



City of San José  
Board of Fair Campaign and Political Practices  
C/O Office of the City Clerk  
200 E. Santa Clara Street, Tower 14th Floor  
San José, CA 95113

August 19, 2018

*In re: Concerns and Demand for Review and Investigation of San Jose Independent Police Auditor (“IPA”), Aaron Zisser*

Members of the Board of Fair Campaign and Political Practices:

The National Police Association, herein (“NPA”), seeks your assistance in addressing what can only be described as serious concerns regarding the actions of San Jose Independent Police Auditor, Mr. Aaron Zisser, herein (“IPA Zisser”). Further, after addressing the NPA’s concerns regarding IPA Zisser, NPA respectfully demands that a full review and investigation be conducted regarding IPA Zisser’s practices and conduct in connection with his role as IPA.

NPA’s concerns are three-fold. First, IPA Zisser has been derelict in his duty, put officers’ lives in jeopardy and fails to serve the best-interests of the public, which in at least one significant case, directly threatened the life/lives of San José Police Officer(s). Second, IPA Zisser’s co-prime function as IPA “is to provide *independent* oversight of and instill confidence in the complaint process through *objective* review of police misconduct investigations.”<sup>1</sup>(emphasis added). However, IPA Zisser’s own conduct, continual contrition when confronted with *actual facts* in contrast with IPA Zisser’s work-product and proven inability to be either independent or objective in connection with his role as IPA, leave little doubt that IPA Zisser cannot meet the core mission of IPA. Finally, IPA Zisser’s inability to perform one of his main assigned responsibilities, the reporting function, further shows that he is not fit to serve as IPA.

In addressing the issue of IPA Zisser failing to disclose a credible threat to the San Jose Police Department (“SJPD”), which has already received significant media and other related coverage, IPA Zisser’s conduct is nothing short of an absolute dereliction of duty. IPA Zisser is a learned attorney, who should be well-aware of both his legal and ethical obligations owed to his client/employer, which in this case is the SJPD, *vis-a-vi* the San José City Council. Failing to

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<sup>1</sup> Independent Police Auditor, *Mission Statement*, <https://www.sanjoseca.gov/ipa/>

report, while acknowledging his duty to report a credible threat to the safety and health of the SJPDP is *prima facie* dereliction of duty.

When Stephen Garrison, an inmate at the Santa Clara County main jail, directly called IPA Zisser's office and reportedly stated that the next time he came across law enforcement he was going to shoot them in their (expletive removed) face, there is no doubt that this information should have been shared with law enforcement. Law enforcement officers place their lives on the line for the public every single day and they have the expectation that when a direct threat to their lives is made that they would be alerted so that they can take the necessary precautions. IPA Zisser stated how seriously they take threats against officers, however, he never explained why this specific threat that was given directly to his office was not relayed to law enforcement. There is no description of his actions other than a complete dereliction of duty.

The second concern of the NPA is focused on the bias shown by IPA Zisser against law enforcement. Lingering still is IPA Zisser's personal involvement in several anti-police rallies, events and other gatherings. In the charter that created the position of IPA, the first job that is assigned to the IPA is to review police department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.<sup>2</sup> How is it possible to determine if an investigation was objective and fair if the individual completing said investigation is himself anti police? IPA Zisser tried to explain his presence at one such anti police event by stating he was there to let them know he heard their message.<sup>3</sup> However, there has been no such sighting of IPA Zisser at any pro police activities to let anyone know that he is there to hear their message. If one is truly impartial and wanting the community to know he is listening should he remain neutral rather than completely one-sided?

Not to be overshadowed by the first two concerns, the final concern to be addressed further challenges the credibility and quality of performance that IPA Zisser could provide as IPA given IPA Zisser's demonstrated bias and partisanship. Again, the very mission statement of IPA is to instill confidence in the public through both independent and objective analysis of information. IPA Zisser has failed this mission. In his most-recent catastrophe, IPA Zisser's 2017 IPA Year-End Report, herein ("Report"), specifically, the sections concerning SJPDP<sup>4</sup>, are nothing short of misleading – intentional or not producing inaccurate statistics supporting false claims of police racial bias. In one case IPA Zisser used percentages to try to show that the number of minorities going to jail over whites in similar situations was higher. However, it was later learned that that was based on only seven cases and looking at just one additional case could seriously change the percentages. The San Jose City Counsel had to send back the report due to the false and misleading information it contained. While acknowledging the information was misleading IPA Zisser still fought for the report, stating that correcting the report sets bad precedent.<sup>5</sup> IPA Zisser had no problem with setting the precedent of false and misleading information with the undeniable result being the police department looking racist, but only had an issue with being forced to correct the misinformation that he was putting out to the public. It should be noted that if that information was not changed, it would have been used against the police department and

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<sup>2</sup> Office of the Independent Police Auditor, Charter section 809 (a), <https://www.sanjoseca.gov/ipa/>

<sup>3</sup><https://www.mercurynews.com/2018/07/20/union-says-auditor-attended-anti-police-rally-calls-for-his-removal/>

<sup>4</sup> See, Report, Ch. 4-5, pgs. 31 – *et. seq.*

<sup>5</sup><https://www.mercurynews.com/2018/05/23/san-jose-council-sends-back-police-audit-over-misleading-race-claim/>

the city repeatedly, which one can only assume was the purpose of the report of IPA Zisser in the first place.

Certainly, if the intent was to mislead, IPA Zisser should be terminated from employment immediately. However, even if unintentional, IPA Zisser should be considered incompetent, and therefore not qualified to hold his appointed position, and thus, terminated from employment. Either way, serious questions remain as to whether IPA Zisser can even competently perform his functions as IPA.

One of the few duties and responsibilities spelled out for the IPA is a reporting function. If IPA Zisser can not complete this duty in a honest, competent manner, he should immediately be removed from the job.

It is for these reasons the NPA respectfully demands a full-review and investigation into the conduct, activities, and whether IPA Zisser is appropriately fit for office in serving as IPA. Should the City of San José determine that he is not, there is but one appropriate outcome – the termination of employment of IPA Zisser as IPA.

Respectfully Submitted,

*Ed Hutchison*

Ed Hutchison  
President  
National Police Association