheriff's Department had a Higher Rate of Jail Deaths than Most California Sheriffs

Jail Deaths per 1,000 Jail Population, 2016-2018



Analysis includes the Sheriff's Departments of the 30 most populous counties in California. Chart: Campaign Zero • Source: California Department of Justice URSUS Database, 2016-2018

Police Accountability

Nearly 9 in every 10 civilian complaints alleging San Diego sheriff's deputy misconduct are reported to the San Diego County Citizens Law Enforcement Review Board.³¹ This Review Board reported receiving 417 civilian complaints from 2016-2018, including 1,581 different allegations of deputy misconduct.³² San Diego Sheriff's Department's Internal Affairs division also [reported](#) receiving 30 civilian complaints in 2016 and 2017,³³ but did not report the number of civilian complaints specifically that were sustained.

Of the 1,581 allegations reported to the Citizens Law Enforcement Review Board, 252 alleged excessive force, 73 alleged criminal conduct and 33 alleged police discrimination. The board sustained only 18 complaints overall during this period - including 1 excessive force allegation, 2 criminal allegations and 0 allegations of discrimination. This represents a 4% complaint sustain rate overall, a 3% sustain rate for criminal allegations, 0.4% sustain rate for excessive force and 0% sustain rate for allegations of police discrimination. This is a lower sustain rate than the 7% average rate reported statewide under the CCAPO program during this period. This suggests further policy changes are warranted to strengthen the Citizens' Law Enforcement Review Board so that it can effectively hold San Diego Sheriff's Department accountable for misconduct.

³¹ For example, from 2016-17, 262 civilian complaints were reported to the San Diego County Citizens Law Enforcement Review Board compared to 30 civilian complaints reported to SDSD's Internal Affairs division.

³² Data obtained via San Diego County Citizens Law Enforcement Review Board's [2018](#), [2017](#) and [2016](#) Annual Reports.

³³ 2018 data was not reported by the SDSD Internal Affairs Unit

Policy Review and Recommendations for San Diego Sheriff's Department

We reviewed San Diego Sheriff's Department's policy manual, [use of force guidelines](#) and police union contract to determine where new policies could contribute towards addressing the outcomes described in this report. Our recommendations are provided below.

1. Reduce SDSA Arrests by One-Third by scaling up Alternatives to Arrest for Drug Possession, Quality of Life Offenses and Other Low-Level Offenses

34% of all San Diego Sheriff's Department arrests were reportedly for drug possession, status offenses and quality of life offenses that pose no threat to public safety. San Diego Sheriff's Department would see a substantial reduction in arrest rates by expanding the use of alternative, community-based responses to these low-level offenses.

2. Ban Consent Searches and Limit Pretext Stops

We found evidence San Diego Sheriff's Department engaged in biased police search practices - searching black and brown people at higher rates despite being less likely to find contraband during these searches. Moreover, 66% of all contraband found was either drugs or drug paraphernalia - hardly a public safety risk justifying the use of this intrusive police tactic. As such, SDSA should take action to substantially reduce the number of searches conducted - especially of black and brown residents. Banning or strongly restricting searches originating from traffic-violation stops as well as "consent searches", types of searches where San Diego deputies have the most discretion, would reduce the overall number of SDSA searches by as much as 31%. One way to accomplish this would be to require deputies to have probable cause to initiate a search.

3. Strengthen the Department's De-Escalation Policy

The San Diego Sheriff's Department Use of Force guidelines require deputies to "attempt to de-escalate confrontations by using verbalization techniques" prior to using force:

"Deputies should attempt to de-escalate confrontations by using verbalization techniques prior to, during and after any use of physical force. Commands should be given in clear, concise terms, i.e., "don't move," "slowly raise your hands over your head." Keep it simple. Arm guidance and firm grip: When verbalization proves ineffective, arm guidance or a firm grip may suffice to overcome resistance. Arm guidance or a firm grip that results in injury requires documentation."

While this limited de-escalation requirement is important, it does not contain language that is nearly as comprehensive or robust as the language contained within de-escalation policies adopted by police departments in cities like San Francisco, Seattle, New Orleans or Las Vegas. For example, Seattle Police

Department's De-escalation policy includes [four approaches](#) to de-escalating situations that officers are required to consider when possible: using communication, slowing down or stabilizing the situation, increasing distance, and shielding/utilizing cover and concealment. Of these, San Diego deputies are only required to consider using communication (i.e. "verbalization techniques").

4. Restrict the Use of Tasers

San Diego Sheriff's Department killed 3 people with tasers from 2016-2018 - representing 17% of all taser deaths statewide during this period. San Diego Sheriff's Department used tasers in 590 cases during this time, 1.7x more often per arrest than San Diego Police Department. As such, the department should impose new restrictions on the use of tasers and emphasize using de-escalation tactics and lesser forms of physical force in these situations instead. If these reforms fail to curb deaths and serious injuries from taser use, SDSD should consider banning the use of tasers entirely.

5. Ban the use of Carotid Restraints (i.e. Strangleholds)

San Diego Sheriff Department reported seriously injuring 28 people through the use of carotid restraints - a form of stranglehold - from 2016-2018. This represents 21% of all people seriously injured by this tactic statewide during this period - more than any other police agency. SDSD's use of force guidelines state that:

"The carotid restraint may be used on subjects who are actively resisting or assaultive."

This allows carotid restraints to be used even when no threat of imminent death or serious injury is present. Of the 205 people SDSD used a stranglehold on from 2016-2018, only 18 (9%) displayed "aggravated active aggression" which is the level of resistance defined by SDSD as involving a perceived threat of death or serious injury.

Banning the use of carotid restraints by SDSD or limiting this tactic to be authorized only as deadly force can help prevent further injuries. Police departments in San Jose, Los Angeles, San Francisco, Berkeley and Corona have either banned or limited the use of carotid restraints to deadly force situations where there is a threat of imminent death or serious injury. San Diego Sheriff's Department should do the same.

6. Ban Shooting at Moving Vehicles

4 of the 22 people shot by San Diego Sheriff's Department were in a moving vehicle when police fired at them. The use of force guidelines of the San Diego Sheriff's Department provide confusing and contradictory instructions to officers regarding shooting at moving vehicles:

"Shooting at a motor vehicle for the purpose of disabling that vehicle is prohibited. Shooting at or from a moving vehicle is prohibited, except when immediately necessary to protect persons from death or serious bodily injury. Shooting at or from moving vehicles is ineffective and extremely hazardous."

Deputies must consider not only their own safety but the safety of fellow deputies and the public. Tactical considerations and decisions for real and or potential threat of the vehicle should be assessed."

While this policy bans shooting at vehicles "for the purpose of disabling that vehicle" it includes an exception that authorizes shooting at or from vehicles " when immediately necessary to protect persons from death or serious bodily injury." This loophole authorizes deputies to use deadly force against someone in a moving vehicle under similar circumstances (an imminent threat of death or serious injury) as someone who is not in a vehicle. This policy should be updated to reflect best-practices in the field by banning police departments from shooting at moving vehicles unless an occupant of the vehicle is using deadly force by means other than the vehicle. At least 3 of the 4 vehicle-related shootings from 2016-2018 - representing 14% of all SDDSD shootings during this period - would have been prohibited by this policy because the subjects in these cases did not use force other than a vehicle against deputies or members of the public.

7. Improve Jail Conditions and Strengthen Oversight

Our analysis found San Diego County jails have higher rates of in-custody deaths than most jails in the state - including a relatively large number of deaths due to suicide and at least one death due to homicide by another inmate. This is consistent with the [analyses](#) from Disability Rights California as well as [recent reporting](#) that finds not only does San Diego County jail have a high rate of in-custody deaths, especially suicides, but also that 82% of the in-custody deaths over the past decade were of people who were awaiting trial. While we did not have access to more detailed records describing the conditions within these facilities, the data currently available suggests the need for independent oversight and policy and practice interventions to change the conditions contributing to these outcomes.

8. Empower the San Diego County Citizens' Law Enforcement Review Board to Enforce Accountability

The San Diego County Citizens' Law Enforcement Review Board's mission is to increase public confidence in government and the accountability of law enforcement. However, the board does not currently have the power to impose discipline or determine the policies of the San Diego Sheriff's Department. Without these powers, the Sheriff's Department routinely fails to follow the board's recommendations. For example, [the majority](#) of the board's policy recommendations in 2018 were not implemented by SDDSD. As such, the board's powers should be strengthened to be able to implement policy recommendations and to hold deputies accountable for misconduct.

9. Allow Residents to Submit Anonymous Complaints of Deputy Misconduct

People who've experienced violence or other forms of misconduct at the hands of San Diego sheriff's deputies have three options for filing formal misconduct complaints:

1. Submit a complaint in-person at the San Diego Sheriff's Office
2. File a complaint by mail to the SDSD Internal Affairs Unit or;
3. File a complaint by email, fax or mail with the San Diego County Citizens Law Enforcement Review Board

In order for complaints to be investigated, [they must be submitted in writing](#) and signed under penalty of perjury. Complainants must [complete a form](#) that requires they enter their full name and sign the following sworn statement:

"I hereby certify that, to the best of my knowledge, and under penalty of perjury, the statements made herein are true."

The form does not allow for anonymous complaints - creating potential barriers to communities that are hesitant to identify themselves in the process of reporting police misconduct due to potential retaliation. In 2018, for example, the San Diego County Citizens Law Enforcement Review Board [ruled](#) 55 complaints "procedurally closed" and dismissed them because they were not able to obtain a signed complaint - representing 32% of all complaints closed that year. Anonymous complaints should be accepted by San Diego County Citizens Law Enforcement Review Board just as they are in many other jurisdictions - for example, Oakland's [police complaint form](#) allows complainants to select "decline to state" as an alternative to identifying themselves.

10. Strengthen Enforcement of the Racial Profiling Ban and Use Data to Inform Interventions to Hold Deputies Accountable

Section 2.55 of the SDSD [Policy Manual](#) states that:

"Members of the San Diego County Sheriff's Department are prohibited from inappropriately or unlawfully considering race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in deciding whether or not enforcement intervention will occur."

Despite this policy, we find substantial evidence of racial bias, especially anti-black bias, and bias against LGBT people and people with disabilities in SDSD searches and use of force. We also found severe inequities in SDSD's use of deadly force against Latinx people. Since SDSD redacted information from the dataset that could have been used to identify officers, we cannot determine which officers are responsible for producing most of these inequities. However, SDSD already has the data needed to begin enforcing this policy effectively. SDSD and an independent oversight agency should use these data to identify, intervene and hold officers accountable who's records indicate a pattern of biased policing. SDSD should also improve its use of force data collection efforts to assign unique identifiers to individuals who force was used against and to begin

systematically tracking and publishing individualized use of force data that includes more expansive information - such as the weapon type (if any) subjects had when force was used against them.

11. Address Underreporting Issues with the Arrests Data Reported by San Diego Sheriff's Department

We found substantial differences between the number of arrests SDSD reported to RIPA and arrests statistics reported in SDSD's [2018 Annual Use of Force Report](#). According to the annual report, deputies made 18,613 arrests during the full year of 2018. By contrast, SDSD's RIPA database includes only 4,444 arrests made during the second half of 2018 (7/1/2018 - 12/31/2018) and 8,206 arrests during the full year period covering 7/1/2018 - 6/30/2019. This suggests SDPD failed to report to RIPA roughly half of all arrests made during the second half of 2018. SDSD should improve the quality of its reporting to ensure compliance with the Racial and Identity Profiling Act.

12. Repeal the One-Year Statute of Limitations on Police Misconduct Investigations

Section 3304(d)(1) of the [California Peace Officer Bill of Rights](#) states that:

"No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct."

Under this law, investigations can be tossed out if the police department or other investigating agency takes longer than one year to complete the investigation. According to the San Diego County Citizens Law Enforcement Review Board, [15% of all cases in 2017](#) were dismissed because they exceeded this statute of limitations - including 22 cases investigating the deaths of civilians. California is [one of only 4 states](#) that has a law establishing a statute of limitations of one-year or less on police misconduct investigations. This section should be repealed to enable agencies to effectively investigate and adjudicate complaints of misconduct - especially for cases resulting in death or serious injury.

Appendix

Appendix A: Datasets Obtained from Police Agencies

Datasets Used in Our Analysis:

1. [San Diego Police Use of Force Incidents, 9/2016 - 12/2018](#)
2. [San Diego Sheriff Use of Force Incidents, 2016-2018](#)
3. [Deadly Force Incidents \(CA DOJ URSUS Database\), 2016-2018](#)
4. [CCOPA CA Agency Civilian Complaints Data, 2016-2018](#)
5. [2016 CA MACR Arrests Data and 2016-2018 SDPD Arrests](#)
6. [San Diego Police Beat Geographies](#)
7. [San Diego Police Beat Demographics](#)
8. [San Diego Police RIPA Stops Data, 7/1/18-6/30/19](#)
9. [San Diego Sheriff RIPA Stops Data, 7/1/18-7/31/19](#)
10. [Census Demographic Data \(2013-2017 ACS Data\)](#)
11. [San Diego Sheriff Primary Jurisdiction Demographics and Stops](#)

Additional Datasets for Further Investigation:

1. [San Diego Police Calls for Service](#)
2. [Crisis Intervention Team Deployments \(Mental Health Crises\), 2013-2018](#)

Appendix B: Methodology for Cleaning and Analyzing San Diego PD Stops Data

The City of San Diego produced eight (8) datasets for the period between July 1, 2018 to June 30, 2019 which include the following information on police pedestrian and vehicle stops:

- Actions taken
- Contraband and/or evidence found
- Disability of persons
- Gender of persons
- Basis for property seizure
- Property seized
- Race of persons
- Basis for searches conducted
- Reason for stop
- Result of stop

Each dataset includes variables that are employed in this analysis. All of the datasets are made publicly available by the San Diego and additional details about the contents can be explored.³⁴ We merged the

³⁴ <https://data.sandiego.gov/datasets/police-ripa-stops/>

datasets by both the “Stop_ID” and the “PID” (Person ID) parameters to produce a row for each person stopped by police. We found a number of duplicate observations, which were the result of using datasets that have multiple rows for the same persons as a consequence of how the datasets were structured.

For example, an officer may record multiple pieces of evidence or contraband found for a single person, or an officer may cite multiple reasons as the basis to conduct a search or seize property. Similarly, a person stopped may experience multiple results of the stop. An officer can even have more than one perception of a person’s gender or race. All of this is recorded in the data.

While the data is valuable for further exploration, this analysis is primarily focused on stop, search and hit rates and therefore removed duplicates to only focus on unique individual persons. The final dataset which also includes another merge/matching of population variables by race results in 179,710 observations and 55 variables.

Variables:

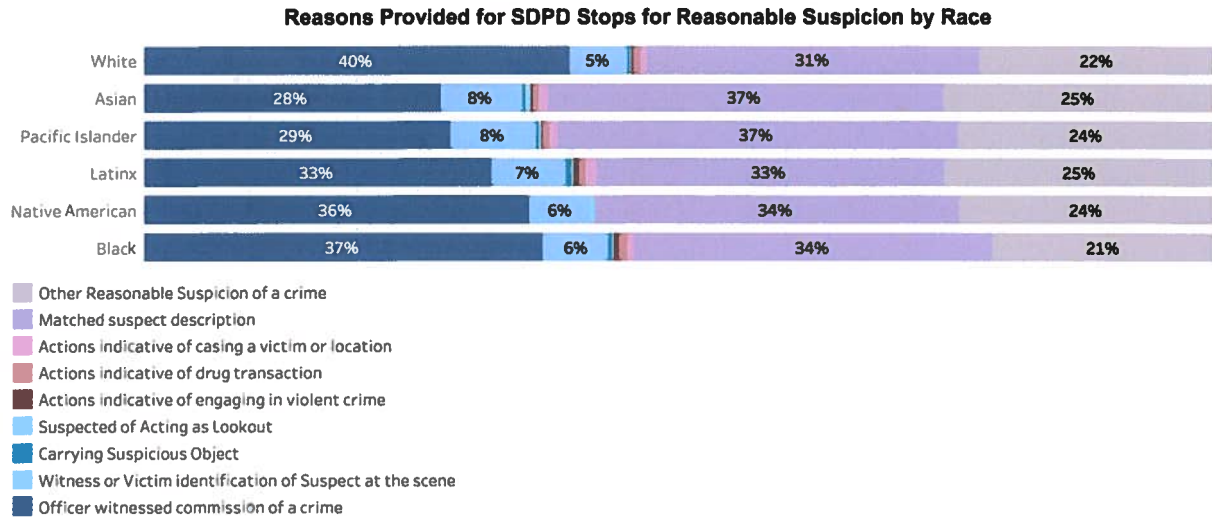
The following variables were constructed based on the dataset:

- Person Stopped = Person ID * Stop ID
- Search Conducted = Searched person, Searched property
- Property Seized = Property Seized, Vehicle Impounded
- Force Used = Electronic control weapon, Baton or Impact weapon, Pointed firearm at subject, Discharged firearm, Chemical spray and Physical or Vehicle contact³⁵
- Consent Search = Searches where “Consent given” was the only basis provided
- Mental Disability = Disability related to hyperactivity or impulsive behavior, Mental health condition, Intellectual or developmental disability including dementia, Speech impairment or limited use of language
- Physical/Other Disability = Blind/limited vision, Deafness/difficulty hearing, Other disability

³⁵ We coded “Physical or Vehicle Contact” as use of force since its definition in the RIPA [guidelines](#) is consistent with how SDPD reports use of force. The guidelines define this category as “any of the following contacts by the officer, when the purpose of such contact is to restrict movement or control a person’s resistance: any physical strike by the officer; instrumental contact with a person by an officer; or the use of significant physical contact by the officer. Examples of such contacts include, but are not limited to, carotid restraints, hard hand controls, the forcible taking of a subject to the ground, or use of vehicle in apprehension.” There was an additional category for “removed from vehicle by physical contact” which was not included. This category was not defined in the guidelines and, as such, may include actions that are broader than use of force - for example some of these incidents involved officers taking someone out of a vehicle who was reportedly too intoxicated to get up on their own. This would not be considered a use of force. In total, there were 338 people who were “removed from vehicle by physical contact” without any other type of force-related action attributed to the incident.

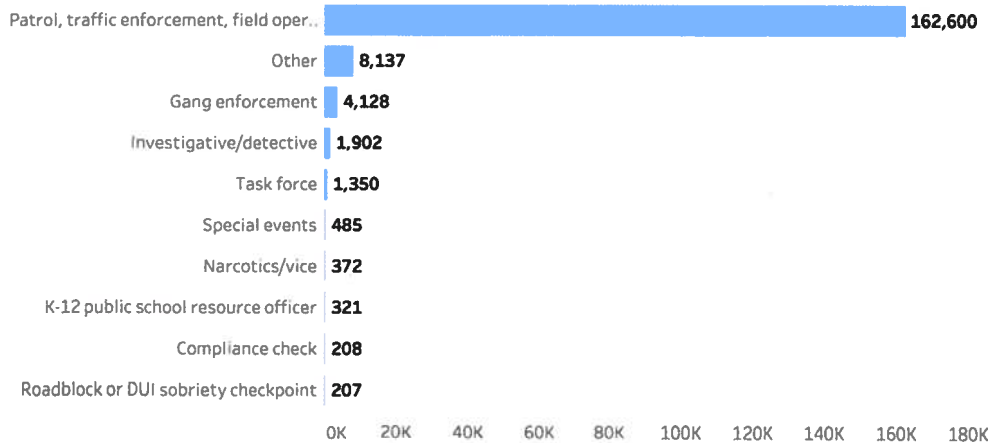
Appendix C: Additional Data Tables for Analysis of San Diego Police Department

1. San Diego Police Stops for “Reasonable Suspicion” by Type of Suspicion Cited



2.

San Diego Police Stops by Officer Assignment



3. San Diego Police Stops by Race, Searches, Arrests and Use of Force

San Diego Police Department RIPA Stop Outcomes

Data from July 2018 - June 2019

Perceived Identity	People Stopped	% Searched	% Arrested Without Warrant	% Property Seized	% Police Used Force
Asian	13,397	11.7%	6.2%	1.8%	1.3%
Black	35,038	24.4%	10.9%	3.3%	2.2%
Latinx	51,361	20.8%	9.4%	3.1%	1.8%
Native American	393	24.7%	16.3%	3.3%	1.5%
Pacific Islander	1,538	20.4%	10.2%	3.3%	1.8%
White	77,983	19.5%	10.1%	2.8%	1.4%

4. San Diego Police Contraband “Hit” Rates for Searches

San Diego Police Department RIPA Stop Outcomes

Data from July 2018 - June 2019

Race	People Searched	Contraband Found Following Search	% Searches Finding Contraband
Asian	1,574	314	19.9%
Black	8,536	2,095	24.5%
Latinx	10,665	2,303	21.6%
Native American	97	19	19.6%
Pacific Islander	313	68	21.7%
White	15,239	3,415	22.4%

5. San Diego Police Use of Force Rates during Arrest or Search

SDPD Use of Force During Police Searches

	People Searched	People Force Used Against	Force Rate
Contraband Found			
Asian	314	27	8.6%
Black	2,095	175	8.4%
Latinx	2,303	197	8.6%
Native American	19	2	10.5%
Pacific Islander	68	4	5.9%
White	3,415	192	5.6%
No Contraband Found			
Asian	1,260	72	5.7%
Black	6,441	374	5.8%
Latinx	8,362	441	5.3%
Native American	78	1	1.3%
Pacific Islander	245	16	6.5%
White	11,824	508	4.3%

SDPD Use of Force During Arrests

	People Searched	People Force Used Against	Force Rate
Arrested			
Asian	1,062	82	7.7%
Black	5,696	437	7.7%
Latinx	6,903	514	7.4%
Native American	78	3	3.8%
Pacific Islander	219	14	6.4%
White	10,803	555	5.1%
Not Arrested			
Asian	12,335	88	0.7%
Black	29,342	319	1.1%
Latinx	44,458	417	0.9%
Native American	315	3	1.0%
Pacific Islander	1,319	13	1.0%
White	67,180	500	0.7%

6. San Diego Police Department Stops by Disability Status

San Diego police were more likely to search and use force against people perceived to have disabilities.

Data from July 2018 - June 2019

Perceived Identity	People Stopped	% Searched	% Searches Finding Contraband	% Arrested Without Warrant	% Property Seized	% Police Used Force
Mental Disability	6,985	35.6%	9.5%	7.8%	1.9%	4.2%
Physical/Other Disability	1,684	5.4%	33.0%	2.6%	1.1%	1.6%
No Perceived Disability	171,041	19.6%	23.5%	7.7%	2.4%	1.5%

SDPD Search Rates by Race and Disability Status

	All Other Stops		People with Disabilities	
	No Search Conducted	Search Conducted	No Search Conducted	Search Conducted
White	81.2% (59,772)	18.8% (13,882)	68.7% (2,972)	31.3% (1,357)
Black	76.2% (25,246)	23.8% (7,889)	66.0% (1,256)	34.0% (647)
Latinx	79.8% (39,557)	20.2% (10,035)	64.4% (1,139)	35.6% (630)

SDPD Contraband Hit Rates by Race and Disability Status

	All Other Stops		People with Disabilities	
	No Contraband Found	Contraband Found	No Contraband Found	Contraband Found
White	76.5% (10,622)	23.5% (3,260)	88.6% (1,202)	11.4% (155)
Black	74.7% (5,891)	25.3% (1,998)	85.0% (550)	15.0% (97)
Latinx	77.7% (7,796)	22.3% (2,239)	89.8% (566)	10.2% (64)

7. San Diego Police Department Stops of Perceived LGBT and/or Gender Non-Conforming Individuals

San Diego police were more likely to search, arrest without warrant, and use force against people perceived to be LGBT.

Data from July 2018 - June 2019

Perceived Identity	People Stopped	% Searched	% Searches Finding Contraband	% Arrested Without Warrant	% Property Seized	% Police Used Force
LGBT	4,523	24.6%	19.2%	14.9%	2.7%	2.2%
All Other Stops	175,188	20.2%	22.7%	9.6%	2.9%	1.6%

San Diego police were more likely to search, arrest without warrant, and use force against people perceived to be Gender Non-Conforming.

Data from July 2018 - June 2019

Perceived Identity	People Stopped	% Searched	% Searches Finding Contraband	% Arrested Without Warrant	% Property Seized	% Police Used Force
Gender Non-Conforming	119	22.7%	11.1%	14.3%	2.5%	2.5%
Cisgender	179,591	20.3%	22.6%	9.8%	2.9%	1.6%

SDPD Search Rates by Race and LGBT Status

	Other		LGBT	
	No Search Conducted	Search Conducted	No Search Conducted	Search Conducted
White	80.5% (61,209)	19.5% (14,781)	77.0% (1,536)	23.0% (458)
Black	75.7% (25,881)	24.3% (8,308)	73.1% (621)	26.9% (228)
Latinx	79.4% (39,717)	20.6% (10,313)	73.6% (979)	26.4% (352)

SDPD Contraband Hit Rates by Race and LGBT Status

	Other		LGBT	
	No Contraband Found	Contraband Found	No Contraband Found	Contraband Found
White	77.5% (11,448)	22.5% (3,333)	82.1% (376)	17.9% (82)
Black	75.3% (6,254)	24.7% (2,054)	82.0% (187)	18.0% (41)
Latinx	78.4% (8,084)	21.6% (2,229)	79.0% (278)	21.0% (74)

8. San Diego Police Department Stop Results by Race

San Diego Police Department Stop Results by Race

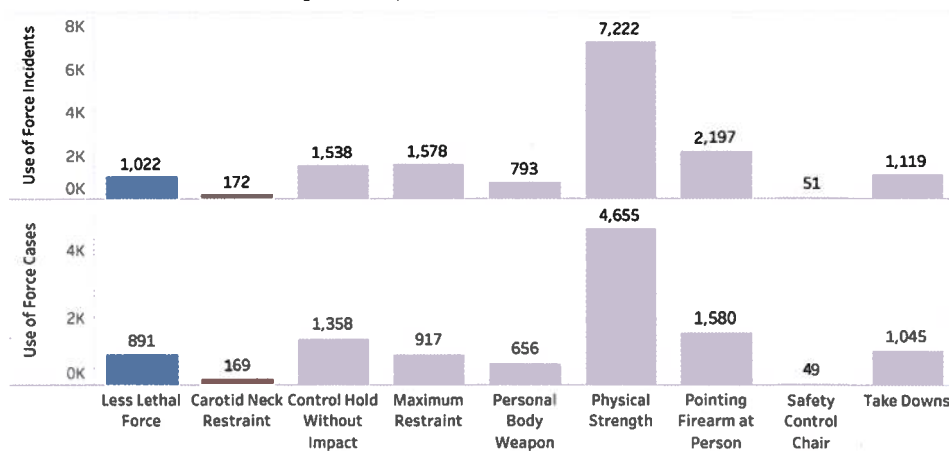
	White	Black	Latinx	Asian	Native American	Pacific Islander
No Action	13.3% (10,396)	16.1% (5,630)	13.9% (7,136)	11.8% (1,587)	13.2% (52)	12.5% (193)
Warning (verbal or written)	15.0% (11,682)	15.4% (5,380)	16.2% (8,324)	21.2% (2,841)	12.5% (49)	17.5% (269)
Citation for infraction	23.1% (17,981)	14.7% (5,134)	22.9% (11,764)	34.1% (4,567)	15.3% (60)	23.9% (368)
In-field cite and release	7.7% (6,006)	5.2% (1,838)	7.5% (3,870)	8.5% (1,140)	4.8% (19)	8.5% (131)
Field interview card completed	20.7% (16,120)	27.5% (9,647)	21.4% (10,966)	11.7% (1,563)	25.0% (102)	16.4% (252)
Contacted parent/legal guardian	0.2% (138)	0.2% (80)	0.4% (195)	0.2% (22)	0.3% (1)	0.4% (6)
Contacted U.S. DHS	0.0% (4)	0.0% (1)	0.0% (1)			
Custodial Arrest pursuant to warrant	3.8% (2,933)	5.3% (1,869)	4.1% (2,100)	1.8% (238)	3.6% (14)	4.0% (62)
Custodial Arrest without warrant	10.1% (7,870)	10.9% (3,827)	9.4% (4,803)	6.2% (824)	16.3% (64)	10.2% (157)
Noncriminal transport or caretaking transport	1.9% (1,451)	1.2% (421)	1.3% (680)	1.1% (141)	0.5% (2)	1.4% (21)
Psychiatric hold	4.4% (3,396)	3.5% (1,210)	2.9% (1,507)	3.5% (470)	7.6% (30)	5.1% (79)
Referral to school administrator	0.0% (4)	0.0% (1)	0.0% (13)	0.0% (4)		
Referral to school counselor or other support s..	0.0% (2)		0.0% (2)			

9. Use of Force Types Used by Case and Incident Level of Analysis

We calculated use of force rates by creating a Use of Force Index that includes all types of force involving weapons as well as the use of neck restraints. For San Diego Police Department, this includes the use of tasers, chemical agents, control holds involving weapons, carotid neck restraints, hard impact weapons and extended range impact weapons.

San Diego PD Force Types Used, 2017-2018

Source: Records obtained from San Diego Police Department



10. Methodology for Calculating Use of Force Rates per Arrest

In order to evaluate use of force rates, we benchmarked use of force by arrests as has been done in [previous research](#). Data on use of force incidents by type of force used in 2017 and 2018 were obtained via public records request from each agency. While we requested data from the 100 largest cities in California, we obtained data for both 2017 and 2018 from 42 of those agencies. Calculations of use of force rates per 10,000 arrests for each agency are shown below.

Use of Force Rates for California Police Departments

Calculating Rates of Use of Force Index Incidents from 2017-2018.

Agency Name	Use of Force Index Incidents 2017-2018	Arrests 2017-2018	Index Rate per 10,000 Arrests
Los Angeles	1,191	206,903	57.6
San Diego	1,060	59,152	179.2
San Jose	462	29,369	157.3
San Francisco	251	27,841	90.2
Fresno	169	41,597	40.6
Vallejo	172	5,015	343.0
Santa Ana	223	14,006	159.2
Stockton	256	14,762	173.4
Chula Vista	62	8,331	74.4
Fremont	74	5,146	143.8
Modesto	96	18,039	53.2
Santa Rosa	61	12,766	47.8
Garden Grove	35	11,197	31.3
Corona	57	7,534	75.7
Hayward	58	6,828	84.9
Salinas	106	8,572	123.7
Escondido	49	9,792	50.0
Pasadena	51	8,718	58.5
Roseville	33	5,726	57.6
Simi Valley	30	4,900	61.2
Fairfield	132	7,729	170.8
Richmond	40	3,264	122.5
Ventura	32	11,106	28.8
Daly City	29	3,909	74.2
El Cajon	37	8,182	45.2
Vacaville	41	6,932	59.1
Santa Barbara	27	14,225	19.0
Citrus Heights	15	4,252	35.3
Redwood City	26	3,234	80.4
Buena Park	24	6,186	38.8
Mountain View	17	3,259	52.2
Pleasanton	10	1,252	79.9
Milpitas	15	3,170	47.3
Alameda	14	2,360	59.3
Union City	30	2,663	112.7
Turlock	19	6,487	29.3
Redlands	46	4,136	111.2
Pittsburg	49	3,303	148.3
Walnut Creek	10	2,287	43.7
Redondo Beach	43	3,928	109.5
Santa Cruz	35	4,049	86.4
National City	45	3,714	121.2

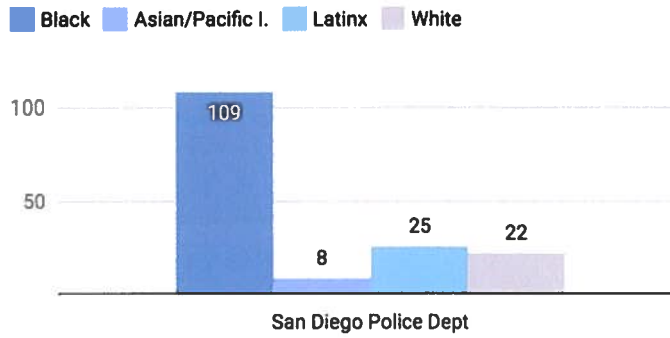
The Use of Force Index includes all uses of tasers, batons and other impact weapons, projectiles, neck restraints and chemical agents reported by Agencies. Data obtained from Agencies via Public Records requests.

Source: Data obtained from agencies via public records request · Created with Datawrapper

11. Use of Force Cases per Population

San Diego Police Use of Force per Population

The average black person experienced use of force by San Diego police at 5x higher rate than the average white person in San Diego.



Use of Force Cases per 10,000 Population

Source: 2016-2018 Use of Force Data obtained from SDPD.

12. Use of Force Severity by Resistance Level

SDPD Force Severity by Resistance Level

Source: San Diego Police Department, 2016-2018

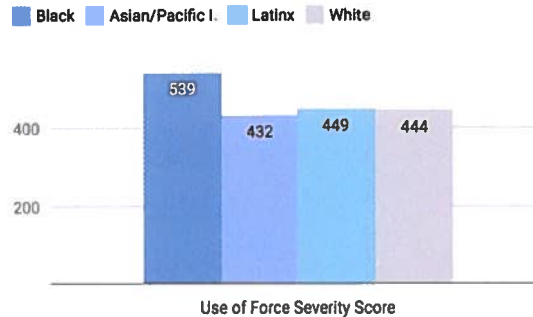
"Because San Diego police grouped subjects' resistance levels and weapon types together into the same column, we could not determine force severity against people who posed No Resistance (rows with NULL in this column could either represent people who were Unarmed or who posed No Resistance or both, but we could not determine which of these options applied based on the data provided.)"

Life-Threatening	Asian / Pacific Islander	3.0
	Black	2.8
	White	3.1
	Latinx	2.4
Assaultive	Asian / Pacific Islander	1.9
	Black	2.2
	White	2.0
	Latinx	2.1
Active Resistance	Asian / Pacific Islander	1.6
	Black	1.6
	White	1.5
	Latinx	1.6
Passive Resistance	Asian / Pacific Islander	1.5
	Black	1.8
	White	1.6
	Latinx	1.6

13. Severity Scores using CPE Methodology and Scores with All SDPD Force Options Included

San Diego Police Use of Force Severity Score by Race (All Force Options)

San Diego police used more severe levels of force against Black people per 1,000 Arrests



Source: 2016-2018 Use of Force Data obtained from SDPD.

Appendix D: Methodology for Cleaning and Analyzing San Diego Sheriff's Department Stops Data

In response to our [public records request](#), San Diego Sheriff's Department provided us with RIPA stops data (see [here](#) and [here](#)) for the period between July 1, 2018 to July 31, 2019 which included information on both police pedestrian and vehicle stops. The dataset was coded according to the [specifications](#) of the RIPA program. Using the codebook for this program, we were able to identify each variable for our analysis. Unlike the data provided by San Diego PD, the data provided by San Diego Sheriff's Department removed the column of data indicating the assignment of the officer who made the stop, though this wasn't used in our analysis of either department.

Appendix E: Calculating San Diego Sheriff's Jurisdiction and Stop Rates

Since there are municipal police departments that have primary jurisdiction over some of the larger cities within the county, we benchmarked stop rates based on the population of the areas where the Sheriff's Department has primary jurisdiction. This includes Del Mar, Santee, Encinitas, Solana Beach, Imperial Beach, Poway, Lemon Grove, Vista, San Marcos and Unincorporated San Diego County. Collectively, these areas represent 87% of all SDSD stops during the period of our analysis. We used only those stops that took place within the area of primary jurisdiction to calculate stop rates. Population totals and stop rates by race are provided below using the population of SDSD's primary jurisdiction and detailed calculations of stop rates and demographic totals for each area of the jurisdiction are available [here](#).

	Asian	Black	Latinx	Native American	Pacific Islander	White
Total San Diego County Population	376,669	154,599	1,095,458	26,340	13,122	1,517,153
Population of Sheriff's Primary Jurisdiction (PJ)	48,300	28,185	278,182	11,258	8,403	527,743
People Stopped	5,199	6,353	23,056	598	733	42,168
People Stopped in PJ	4,235	4,523	18,296	547	603	36,798
Stops per 1k Population (PJ)	87.7	160.5	65.8	48.6	71.8	69.7
Disparity Relative to White People (PJ)	1.3	2.3	0.9	0.7	1.0	1.0
Stops Excluding Traffic Violations (PJ)	661	2,064	6,344	238	175	12,928
Stops per 1k Excluding Traffic Violations (PJ)	13.7	73.2	22.8	21.1	20.8	24.5
Disparity Relative to White People (PJ Non-Traffic)	0.6	3.0	0.9	0.9	0.9	1.0

Appendix F: Additional Data Tables for Analysis of San Diego Sheriff's Department

1. San Diego Sheriff Stop Outcomes

Perceived Identity	People Stopped	% Searched	% Searches Finding Contraband	% Arrested Without Warrant	% Stops with Property Seized	% Police Used Force
Asian	5,199	7.0%	22.4%	4.0%	1.6%	0.5%
Black	6,353	22.7%	21.7%	9.8%	3.4%	1.3%
Latinx	23,056	19.3%	21.6%	9.2%	3.9%	1.2%
Native American	598	30.1%	21.1%	13.0%	4.7%	1.8%
Pacific Islander	733	17.7%	23.1%	7.5%	2.5%	1.1%
White	42,168	18.7%	24.1%	8.3%	3.5%	0.9%

2. San Diego Sheriff Use of Force by Arrest and Contraband Rates

SDSD Were More Likely to Use Force Against Black and Latinx People Whether or Not They Make an Arrest

		Force Used
No Arrest	White	0.4% (158)
	Black	0.5% (28)
	Latinx	0.5% (104)
Arrest Made	White	4.6% (213)
	Black	6.2% (54)
	Latinx	6.4% (174)

SDSD Were More Likely to Use Force Against Black and Latinx People During a Search Whether or Not Contraband Was Found

		Force Used
Contraband Found	White	5.2% (99)
	Black	8.3% (26)
	Latinx	7.6% (73)
No Contraband	White	3.2% (189)
	Black	3.8% (43)
	Latinx	4.1% (145)

3. San Diego Sheriff's Department Consent Given to Search by Race

Consented	Asian	92.1%
	Black	86.5%
	Latinx	92.8%
	White	89.2%
Did Not Consent	Asian	7.9%
	Black	13.5%
	Latinx	7.2%
	White	10.8%

4. San Diego Sheriff's Department Searches during Traffic Violation Stops by Race

Race	Consent Search	Other Search
Black	1.5% (48)	4.3% (141)
Latinx	1.7% (258)	4.6% (690)
White	1.3% (345)	3.7% (991)

Race	Contraband Found	No Contraband
Asian	20.3% (13)	79.7% (51)
Black	18.0% (34)	82.0% (155)
Latinx	23.0% (218)	77.0% (730)
White	30.3% (405)	69.7% (931)

5. San Diego Sheriff's Department Stops by Disability Status and Race

	No Disability		People with Disabilities	
	Not Searched	Searched	Not Searched	Searched
White	81.9% (33,269)	18.1% (7,371)	66.8% (1,020)	33.2% (508)
Black	78.0% (4,742)	22.0% (1,339)	62.5% (170)	37.5% (102)
Latinx	81.0% (18,296)	19.0% (4,281)	62.4% (299)	37.6% (180)

6. San Diego Sheriff Stops of Perceived LGBT and/or Gender Non-Conforming Individuals

San Diego sheriff's deputies were more likely to search and arrest people perceived to be LGBT.

Data from 7/1/2018 - 7/31/2019

Perceived Identity	People Stopped	% Searched	% Searches Finding Contraband	% Arrested Without Warrant	% Stops with Property Seized	% Police Used Force
All Other Stops	77,529	18.5%	23.2%	8.4%	3.5%	1.0%
LGBT	1,169	22.0%	16.0%	11.6%	2.7%	1.0%

San Diego sheriff's deputies were more likely to search, arrest, and seize property from people perceived to be Gender Non-Conforming.

Data from 7/1/2018 - 7/31/2019

Perceived Identity	People Stopped	% Searched	% Searches Finding Contraband	% Arrested Without Warrant	% Stops with Property Seized	% Police Used Force
Gender Non-Conforming	107	20.6%	18.2%	19.6%	4.7%	0.9%
Cisgender	78,591	18.5%	23.1%	8.5%	3.5%	1.0%

SDSD Contraband Hit Rates by Perceived LGBT Status

	Other		Perceived LGBT	
	No Contraband	Contraband Found	No Contraband	Contraband Found
White	75.7% (5,874)	24.3% (1,884)	85.1% (103)	14.9% (18)
Black	78.2% (1,097)	21.8% (306)	81.6% (31)	18.4% (7)
Latinx	78.3% (3,432)	21.7% (950)	82.3% (65)	17.7% (14)

SDSD Search Rates by Perceived LGBT Status

	Other		Perceived LGBT	
	Not Searched	Searched	Not Searched	Searched
White	81.3% (33,821)	18.7% (7,758)	79.5% (468)	20.5% (121)
Black	77.4% (4,803)	22.6% (1,403)	74.1% (109)	25.9% (38)
Latinx	80.7% (18,354)	19.3% (4,382)	75.3% (241)	24.7% (79)

7. San Diego Sheriff Stop Results by Race

San Diego Sheriff's Department Stop Results by Race

	Asian	White	Black	Latinx	Multiracial	Native American	Pacific Islander
No action	13.8% (716)	18.3% (7,696)	22.1% (1,404)	21.3% (4,903)	18.1% (106)	31.6% (189)	20.9% (153)
Warning (verbal or written)	28.6% (1,485)	23.1% (9,745)	28.0% (1,774)	25.3% (5,827)	26.9% (158)	24.1% (144)	25.0% (183)
Citation for infraction	47.0% (2,441)	35.2% (14,858)	20.5% (1,303)	29.7% (6,832)	28.6% (168)	10.9% (65)	31.8% (233)
In-field cite and release	1.2% (64)	2.3% (954)	2.7% (174)	2.4% (544)	4.3% (25)	2.7% (16)	2.7% (20)
Field interview card completed	3.1% (160)	7.5% (3,166)	10.7% (677)	7.8% (1,800)	5.6% (33)	9.7% (58)	6.7% (49)
Custodial arrest pursuant to warrant	1.2% (60)	2.7% (1,145)	4.1% (259)	2.8% (653)	1.9% (11)	6.0% (36)	3.8% (28)
Custodial arrest without warrant	3.8% (196)	7.9% (3,338)	9.2% (584)	8.7% (2,014)	10.1% (59)	12.4% (74)	7.0% (51)
Contacted parent/legal guardian	0.1% (5)	0.1% (63)	0.3% (16)	0.3% (63)	0.5% (3)	0.2% (1)	0.3% (2)
Noncriminal transport or caretaking ..	0.3% (14)	0.5% (229)	0.5% (30)	0.3% (76)	1.0% (6)	0.8% (5)	0.5% (4)
Psychiatric hold	1.1% (57)	2.3% (963)	2.0% (125)	1.4% (315)	3.1% (18)	1.7% (10)	1.2% (9)

8. San Diego Sheriff Force Severity by Resistance Level

SDSD Force Severity by Resistance Level

Source: San Diego Sheriff's Department, 2016-2018

Aggravated / Assaultive Resistance	Asian / Pacific Islander	2.7
	Black	2.4
	Latinx	2.7
	White	2.4
Active Resistance	Asian / Pacific Islander	1.7
	Black	1.7
	Latinx	1.7
	White	1.6
Passive Resistance	Asian / Pacific Islander	1.3
	Black	1.9
	Latinx	1.7
	White	1.5
Verbal Noncompliance / Psychological Intimidation	Asian / Pacific Islander	1.8
	Black	1.9
	Latinx	1.5
	White	1.6

Exhibit K

San Diego City Assessment

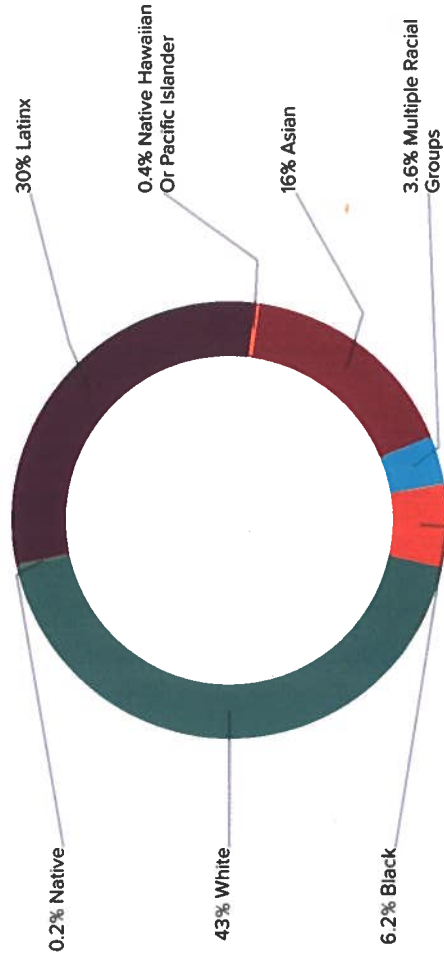
2021



San Diego City Assessment - Summary of Findings

CONTEXT: RESIDENT DEMOGRAPHICS

The population of San Diego City is 43% White, 30% Latinx, 16% Asian, 6.2% Black, 3.6% Multiple Racial Groups, 0.4% Native Hawaiian or Pacific Islander, and 0.2% Native.



San Diego City Assessment

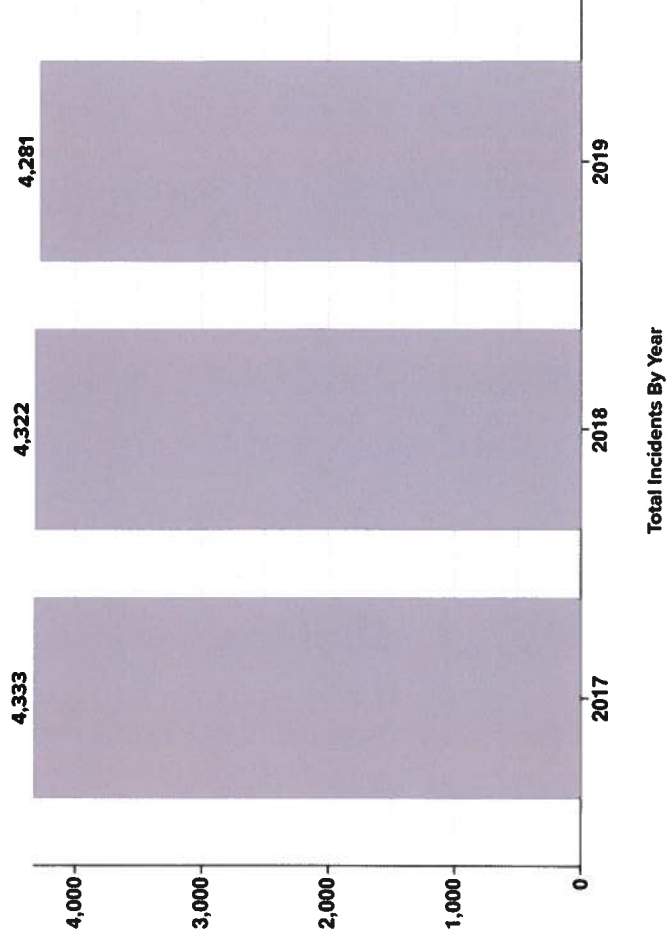
Use of Force



San Diego City Assessment - Summary of Findings

USE OF FORCE INCIDENTS PER YEAR

The number of use of force incidents recorded each year varied from a high of 4,333 in 2017 to a low of 4,281 in 2019.

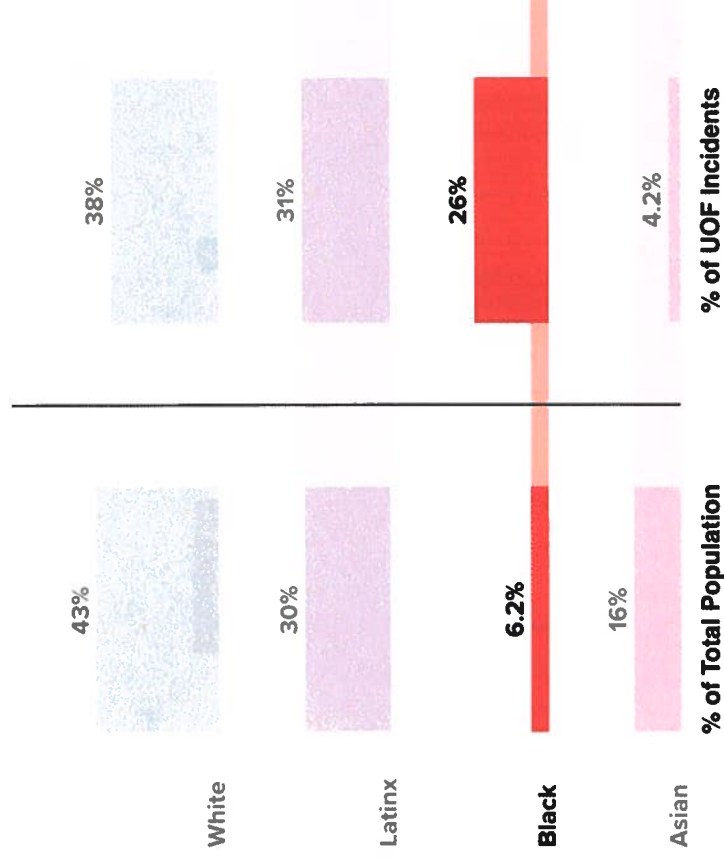




San Diego City Assessment - Summary of Findings

PERCENTAGE OF USE OF FORCE INCIDENTS, BY RACIAL GROUP, COMPARED TO POPULATION

26% of all use of force incidents recorded between 2016 and 2020 were against Black people, who made up 6.2% of the population of San Diego.

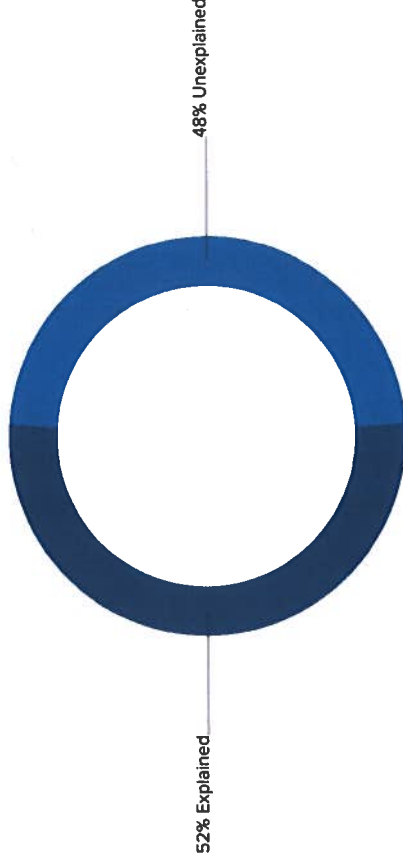




San Diego City Assessment - Summary of Findings

PERCENTAGE OF INCIDENT FREQUENCY EXPLAINED BY NEIGHBORHOOD FACTORS

Statistical analysis showed that neighborhood crime rates, poverty, and share of Black residents explained 52% of the frequency of use of force, while 48% was not explained by these factors.



San Diego City Assessment

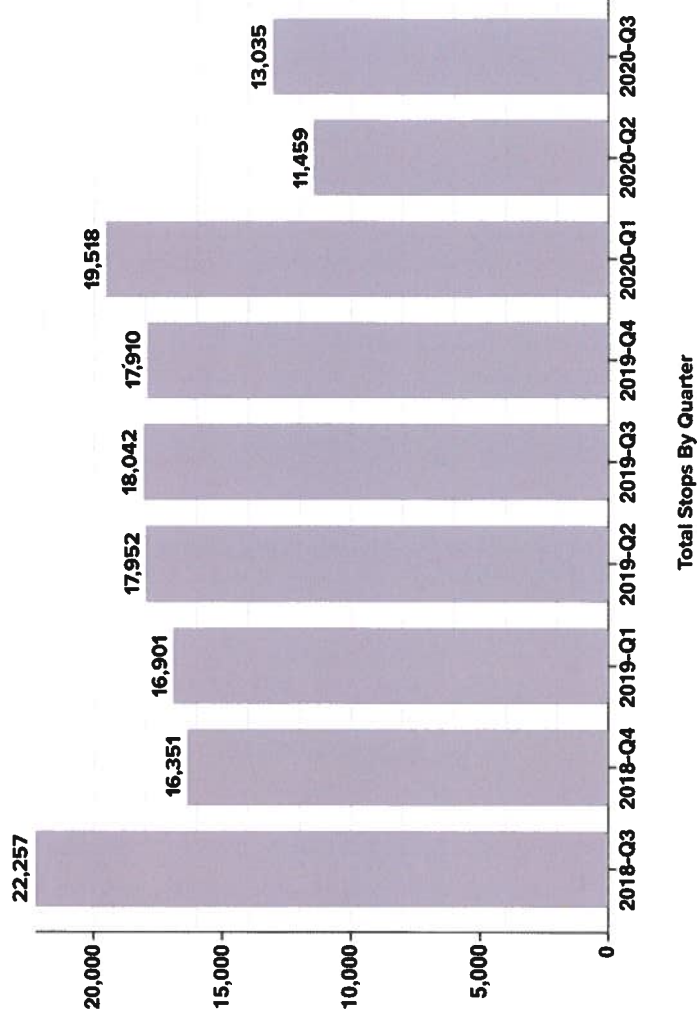
Traffic Stops



San Diego City Assessment - Summary of Findings

TRAFFIC STOPS PER QUARTER

The total number of traffic stops recorded each quarter varied from a high of 22,257 in 2018-Q3 to a low of 11,459 in 2020-Q2.





San Diego City Assessment - Summary of Findings

CONTRABAND FOUND AND NOT FOUND IN TRAFFIC STOP SEARCHES

Latinx people who were searched possessed contraband such as weapons, drugs, or stolen goods less frequently than White drivers.

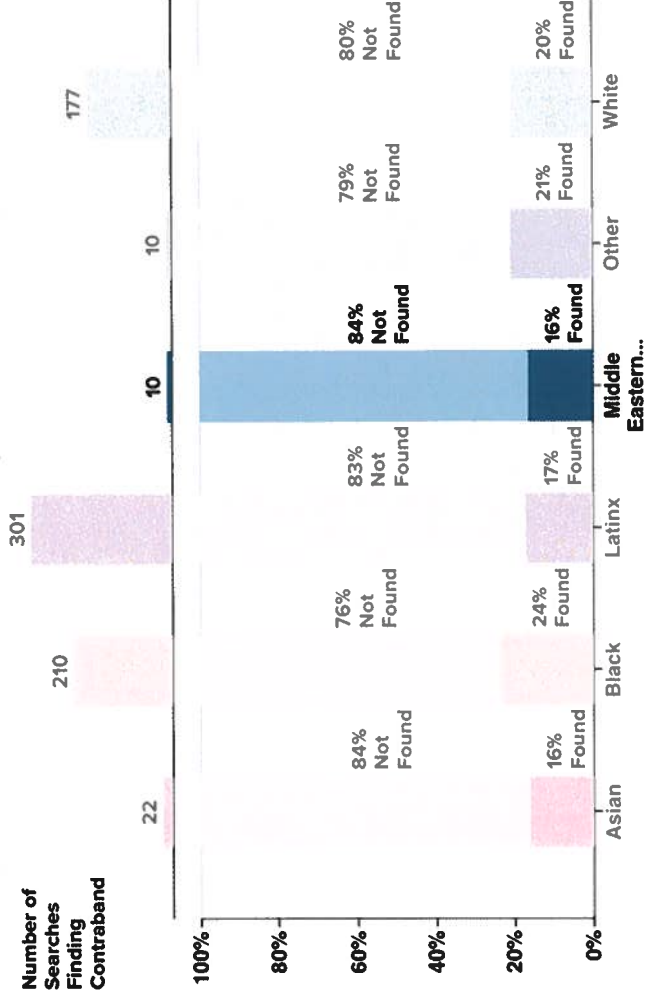




San Diego City Assessment - Summary of Findings

CONTRABAND FOUND AND NOT FOUND IN TRAFFIC STOP SEARCHES

Middle Eastern or South Asian people who were searched possessed contraband such as weapons, drugs, or stolen goods less frequently than White people.

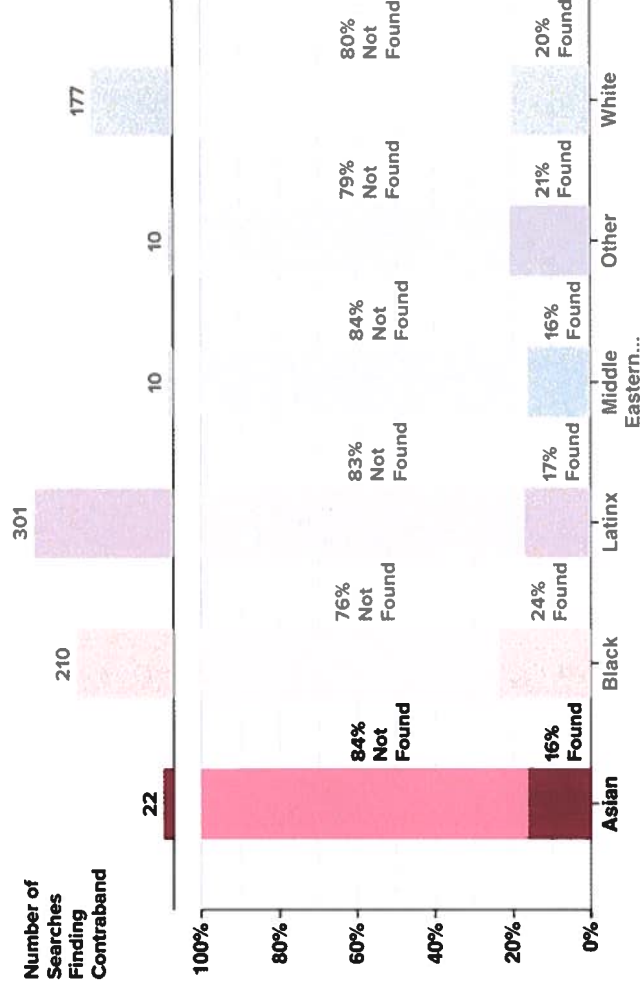




San Diego City Assessment - Summary of Findings

CONTRABAND FOUND AND NOT FOUND IN TRAFFIC STOP SEARCHES

Asian people who were searched possessed contraband such as weapons, drugs, or stolen goods less frequently than White people.

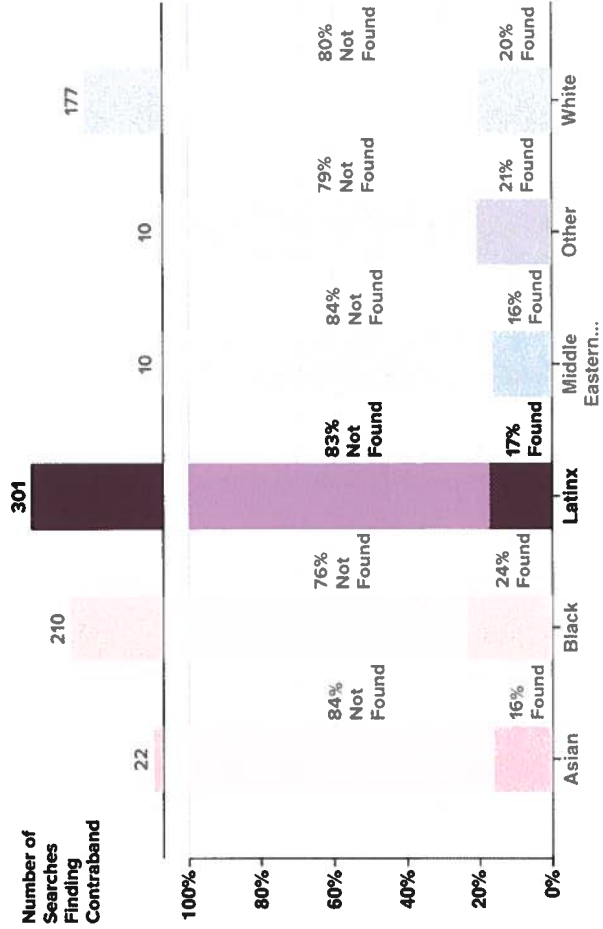




San Diego City Assessment - Summary of Findings

CONTRABAND FOUND AND NOT FOUND IN TRAFFIC STOP SEARCHES

Although searches of Latinx people did not find contraband at a higher rate than White people, because Latinx people were stopped and/or searched more often, contraband was found in a larger number of searches of Latinx people.

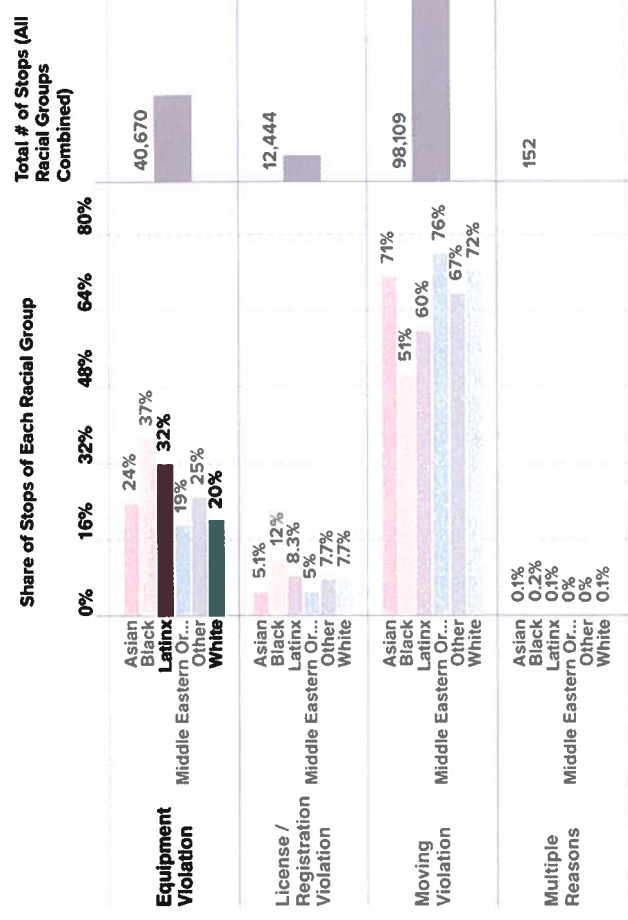




San Diego City Assessment - Summary of Findings

PROPORTION OF TRAFFIC STOPS OF EACH RACIAL GROUP THAT ARE MADE FOR EACH STOP REASON

32% of stops of Latinx people were for Equipment Stops, compared to 20% of stops of White people.

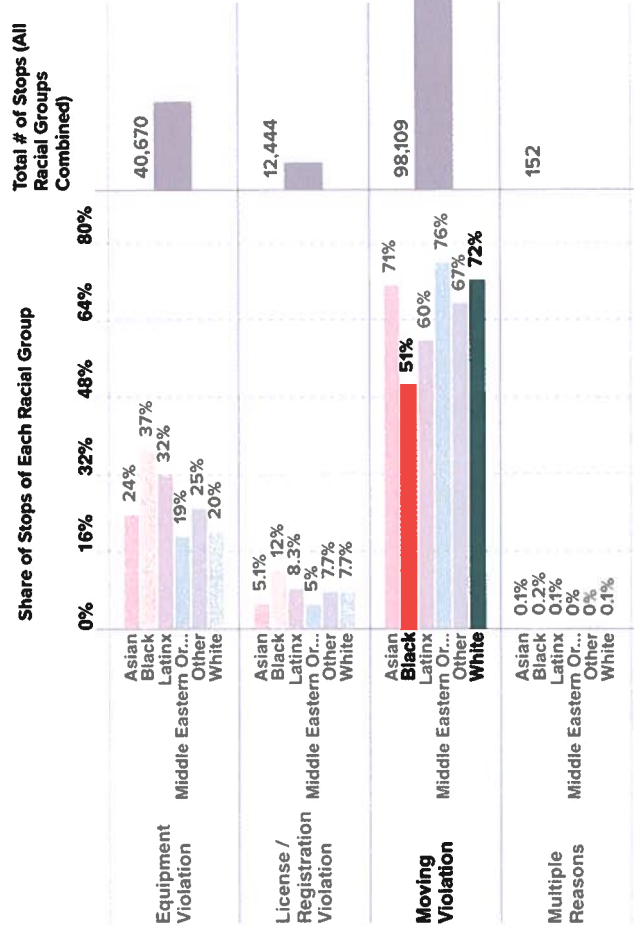




San Diego City Assessment - Summary of Findings

PROPORTION OF TRAFFIC STOPS OF EACH RACIAL GROUP THAT ARE MADE FOR EACH STOP REASON

72% of stops of White people were for Moving Violations, compared to 51% of stops of Black people.

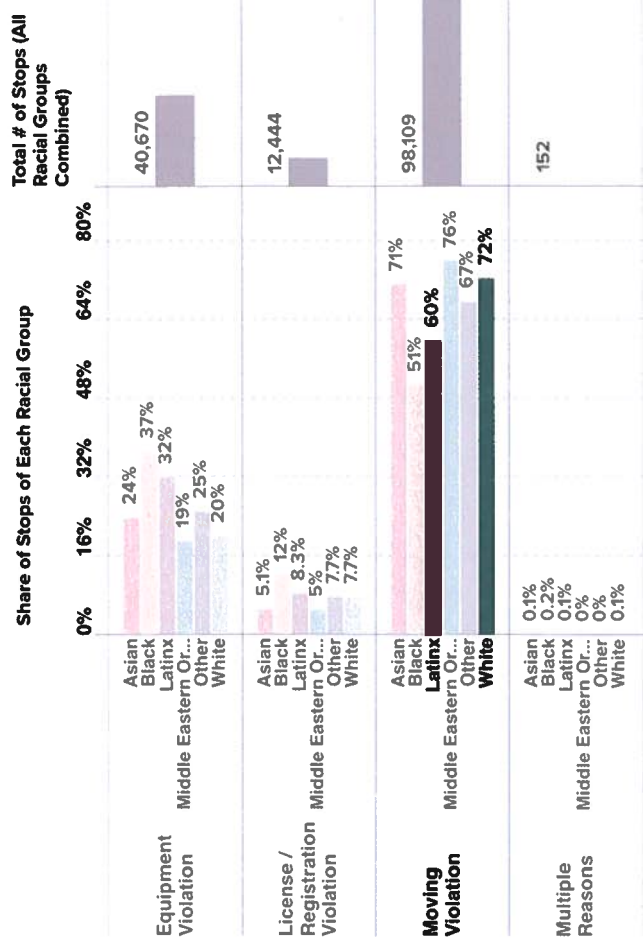




San Diego City Assessment - Summary of Findings

PROPORTION OF TRAFFIC STOPS OF EACH RACIAL GROUP THAT ARE MADE FOR EACH STOP REASON

72% of stops of White people were for Moving Violations, compared to 60% of stops of Latinx people.

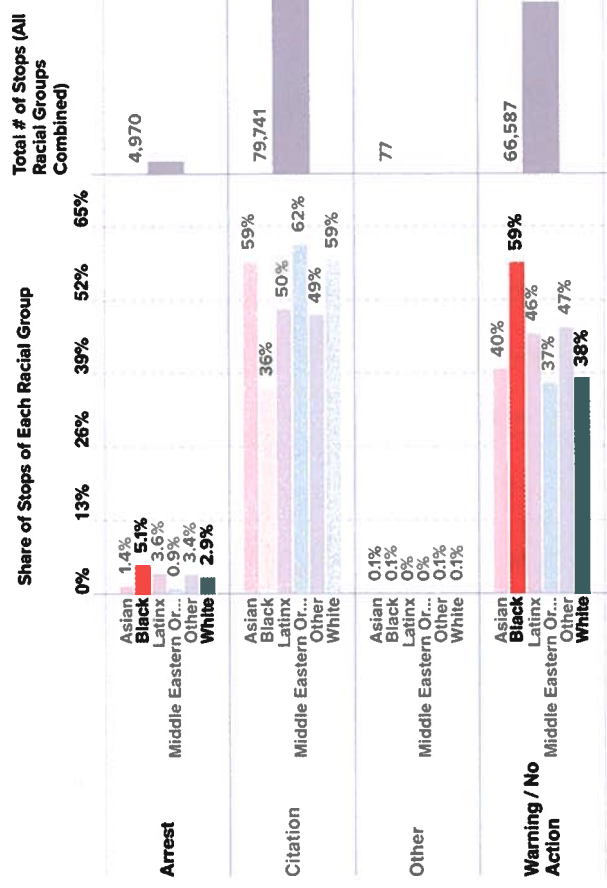




San Diego City Assessment - Summary of Findings

PROPORTION OF TRAFFIC STOPS OF EACH RACIAL GROUP THAT ENDED IN EACH OUTCOME

Once stopped, Black people were arrested 1.7 times as often as White people. They were also 1.5 times as likely to be released with a warning or no action taken.

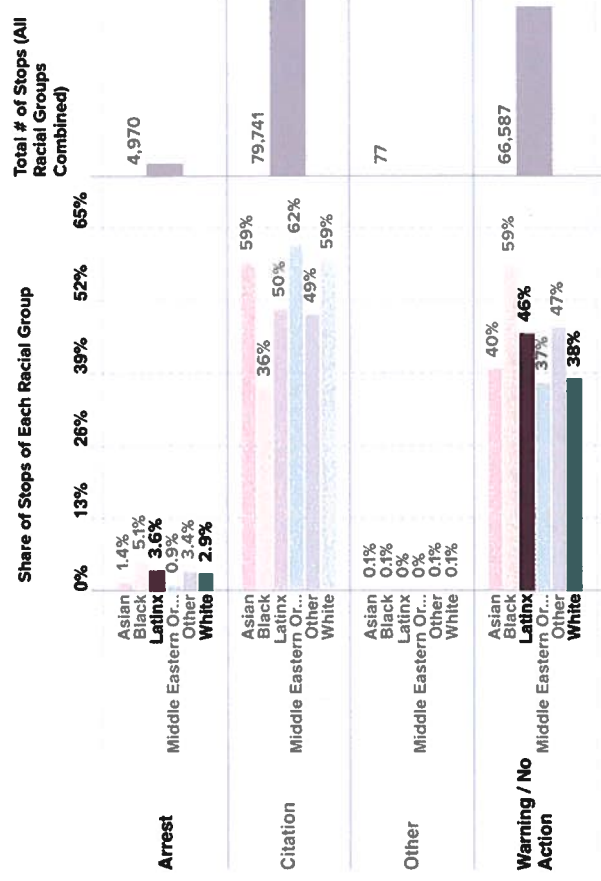




San Diego City Assessment - Summary of Findings

PROPORTION OF TRAFFIC STOPS OF EACH RACIAL GROUP THAT ENDED IN EACH OUTCOME

Once stopped, Latinx people were arrested 1.2 times as often as White people. They were also 1.2 times as likely to be released with a warning or no action taken.



San Diego City Assessment

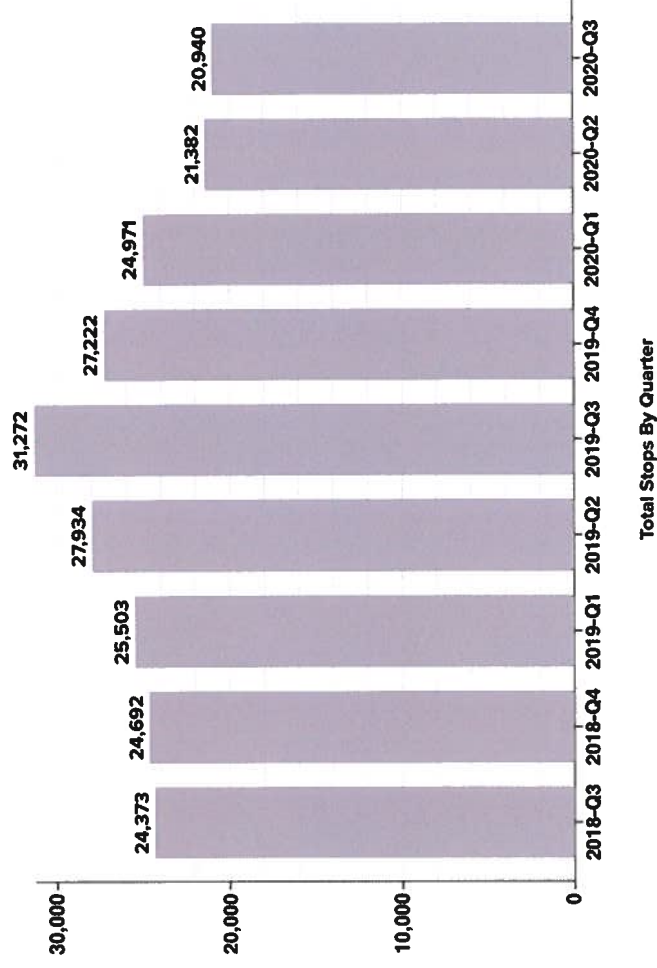
Non-Traffic Stops



San Diego City Assessment - Summary of Findings

NON-TRAFFIC STOPS PER QUARTER

The total number of non-traffic stops recorded each quarter ranged from a high of 31,272 in 2019-Q3 to a low of 20,940 in 2020-Q3.

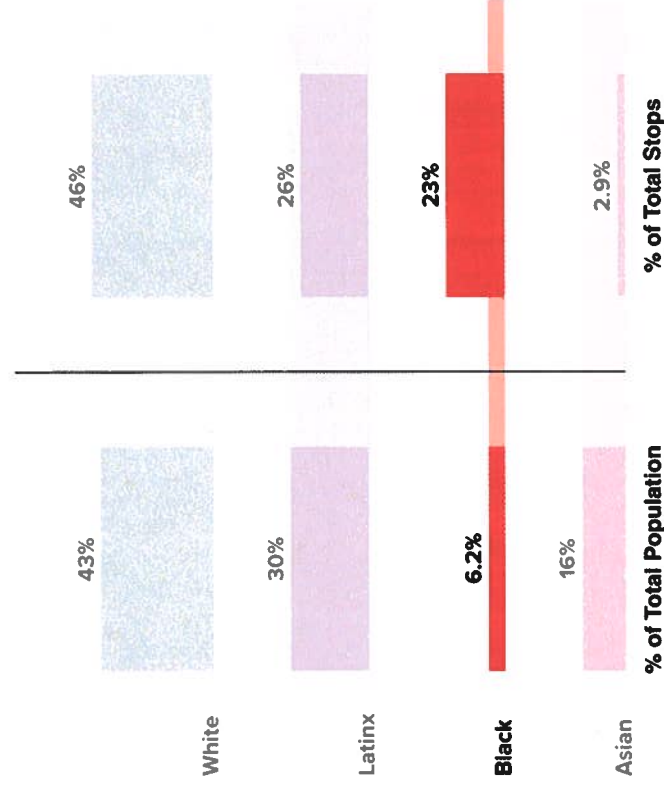




San Diego City Assessment - Summary of Findings

PERCENTAGE OF NON-TRAFFIC STOPS, BY RACIAL GROUP, COMPARED TO POPULATION

Black people, who make up 6.2% of the population of San Diego, made up 23% of all people stopped between 2018-Q3 and 2020-Q3.





San Diego City Assessment - Summary of Findings

RATES OF NON-TRAFFIC STOPS AFTER ACCOUNTING FOR NEIGHBORHOOD CRIMES RATES, POVERTY LEVELS, AND SHARE OF BLACK RESIDENTS

Using a statistical technique called regression analysis, we found that taking into account the influence of neighborhood crime rates, poverty, and share of Black residents, Black people were stopped 4.8 times as often as White people

Black people
were stopped
4.8x as often as
White people



4.8 stops involving a Black person for every



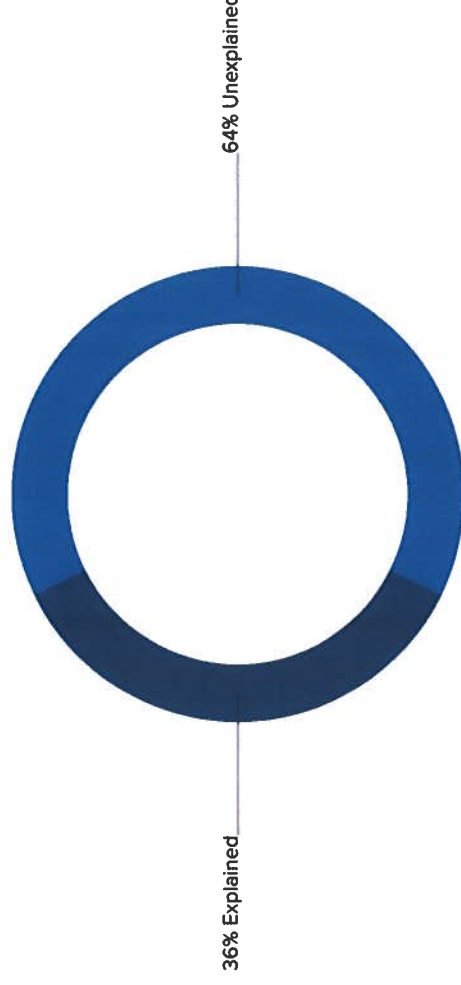
1 stop involving a White person.



San Diego City Assessment - Summary of Findings

PERCENTAGE OF STOP FREQUENCY EXPLAINED BY NEIGHBORHOOD FACTORS

Statistical analysis showed that neighborhood crime rates, poverty, and share of Black residents explained 36% of the frequency of non-traffic stops, while 64% was not explained by these factors.

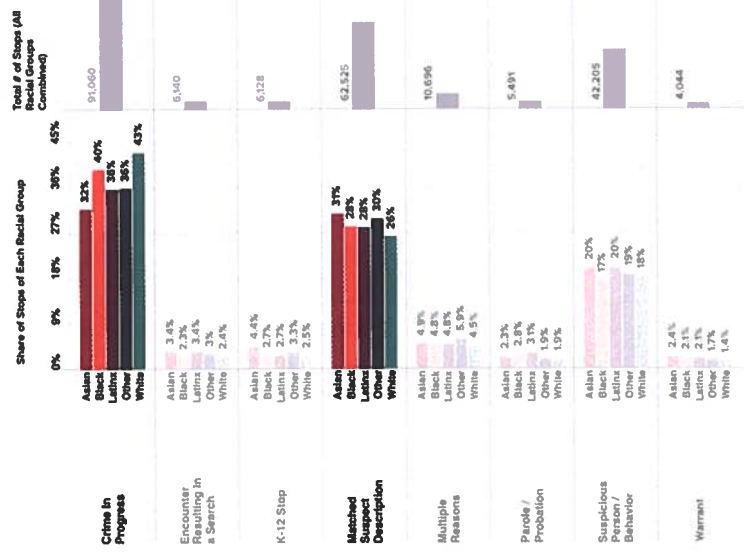




San Diego City Assessment - Summary of Findings

PROPORTION OF NON-TRAFFIC STOPS OF EACH RACIAL GROUP THAT ARE MADE FOR EACH STOP REASON

Crime in Progress and Matched Suspect Description were the most common reasons recorded for non-traffic stops among all racial groups.

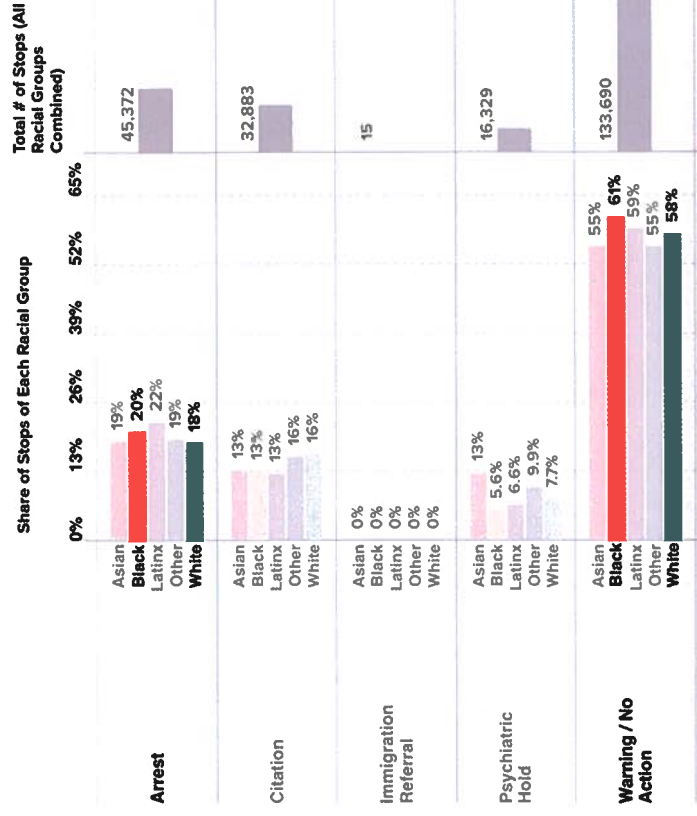




San Diego City Assessment - Summary of Findings

PROPORTION OF NON-TRAFFIC STOPS OF EACH RACIAL GROUP THAT ENDED IN EACH OUTCOME

Once stopped, Black people were arrested at similar rates to White people. They were also released with a warning or no action taken at similar rates to White people who were stopped.

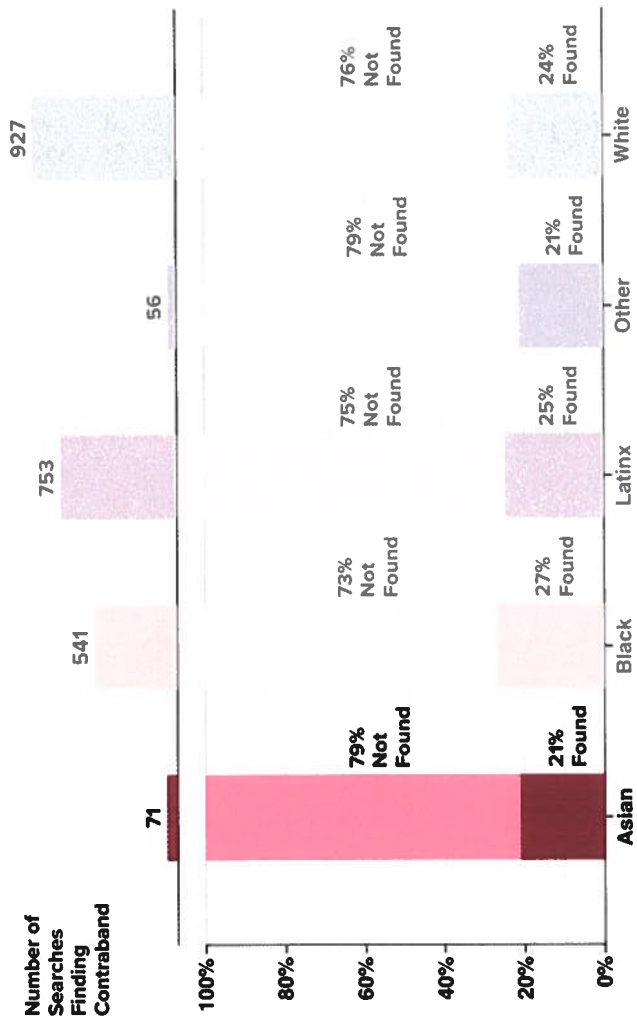




San Diego City Assessment - Summary of Findings

CONTRABAND FOUND AND NOT FOUND IN NON-TRAFFIC SEARCHES

Asian people who were searched possessed contraband such as weapons, drugs, or stolen goods less frequently than White people.

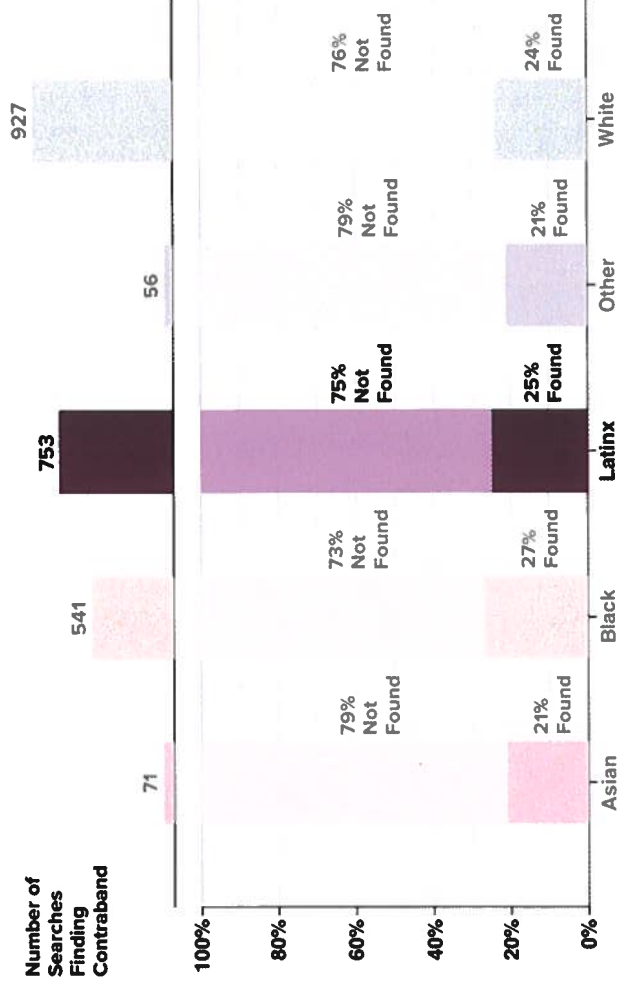




San Diego City Assessment - Summary of Findings

CONTRABAND FOUND AND NOT FOUND IN NON-TRAFFIC SEARCHES

Latinx people who were searched were roughly equally likely as White people to possess contraband such as weapons, drugs, or stolen goods.





San Diego City Assessment - Summary of Findings

RATIOS OF SEARCH RATES AT NON-TRAFFIC STOPS

Once stopped, Latinx people were searched 1.4 times as often as White people.



52 searches of Latinx people per 1,000 stops.

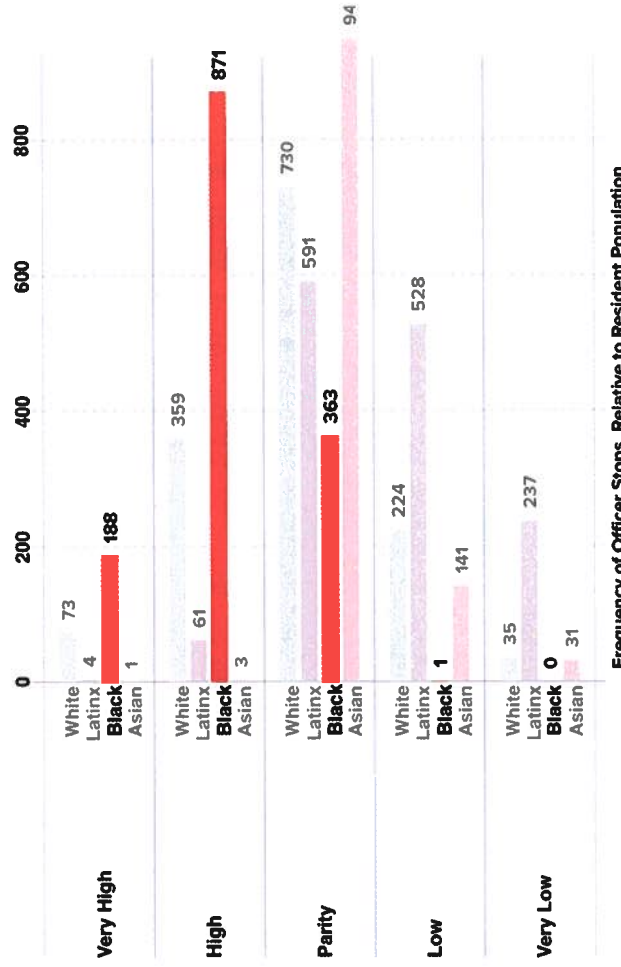
37 searches of White people per 1,000 stops.



San Diego City Assessment - Summary of Findings

COMPOSITION OF OFFICER NON-TRAFFIC STOPS RELATIVE TO EACH OFFICER'S PATROL AREA

74% of officers who made stops of Black people did so at rates that were higher than the proportion of Black people in the areas they patrol.



San Diego City Assessment

Next Steps



San Diego City Assessment - Summary of Findings

NEXT STEPS

Measure and monitor

Collecting and analyzing data can help you shed light on current problems and measure future progress.

[Learn more](#)

Investigate to learn more

Learn as much as possible about the situations when a disparity occurs or is most severe, in order to understand how to address it.

[Learn more](#)

Identify risk factors and develop targeted interventions

You can then address risk factors by improving written policies and partnering with the community to develop targeted interventions.

[Learn more](#)

Share results

Visit the Justice Navigator homepage to learn more about how to share results and take action.

[Learn more](#)



San Diego City Assessment - Summary of Findings

ACKNOWLEDGMENTS

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Suggested citation: Center for Policing Equity (2021). *Assessment of San Diego Police Department*. Justice Navigator, justicenavigator.org.

Exhibit L

THE NEW YORK TIMES BESTSELLER

**So you
want
to talk
about
race**

"Fascinating, real,
and necessary."

—THE ROOT

Ijeoma Oluo

So you want to talk about race

racist. It seemed far more important to him that the white people who were spreading and upholding racism be spared the effects of being called racist, than sparing his black friend the effects of that racism.

No matter what I said, no matter how I described the effects that this sort of racism had on me and other people of color, he was not going to accept me using the word "racist" to describe it.

That was when I learned that this was not a friend I could talk to about this really important part of my life. I couldn't be my full self around him, and he would never truly have my back. He was not safe. I wasn't angry, I was heartbroken.

We couldn't talk about the ways in which race and racism impacted my life, because he was unwilling to even acknowledge the racism that was impacting my life and he was unable to prioritize my safety over his comfort—which meant that we couldn't talk about me.

PROBABLY ONE OF THE MOST TELLING SIGNS THAT WE have problems talking about race in America is the fact that we can't even agree on what the definition of racism actually is. Look at almost any discussion of race and racism online, and you'll see an argument pop up over who is racist, who isn't, and who has the right to claim they are suffering from racism. The most common definitions of racism (in my own summation) are as follows: (1) Racism is any prejudice against someone because of their race. Or (2) Racism is any prejudice against someone because of their race, when those views are reinforced by systems of power. While these two definitions

What is racism?

are very close to each other in many ways, the differences between these two definitions of racism drastically change how you look at and address racism in America.

For the purposes of this book, I'm going to use the second definition of racism: a prejudice against someone based on race, when those prejudices are reinforced by systems of power. And this is a definition I recommend you use in your day-to-day life if your goal is to reduce the systemic harm done to people of color by racism in America. Let me explain why.

When we use only the first definition of racism, as any prejudice against someone based on race, we inaccurately reduce issues of race in America to a battle for the hearts and minds of individual racists—instead of seeing racists, racist behaviors, and racial oppression as part of a larger system.

There are a lot of individual, unapologetic racists out there. They're easy to spot—they're the people sharing the Obama = monkey memes. They are the people sewing swastikas to their jackets and talking about "White Genocide." This book is not for them and they are not my primary concern. This book will not tell you how to get unabashed racists to love people of color. I'm not a magician. Furthermore, many of those people have very little real power on their own and tend to stay on the fringes of society. We, as a society, like our racism subtler than that. What special power virulent racists do have can often be thwarted by just staying away from wherever you see "Obama is a Muslim" signs.

What is important is that the impotent hatred of the virulent racist was built and nurtured by a system that has much more insidiously woven a quieter, yet no less violent, version of those same oppressive beliefs into the fabric of our society.

Exhibit M

Katherine Braner and Megan Marcotte declare:

1. I, Katherine Braner, am currently the Chief Deputy of the Primary Public Defender's Office within the San Diego County Public Defender's Office, where I have been employed for over twenty-nine years.
2. I, Megan Marcotte, am currently the Chief Deputy of the Alternate Public Defender within the San Diego County Public Defender's Office, where I have been employed for over thirty years.
3. On the afternoon of December 04, 2023, Ms. Braner received a phone call from Judge Shore asking if he could come to the Office of the Public Defender in the next fifteen minutes to meet with her. He indicated he also wanted to have a conversation with the other Chiefs in the Office of the Public Defender.
4. Due to the short notice, only Ms. Braner and Ms. Marcotte were available to immediately meet with Judge Shore.
5. The meeting between Judge Shore and Ms. Braner and Marcotte took place in Ms. Braner's office and lasted approximately 45 minutes.
6. Judge Shore began the conversation by explaining that several years ago his son had a child who was born with serious medical conditions.

He later explained that this was particularly upsetting to him and his wife because his wife had previously given birth to a stillborn daughter.

7. As he could not “let another little girl die,” he and his wife went to Los Angeles every weekend to help his son and daughter-in-law with their granddaughter.
8. Judge Shore explained because he is an Orthodox Jew, he does not drive a motor vehicle on Saturday. Because he and his wife wanted to be in Los Angeles on the weekends, and because he cannot drive on Saturdays, he and his wife had to drive to Los Angeles on Fridays.
9. Judge Shore explained that because of his grandchild’s situation and his religion, he took Fridays off for a “couple of years” without asking or telling anyone.
10. Judge Shore went on to explain that he felt he was able to complete all his work Monday through Thursday.
11. Judge Shore implied that Judge Smyth did not want to report him but indicated that Judge Smyth felt that he “had to” report the discovery to the Judicial Council.
12. Judge Shore told us the Commission on Judicial Performance’s initial decision was that Judge Shore ought to be permanently removed from

his judgeship and be denied the ability to work subsequently in the arbitration / mediation field, as many retired judges do.

13. However, Judge Shore explained he hired a “good attorney,” compiled letters of support from his judicial colleagues, and drafted a statement in mitigation. Apparently, the Commission was swayed and decided that a public censure / admonishment would be sufficient.
14. Judge Shore, upset that the censure would not contain his “mitigation,” thought it was important to meet with stakeholders to explain why he engaged in these acts.
15. Judge Shore expressed relief in that he would not be up for reelection for several more years and that the voting public will have forgotten about this by then.
16. At no time did Judge Shore express remorse for his actions. Rather, Judge Shore appeared to meet with us to garner sympathy and downplay his actions. He justified his behavior to us as an administrative oversight and by his claim that he completed his assigned work despite not working on Fridays.

17. At no time did Judge Shore acknowledge his dishonesty to his colleagues, the criminal justice community, and the People of the State of California.
18. At no time did Judge Shore indicate he lied about his behavior when confronted by his supervisors on several occasions.
19. After discussing what amounted to dishonest and unethical behavior, Judge Shore started discussing an assignment handling unlawful detainers.
20. During this discussion, Judge Shore expressed a bias against respondents / defendants (tenants).
 - a. Tenants come to court “pro per” (negative connotation).
 - b. Landlords are forced to spend money on law firms to represent their interests.
 - c. Landlords are already losing a lot of money in rent payments, and then they must pay for attorneys.
 - d. Tenants “have too many rights.”
 - e. Tenants get delay after delay (for the eviction) because there are too many procedural rules that the landlords must comply with.
 - f. This discussion was of concern to us because he explicitly expressed frustration and annoyance with individuals exercising

their statutory rights defending against legal actions in direct violation of multiple canons of the Code of Judicial Ethics (such as canons 3 (a judge shall perform the duties of judicial office impartially), 3B(8) (a judge shall dispose of all judicial matters fairly . . . and manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with law), 3C(1) (a judge shall diligently discharge his administrative responsibilities in a manner that promotes public confidence in the integrity of the judiciary), 2A (a judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), and 1 (a judge shall uphold the integrity of the judiciary).

21. His express bias was particularly troubling because clients of the Public Defender's Office often face eviction, housing uncertainty, and discrimination when seeking housing. Our clients are sometimes forced to live in uninhabitable conditions where judicial intervention is the only recourse.

22. As Judge Shore was leaving the meeting, he expressed dismay over the Israel / Hamas War. During this discussion, Judge Shore expressed a racial bias that was of concern to us, particularly as the judge who is assigned to rule on motions brought under the Racial Justice Act.

- a. Judge Shore said he has family members living in Israel who own farms.
- b. His family relies on the people of Gaza to cross the border daily to work on the farm, just like here (San Diego) with “our Mexicans.”
- c. Judge Shore did not express a concern with the humanitarian issues of the war. His explicitly stated concern was that the people of Gaza could not currently work on his family’s farms which subjected his family to financial hardships.

23. At no time did Judge Shore mention or express any concern over the deaths that had occurred because of the war, nor did he acknowledge that the people of Gaza could not come work on the farm because they were fleeing military action, injured, or dying.

24. On December 13, 2023, the written censure was published. The censure contained information Judge Shore did not disclose to us. Specifically, the censure contained information that Judge Shore was

deceitful multiple times during the investigation. When asked about the absences by Judges Michael Smyth and Maureen Hallahan, Judge Shore denied he had taken time off without a leave slip, that he barely took any vacation; and that he did not regularly take Fridays off.

Judge Shore later sent an e-mail to Judges Smyth and Hallahan acknowledging 59 days of absences, but insisting he was at work in the courthouse the rest of the Fridays. The censure investigation revealed he was absent without approval or authorization on at least 155 court days and was not in the courthouse a single Friday for almost a year and a half (May 28, 2021, through November 18, 2022.)

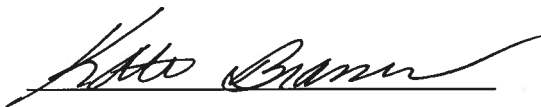
25. Further, Judge Shore did not disclose to us that his absences exceeded his available vacation time. He did not disclose that the absences exceeded his available vacation time by 87 days – over seventeen weeks of time for which he was paid, presumably accrued additional vacation and sick leave, and earned contributions toward retirement, but did not work.
26. Judge Shore's failure to disclose this information caused us further concern as to his integrity, his acceptance of responsibility for his fraudulent behavior, and his failure to recognize the seriousness of his transgressions.

27. The following day, Ms. Braner contacted Presiding Judge Smyth to schedule an appointment to discuss Judge Shore's disclosure.
28. On December 15th, Chiefs Braner, Marcotte, Richard Gates and Michael Garcia met with Judges Smyth, Hallahan, and Groch.
29. The Public Defender's Office Chiefs expressed grave concerns about Judge Shore's dishonest and unethical crimes of moral turpitude that occurred every week for a year and a half until he got caught. The Chiefs explained that it would not be appropriate for our clients' cases to be heard by an unethical judge who committed such an egregious fraud on the People of the State of California by claiming he worked when he had not and was paid for work he did not do.
30. The Chiefs further informed the judges of Judge Shore's racist and insensitive comments, and his expressed disdain for people exercising their rights.
31. Because of Judge Shore's fraudulent behavior , his repeated dishonest claims until apparently confronted with clear evidence, his continued lack of remorse, contrition, and appreciation for the seriousness of his behavior and how he violated the Code of Judicial Ethics, his racially charged and insensitive comments, his expressed disdain for people exercising their rights in court, he has lost judicial legitimacy and

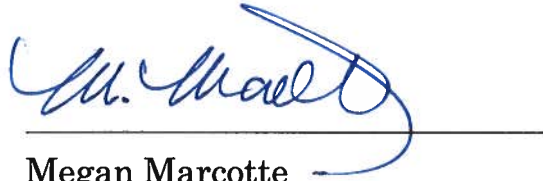
irreparably damaged confidence in his judicial integrity Clients, family members, and the San Diego community members must have faith in the integrity of the criminal justice system.

We declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of January, 2024, at San Diego, California.



Katherine Braner
Chief Deputy
Primary Public Defender
Declarant



Megan Marcotte
Chief Deputy
Alternate Public Defender
Declarant