

Dear Bart Board of Directors:

I appreciate the opportunity to address this agency regarding the recent OIPA case 21-10. I want to explain why I dissented from the Bart Police's Citizen Review Board acceptance of the findings from the OIPA. In this case, the complainants' allegations included Biased Based Policing by the Bart Police officers towards the detained juveniles. OIPA did not agree with this assertion and found that it did not have merit. I respect the purpose and intent of the office to find out the facts of the incident, identify areas of improvement, and bring to light/accountability the departments missteps. However, I believe they overlooked the gravity of handcuffing the juveniles. According to policy, there are special considerations that should be taken when deciding to handcuff someone, especially minors. The policy lists multiple requirements when deciding to handcuff and I want to highlight the considerations brought up during the interviews: compliance and flight risk.

The non-compliance standard for handcuffing was not met.

- The officers that interacted with the youth described the youth as compliant and not posing a threat.
- Based on body camera footage, the kids answered all the officers' questions. and for most part truthfully. They provided the contact info for their parents so that officers could inform them of the issue and verify their statements.
- The officers stated that the youths' behavior did not change until AFTER they were handcuffed for at least forty-five minutes later.
- They all agreed that the youth behavior did not change until much later (roughly 45min later) once a crowd developed to observe their actions. I posit, how many of us would not have been as cooperative as we were in the beginning of an interaction with the police once they not only detained us but put tight, uncomfortable restricting objects on our wrists for almost an hour.
[POSSIBLE REMOVAL]
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The flight risk standard for handcuffing was not met.

- An officer incorrectly applied the "flight risk" standard to the youths based on his belief that they fled the scene.
- In this case, leaving the BART station after completing a trip was equated to "fleeing the scene".
- The policy defines "fleeing the scene" as person(s) posing a risk of leaving the officers before they can determine whether they have enough evidence to demonstrate the suspect committed the crime.
- In this case, no officers suggested that the kids attempted to leave before they asked their question. The officers all agreed the kids were compliant.

Based on the available information and reading of the handcuffing policy, there did not appear a valid reason for why the officers handcuffed the youths. The action was incorrect, and therefore I dissented from the Bart Police's Citizen Review Board acceptance of the findings from the OIPA.

I feel it is important to explain this decision, and how the incorrect application of the handcuffing policy initiated a tense situation with the community and further eroded the trust between the community and BART police officers.

So once again I ask, why the need for handcuffs. It seems to me the reason stemmed from the later answers that the officers provided regarding the incident. When asked whether the kids posed a danger to the officers they stated no; however, multiple officers suggested that the crowd that began to form (ironically because of the handcuffed youth) and their unfamiliarity of the area exacerbated their fear.

However, these are not valid reasons to handcuff minors for almost an hour. Moreover, why were the officers afraid? Like the youth, the community did not threaten or physically harm the officers. A decent number of concerned cooperative community members, calmly spoke with the officers, discussed their concerns and even thanked the officers for answering questions.

These aren't actions of youth or adults that should warrant fear unless the officers already held predetermined beliefs about this specific group of community members and youth.

I assert their bias against African Americans contributed to their fear; and despite the cooperation, willingness to answer questions and patience of the African American adults and youth during a tense ordeal made no difference to the members of Bart Police present on that day; the officers blinded by color decided to handcuff the kids and further fan the anger of the community.

-Todd Davis

Bart Citizen Review Board Member