



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Robert L. Davis
Chief of Police

**SUBJECT: CIVIL GRAND JURY REPORT -
RACIAL PROFILING BY SJPD:
PERCEPTION vs. REALITY**

DATE: August 2, 2006

Approved

Date

8/3/06

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

It is recommended the Honorable Mayor and City Council review and accept the San Jose Police Department's (SJPD) response to the 2005-2006 Santa Clara County Civil Grand Jury's report entitled "Racial Profiling by San Jose Police Department - Perception vs. Reality."

OUTCOME

Approval of this report satisfies the requirements of Penal Code Section 933(c), which requires the City Council to respond to the Civil Grand Jury report no later than 90 days after the Grand Jury submits its final report to the presiding judge of the Superior Court.

EXECUTIVE SUMMARY

The 2005-2006 Santa Clara County Civil Grand Jury released a report entitled "Racial Profiling by San Jose Police Department - Perception vs. Reality," and made eight findings and recommendations, based on their inquiry. The Department is required by law to respond to each recommendation and finding.

BACKGROUND

On May 19, 2006 the Santa Clara County Civil Grand Jury provided the Department with its Final Report of findings and recommendations entitled "Racial Profiling by San Jose Police Department - Perception vs. Reality." The Grand Jury's inquiry was in response to allegations from individuals and concerns from community organizations that the San Jose Police

people were shot or beaten at some entertainment venues where most of the clientele were members of racial/ethnic minority groups.

The purpose of this memorandum is to provide the Mayor and Council with the San Jose Police Department's formal response for approval, as well as to comply with Penal Code Section 933(c), which requires the City Council to respond to the Grand Jury report no later than 90 days after the Grand Jury submits its final report to the presiding judge of the Superior Court.

ANALYSIS

The Department has provided its responses to the eight Findings and Recommendations listed in the 2005-2006 Santa Clara County Civil Grand Jury's Final Report for Council's review and approval.

Civil Grand Jury Finding #1

It appears there is some level of intentional and/or unintentional intimidation on the part of members of the SJPD. This is exhibited in many ways such as vehicle and pedestrian stops for relatively minor violations. In many cases these result in searches or pat downs without probable cause. Requests for police identification (name/badge number) are sometimes perceived by officers as confrontations which can contribute to escalating tension in a given situation.

Civil Grand Jury Recommendation #1

The Grand Jury recommends that a pilot program be established so that in all contacts the officer provides, when feasible, a business card to the civilian which includes officer name and badge number. In addition, the card should include contact information for the SJPD, the Internal Affairs Office, and the Independent Police Auditor's Office. This would reduce the likelihood of confrontation when an officer is asked to provide this information.

SJPD RESPONSE:

Finding #1:

The San Jose Police Department disagrees with the finding.

The issue of racial profiling is a complex one that has been and is the subject of countless sociological studies. And while racial profiling, which is defined as a police-citizen enforcement contact in which the contact is initiated based solely upon the race/ethnicity of a subject, is real and can happen anywhere, it certainly is not something the San Jose Police Department teaches its officers or condones.

Instead, what an individual may perceive as profiling or intimidation may simply be a misunderstanding as to the actual reasons an officer stops an individual. Indeed, while a citizen may feel he or she has been singled out for disparate police attention, what is often missing from

this perspective are the actual facts for why police officers made the stop, or why officers may be concentrating their police enforcement activities in any given area, such as responding to 9-1-1 calls for service, addressing ongoing public safety problems, or enforcing violations any individual may actually have committed, whether such violations are deemed big or small by those the police stop. Yet it must also be stated that to the extent officers are found to be engaging in incidents of racial profiling, the San Jose Police Department is able and willing to investigate such complaints fully and objectively.

The Civil Grand Jury also believed that requests for police to identify themselves often leads to confrontation. What is missing from the discussion is that often times such requests come from people who are being investigated or arrested while the very enforcement activity involving them is occurring. The complaints usually are based upon the fact that an officer did not identify him or herself at the exact moment the complainant demanded it, which is often impractical. The important thing to consider when reviewing such cases is whether or not an officer eventually did identify him or herself at a time when such communication is not jeopardizing the enforcement or investigative activity. Those officers who fail to do so are held accountable.

It should, however, be noted that the San Jose Police Department receives relatively few such complaints in any given year involving officers refusing to identify themselves. In fact, the Department has not received any specific complaints associated with this portion of the findings the Civil Grand Jury made in this report.

What also needs to be considered is the fact the Department handled over 393,000 formal calls for service and many more informal contacts with the public in 2005, and of all of the citizens-to-police contacts, just over 31,062, or 7.9%, involved making an arrest or issuing a criminal citation.

Recommendation #1:

This recommendation will not be implemented. As noted above, the overwhelming majority of the hundreds of thousands of formal calls SJPD officers handle do not involve any request that an officer formally identify him or herself during the contact with a resident. Yet if any person requests such identification, current policy already requires that an officer provide such information, as outlined by the following SJPD Duty Manual section:

C 1409

SUPPLYING IDENTIFICATION:

Consistent with officer safety and protection of public, Department members, while acting in an official capacity, will supply their name, rank and position, and similar identifying information in a professional manner to any person who may inquire. Sworn members will identify themselves, when requested, by using an Incident Card (Form 200-45a) or Department approved business card.

As such, SJPD policy already mandates that an officer supply identifying information to any person who may inquire. Additionally, contact information for the Office of the Independent Police Auditor and the SJPD Internal Affairs Unit is readily available through various sources,

including: all Community Policing Centers, various phone directories, the IPA Internet site, and the Department's SJPD.org public website. The SJPD.org Internet site provides links to all area Captains, providing their names, email and contact numbers. There is also a section that answers questions regarding the complaint process, as well as a link to the IPA's website.

Civil Grand Jury Finding#2

Many individuals do not report perceived abuses or incidents of racial profiling due to concerns about retribution from the SJPD.

Civil Grand Jury Recommendation #2

In addition to formal channels such as Internal Affairs and the Independent Police Auditor's Office, the Grand Jury recommends that an additional conduit for communicating in confidence with the SJPD be established. This might take the form of high-level SJPD officers serving as focal points for minority concerns. The Grand Jury recommends identifying officers whose ethnic backgrounds might make individuals more comfortable making complaints. This could encourage bringing to light specific concerns in confidence without fear of retribution.

SJPD RESPONSE:

Finding #2:

The San Jose Police Department disagrees with the finding in that there is no evidence that the San Jose Police Department has engaged in any retaliation because of a racial profiling complaint. Indeed, the Department has taken any and all such formal complaints seriously. If there are individuals who believe they have been the targets of racial profiling, there are several avenues to take to make a complaint, including the SJPD Internal Affairs Unit, the Office of the Independent Police Auditor, elected officials, and several government agencies.

Recommendation #2:

The Department does not believe the Civil Grand Jury's recommendation is necessary because the Department has already taken several steps over the years to ensure that those who want to make a complaint feel comfortable doing so. These steps include locating the Internal Affairs Unit in a geographical area apart from the main police facility, as well as staffing the unit with officers and personnel who reflect the many different racial and ethnic communities that call San Jose home. Internal Affairs also includes individuals who speak Spanish and Vietnamese. The Independent Police Auditor's Office is also similarly structured and staffed. It is unclear what additional value may be added to the complaint process by identifying others on the Department to do what officers in the Internal Affairs Unit already do.

The Department also continues to seek and recruit individuals who represent all the communities in San Jose.

Civil Grand Jury Finding #3

The IPA provides an alternate way for citizens to report police harassment or abuse. At present, citizen complaints are shared between the IPA and IA. Regardless of where a complaint is filed, any formal investigation is done by IA. The IPA only audits the results of investigations by IA and either agrees or disagrees with them. The IPA does not conduct independent investigations. In cases of unresolved disagreement between the IPA and IA, the IPA can request further investigation by writing to the City Manager.

Civil Grand Jury Recommendation #3

The Grand Jury believes that the IPA's role and responsibilities should be expanded to allow a level of investigatory powers in addition to its current audit responsibilities. The Grand Jury recommends that a review of similar police audit functions in other large cities be initiated. This should identify models which could be used to augment the IPA mission.

SJPD RESPONSE:

Finding #3:

The Department concurs with the Grand Jury's assessment of the role of the IPA.

Recommendation #3:

The San Jose Police Department does not believe any changes to the current system of the Office of the Independent Police Auditor are warranted. It should be stressed that the level of investigative responsibility for the IPA recommended by the Civil Grand Jury was studied and reviewed by the City Council during the establishment of the Office of the Independent Police Auditor in 1993. After much study and public debate, including that provided by the leaders of the San Jose Peace Officers Association, the City Council created the Office of the Independent Auditor by ordinance and in 1996 recommended a ballot proposition amending the City Charter to create the Office of the IPA. Charter Section 809 grants the IPA the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigations of complaints against police officers.

San Jose Municipal Code Chapter 8.04 already does authorize the IPA to interview civilian witnesses in the course of an Internal Affairs investigation and to attend Internal Affairs Unit interviews of any witnesses, including police officers. Through this review process, the IPA has the ability to determine if the investigation is complete, thorough, objective and fair, thereby

assuring the public that the Department's administrative investigations are fair and unbiased. This process also ensures that the rights of the police officers involved are also protected, as mandated by state law.

It should also be stressed that since the creation of the San Jose IPA office, this system has been widely recognized as a model program. Indeed, as stated in the IPA's 2005 Year-End Report, "San Jose's Independent Police Auditor model of police oversight is recognized as a successful model in the field of civilian oversight. Cities across the country and internationally continue to invite the Independent Police Auditor to speak to their communities about the IPA model and to provide guidance and assistance in developing new programs."

The report further states, "In 2005 the IPA was invited to present the San Jose model of police oversight at the National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference in Miami, Florida. IPA Barbara Attard was elected President of the NACOLE Board of Directors for 2006. The Independent Police Auditor was selected as the United States' representative to present comparative models of oversight in the United States at an international United Nation's Development Program conference to establish oversight of the police in Brazil."

There is no compelling reason to change what has become a very successful model for police oversight.

Civil Grand Jury Finding #4

The City of San Jose does not have a police Civilian Review Board, as exists in some other large cities.

Civil Grand Jury Recommendation #4

A task force should be convened to explore and determine whether or not a Civilian Review Board would be an appropriate additional mechanism for citizens to report cases of racial profiling or other abuse.

SJPD RESPONSE:

Finding #4:

The Department concurs with the finding.

Recommendation #4:

As stated in the Department's response to Finding and Recommendation #3, there is no compelling reason to change what has become a very successful model for police oversight.

Civil Grand Jury Finding #5

Outreach programs can be effective in promoting understanding between persons of all ethnic backgrounds and sources of authority such as the SJPD.

Civil Grand Jury Recommendation #5

SJPD training should continue to include participation in community outreach programs.

SJPD RESPONSE:

Finding #5:

The Department strongly supports this finding.

Recommendation #5:

The activities the Civil Grand Jury recommends have actually been in place formally for over 14 years, with the San Jose Police Department's commitment to and adoption of community policing. The underlying definition of community policing is, in essence, an organizational and individual *attitude*, not a program or project. It is a Department-wide mind-set in which each Department member is committed to providing the highest quality of public service at every opportunity and contact with those served.

Sworn Department members deliver these services at the individual, neighborhood, and community levels. Community meetings and other interactions, whether formal (such as 9-1-1 calls for service) or informal, serve as methods for our officers to identify and prioritize a neighborhood's short and long-term enforcement needs, along with the development of associated prevention and intervention service strategies.

The Department's overall neighborhood policing strategy is *beat-officer based*, with beat officers serving as the nucleus of our neighborhood policing efforts. Though the Department has developed a number of nationally recognized crime prevention, school, and community-based programs, they are designed to *support* the problem-solving prevention, intervention and enforcement capabilities of our patrol officers.

Members of the Department have initiated contacts with various groups, to include the Ethiopian, Eastern European, Muslim, Sikh, Vietnamese, Hispanic, and Chinese communities. The Community Services Division (CSD) has worked with Council staff, PRNS and SNI to identify communities in high-need areas of the City to conduct needs-assessments. Another example of outreach efforts is the Department's participation in the "Santa Clara County Network for a Hate-Free Community" established in April 2000. The mission of this organization is to "reach out, report, respond, repair and rebuild in an effort to prevent and take action against Hate in our community."

As part of this program, the Department's Video Unit is in the process of producing various training videos, each addressing one of the individual ethnic groups that make up our community. The training videos are presented during daily briefings to all Patrol Division officers. This two-pronged approach of outreach provides training to teach officers about the members of the various cultures with whom they might interact, and it also serves as an outreach tool to the various members of the community who volunteer their input regarding their beliefs and culture. The video production team seeks out various community groups and asks them, "Tell us what we need to know about your culture, so that we can inform and train our officers." Three videos have already been completed, which cover the Muslim, Sikh and Vietnamese cultures. Future productions scheduled include training videos for the Eastern European and gay/lesbian cultures.

The Video Unit has received three prestigious awards for this work: The Digital Video Award presented by DV Magazine, a "Communicator Award" presented by a private TV production group, and the 2006 "Film Video - Government Relations Telly Award," which honors local, regional and cable TV productions.

Because this is such a unique approach for law enforcement, the Department has received many requests from other law enforcement agencies for copies of these videos for use in training cultural diversity to their personnel. The videos were also highly praised when presented at the International Association of Chiefs of Police, where over 70+ departments requested copies of the training videos for their individual Department's use.

Civil Grand Jury Finding #6

The cost to the City of San Jose of policing the EZ is significant. During fiscal year 2005-2006, police overtime costs are stated to be about \$840,000. Also, long shifts may contribute to officer stress, fatigue, and performance degradation.

Civil Grand Jury Recommendation #6

Even given labor agreements, the SJPD should reassess its current shift schedules to minimize holding officers past their assigned shifts.

SJPD RESPONSE:

Finding #6:

The Department partially agrees with the finding. The Department agrees that the cost of policing the Entertainment Zone (EZ) is significant. Currently, approximately 40-50 officers can volunteer to work the EZ on a Thursday, Friday, Saturday or Sunday night, depending upon the season and scheduled events. Officers who volunteer at the end of their regular ten-hour shift work two-hours of overtime to focus resources in the downtown area at closing time.

Sergeants are assigned to monitor and direct officers during this period. The Department has seen no evidence that the EZ shift contributes to or results in officer stress, fatigue, or

degradation of performance. The Department is not aware of any situation where an officer's fitness for duty has been questioned during EZ enforcement.

Recommendation #6:

The recommendation will not be implemented. Adjustments to shift schedules will not alleviate the need for the Department to continue the EZ volunteer overtime program. Shift times are established to ensure sufficient City-wide coverage for calls for service. The Department also realizes overtime is not the best or most efficient way to address the need for additional officers in the downtown area. The best solution would be to increase Department staffing to adequate levels, which would allow the Department to police the City and the EZ with on-duty personnel. The EZ program will continue to respond in this manner to downtown issues until staffing shortages can be addressed.

Civil Grand Jury Finding #7

The EZ club owners and the SJPD have differing priorities in maximizing business profits and in maintaining order.

Civil Grand Jury Recommendation #7

The City management and SJPD should continue to work to establish a more synergistic relationship with EZ merchants. For example, club closings might be staggered to ease street congestion. Consideration should be given to having club owners participate in subsidizing patrolling costs. In no case should police officers be employed by club owners.

SJPD RESPONSE:

Finding #7:

The Department partially agrees with the finding, in that the operational priorities on any given day are different between a private nightclub business and a police department. However, the SJPD experience in working with most of San Jose's nightclub operators is that they are becoming much more aware that ensuring a downtown environment is safe is good for business, and the Department itself recognizes the importance of trying to help a business succeed.

Indeed, it is due in part to the efforts of the Department that many people feel safe to come to the downtown area. Police officers have had many contacts throughout the years that EZ has been in existence where patrons have approached and told officers that they came to San Jose's downtown from their city of residence, because they felt safe in San Jose's downtown and appreciated the efforts of the Department. The distinction of the "Safest Big City" encourages patrons to come to the downtown area at night, and our downtown provides an environment where patrons can eat, drink, and patronize night clubs, knowing they are safe. This is good for business.

Recommendation #7:

Some of the recommendations have been implemented and some were considered and will not be implemented.

The Department agrees with the recommendation to continue its ongoing annual, monthly, weekly, and sometimes daily meetings with nightclub and business owners. Department liaisons work with the Downtown Nightclubs and Restaurant Owners' Association, as well as the Downtown Business Association and any other interested member of any organization wishing to participate in meetings with the Department's EZ coordinator or supervisors.

In these meetings, public safety issues and various problems related to downtown are discussed and collaborative strategies are developed to address ongoing issues. Examples of some of the issues discussed and the outcomes of these more recent efforts include:

- Club/business owners are more involved in the ownership of problems
- Club/business owners are more cooperative in complying with closure requirements
- Club/business owners accept accountability for private security
- Cruise strategies have been implemented by the Department to address downtown congestion
- Club/business owners are complying with 1:30 AM "cease entertainment" provisions of their entertainment permits
- To address owners' concerns regarding criminal activity and juvenile curfew violations, Patrol Officers are redeployed, when resources allow, from other districts in the City to foot-patrol the downtown area.

These examples of collaborative efforts to work with downtown business owners have had a positive impact in the downtown area. The effectiveness in these efforts is also reflected in the fact that thus far, there have been no swing shift "hold-overs" of patrol officers this summer.

In regards to the recommendation that "consideration should be given to having club owners participate in subsidizing patrolling costs", this recommendation was previously addressed in the late 1990's by the City through the Ordinance process. The Downtown Entertainment Zone Policing Program originally was intended to be paid for partially by the nightclub owners. Due to the difficulties the City had in fee collection, the fee portion of the program was abandoned. Recent discussions during the Urgency Ordinance Task Force meetings have led to a resurfacing of this issue, which will continue to be explored.

The Department agrees with the recommendation that "In no case should police officers be employed by club owners." In the late 1990's the Department revised the provisions in the Duty Manual dealing with outside employment and conflicts of interest. The Department had determined that there could be a conflict in the scope of responsibility for a police officer, who could receive direction from a secondary employer that might conflict with the law.

SJPD Duty Manual section C 1515 - "SECONDARY EMPLOYMENT WHERE ALCOHOLIC BEVERAGES ARE SERVED" states:

All members of the Department are prohibited from providing law enforcement or security related services for any employer or establishment whose major business is the sale and/or service of alcoholic beverages, e.g., bars, nightclubs and liquor stores. (Exception: City of San Jose sponsored events and events which take place at City of San Jose owned facilities per Duty Manual Section C 1508.) When working for any establishment where alcoholic beverages are served, a Department member will not directly supervise or regulate the sale or consumption of alcoholic beverages.

Civil Grand Jury Finding #8

The San Jose Youth Protection Curfew Ordinance is not widely enforced, in part because of the large numbers of youths present at peak times in the EZ.

Civil Grand Jury Recommendation #8

The City, and especially the SJPD, should work with community organizations to encourage parental responsibility in overseeing youth activities and to promote adherence to curfew ordinances.

SJPD RESPONSE:

Finding #8:

The Department partially agrees with the finding. The San Jose Youth Protection Curfew ordinance is not being systematically enforced due to budget cuts and the de-funding of the Youth Protection Team (YPT). However, beginning in March 2006, efforts have been ongoing to continue the positive aspects of curfew enforcement by redeploying patrol officers during key time periods from outlying districts to assist in downtown curfew enforcement.

These efforts are not affiliated with the de-funded YPT, but act as a temporary patch to address curfew enforcement needs. Recent operations resulted in an average of approximately 20 juveniles being processed on Friday and Saturday nights in the EZ area. Parents are contacted and directed to pick up their children at the field processing center.

These stop-gap measures will continue to be utilized as staffing allows. In addition, the recent addition of 10 police officers to the authorized staffing of the Police Department will eventually provide some capacity to expand upon this program, once the new recruits are hired, trained, and successfully complete the Field Training Program.

Recommendation #8:

The Department agrees with the recommendation. Police participation in various community outreach programs has always been a top priority of the Department and the specific focus of the Community Services Division (CSD). However, staffing shortages have forced the Department to make hard decisions during budget cuts, with the redeployment of officers from the CSD to Patrol to respond to calls for service, the Department's primary priority. Additionally, the elimination of Crime Prevention Specialist positions has also impacted the Department's ability to participate in parental/youth outreach efforts.

However, the Community Services Division will continue its outreach efforts, as staffing allows, to continue programs that provide education to parents of various ethnic communities, who are especially interested in the safety of their children. The CSD has worked to maintain contacts with parents to renew assessments and provide services upon request. This program strategy is to be alert to community issues and identify contacts, initiate relationships, establish communications/rapport, and provide safety services to anyone who needs them.

CONCLUSION

On behalf of the San Jose Police Department, I wish to thank the members of the 2005-2006 Santa Clara County Civil Grand Jury for their time and effort in preparing this report. The Department is sincerely interested in the concerns and perceptions of the individuals the Grand Jury interviewed. We also continue to call upon any and all individuals who believe they have been profiled to please contact the San Jose Police Department so we may investigate.

PUBLIC OUTREACH/INTEREST

By the very nature of the Grand Jury's report and its release, public outreach requirements have been met. Additionally, upon approval of this memorandum by Council, the City Attorney will submit the memorandum to the presiding judge of the Superior Court, as required under Penal Code Section 933(c). The Department will also post this memorandum on the SJPD.org website upon Council approval.

COORDINATION

This report has been coordinated with the City Manager's Office and the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

August 2, 2006

Subject: Civil Grand Jury Report – Racial Profiling by San Jose Police Department - Perception vs Reality

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CEQA

Exempt

A handwritten signature in black ink, appearing to read "R. Davis", with a stylized flourish at the end.

ROBERT L. DAVIS
Chief of Police

RD:CE:EF



2005-2006 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

RACIAL PROFILING BY SAN JOSE POLICE DEPARTMENT – PERCEPTION VS REALITY

Summary

The 2005-2006 Santa Clara County Civil Grand Jury (Grand Jury) reviewed allegations from individuals and concerns from community organizations that the San Jose Police Department (SJPD) has a department-wide problem of racial profiling. Concerns were intensified after an incident of violence in the vicinity of a club in the "Entertainment Zone" (EZ) in downtown San Jose in October 2005.

As a result of an extensive inquiry, the Grand Jury believes there are legitimate concerns regarding individual police excesses. It appears there is no systematic sanctioned program of racial profiling being implemented by the SJPD administration.

The Grand Jury makes the following findings and recommendations:

1. It appears there is some level of intentional or unintentional intimidation on the part of individual members of the SJPD. A pilot program should be established so that on all stops (vehicle or pedestrian) the officer should, when feasible, provide an identifying business card to the individual.
2. Many individuals do not report perceived abuses or incidents of racial profiling due to concerns about retribution from the SJPD. An additional conduit for communicating complaints in confidence with the SJPD should be established.
3. The San Jose Office of the Independent Police Auditor (IPA) reviews the results of SJPD Internal Affairs (IA) investigations but does not conduct any independent investigations. The role and responsibilities of the IPA should be expanded to include some level of investigatory powers.
4. The City of San Jose does not have a police Civilian Review Board. A task force should explore and determine if a Civilian Review Board would be an effective additional mechanism for complaint handling.
5. Outreach programs can be an effective way to enhance understanding between persons of all ethnic backgrounds and sources of authority, such as the SJPD. Part of the SJPD training should include continued participation in community outreach programs.

6. The cost to the City of San Jose for ensuring order in the EZ is significant due to police overtime. The SJPD should reassess its current shift schedules to minimize holding officers past their assigned shifts. Reducing the shift length, including overtime, may reduce officer stress, fatigue, and performance degradation.
7. The EZ club owners and the SJPD have differing priorities in maximizing business profits and in maintaining order. The City and SJPD should continue to work to establish a more synergistic relationship with EZ merchants. Consideration should be given to staggering club closing times and having club owners participate in subsidizing patrol costs.
8. The San Jose Youth Protection Curfew Ordinance is not widely enforced. The City, and especially the SJPD, should work with community organizations to encourage parental responsibility in overseeing youth activities and to promote adherence to curfew ordinances.

Background

Allegations of racial profiling are not new and have been filed in jurisdictions nationally and in California by advocacy groups. These groups include the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU), the Asian Law Alliance (ALA), and the National Conference for Community and Justice (NCCJ – formerly the National Conference for Christians and Jews). According to a 2003-2004 Santa Clara County Civil Grand Jury report:

"In the early 1990's, there was an increased climate of mistrust in police agencies. The Rodney King incident in Los Angeles drew attention to all police agencies and highlighted the possibility of officer misconduct. In San Jose, some citizens demanded that the Council appoint a civilian police review board. As a result, the IPA office was formed to work in conjunction with IA. The position of Independent Police Auditor was confirmed by the City on June 29, 1993 and the office of the IPA opened on September 13, 1993. The Independent Police Auditor is independent of all other City entities and reports directly to the Mayor and the Council. In November 1996, City voters amended the Charter, making the IPA a permanent City office with an auditor appointed for a term of four years. According to the San Jose Municipal Code, the IPA shall have the authority and responsibility to receive, review, and report on citizen complaints filed against officers employed by the SJPD."

Although the IPA has existed since 1993, few claims of racial profiling have been noted in recent years. Starting in late 2005, the Grand Jury began receiving complaints submitted by individuals against the SJPD regarding racial profiling. These complaints allege profiling, harassment and unnecessary detention by the police in the downtown area of San Jose, primarily on Friday and Saturday nights. These events typically occur

as downtown clubs close for business at 2:00 AM. SJPD preparation for club closings generally begins at about 11:00 PM on these nights and surveillance continues until about 3:00 AM, at which time virtually all visitors have left the "Entertainment Zone". The boundaries of the EZ are generally defined as Highway 280 on the south, Julian Street on the north, Stockton Street on the west and 10th Street on the east, with 1st and Santa Clara Streets being "ground zero".

While complaints come primarily from downtown San Jose, they have also been reported from various locations in the City at other times and days throughout the week. Downtown San Jose, including the EZ, attracts patrons from all over the Bay Area, especially during periods when clubs are open. These effects also change, depending on the timing of cultural celebrations, which clubs are in operation, which are popular, and which acts are headlined. These dynamics complicate determining whether or not there may be systematic profiling of particular racial groups.

The Grand Jury reviewed arrest records citywide, as well as for the EZ, for the reporting period July through December 2005. Arrest statistics reflect arrests of persons in San Jose whether or not they are residents. A summary of the statistics includes:

- In the EZ there were 1,714 arrests during the reporting period. Of the total, 336 (19.6%) were African-American and 770 (44.9%) were Hispanic.
- In San Jose overall there were 15,762 arrests. Of that total, 1,484 (9.4%) were African-American and 8,363 (53.1%) were Hispanic.
- In San Jose there were 69 arrests under Penal Code § 148(A) (resisting arrest) during this period. Of those, 13 (18.8%) were African-American and 36 (52.2%) were Hispanic.

The statistics are disproportionate compared to the census-based African-American (2.0%) and Hispanic (31.7%) populations of San Jose (see Appendix A). This may simply reflect the fact that many club patrons come from areas outside of San Jose and/or that the club attendance does not conform to the racial demographics of the City.

The San Jose Police Chief, in a community outreach meeting with the NAACP on March 23, 2006, indicated that pure arrest statistics are deceiving in that officers respond to calls regardless of race. He defended the SJPD, noting its diversity and the sensitivity and cultural awareness training that officers are required to undergo. The Chief stated, "The overwhelming majority of our officers do get it." However, he also stated, "That doesn't mean we don't have to be vigilant of those who don't get it." While vehicle stops are frequent during EZ activities, he cautioned against reading too much into the arrest statistics because fewer than 10% of overall arrests are the result of vehicle stops.

Discussion

The Grand Jury conducted interviews with complainants, community organizations, members of the SJPd, the Palo Alto Police Department, the San Jose IPA, California State officials, the County Public Defender Office, the Director of the San Jose Downtown Association, and business and club owners. Members of the Grand Jury visited the EZ on several occasions during the Friday and Saturday night peak hours for first-hand observations. The Grand Jury also evaluated selected arrest records and statistical information provided by the SJPd Chief of Police and the IPA.

The Grand Jury interviewed 13 individuals via telephone conference calls or in-person interviews to understand specific accusations of racial profiling and/or abuse. The inquiry included a review of Police Department policies, practices and procedures that are in place to protect the public and to ensure that individual civil rights are not violated. The review included statistics regarding police arrests, as well as demographic information associated with some aspects of police activity. The Grand Jury reviewed sensitivity training associated with initial and periodic reinforcement training of new and experienced SJPd officers.

POLICE STATISTICS AND THE COMPLAINT PROCESS

The Grand Jury observed that police statistics provided for the reporting period do not indicate the number of "vehicle stops" and "pedestrian stops" which resulted in neither a physical arrest nor a citation. The Grand Jury requested information about stops in the EZ, but the SJPd stated they were unable to provide these data. This lack of documentation may obscure information about racial profiling. In interviews with individuals who have alleged racial profiling, the Grand Jury found that stops with no arrest or citation are commonplace and create an impression of police harassment and racial profiling. This perception creates a significant negative impact in both the African-American and Hispanic communities.

Complaints received by SJPd IA (also known as Professional Standards and Conduct) are reviewed for legitimacy. During this process, the complainant is contacted to see if they want to pursue a formal investigation. The Grand Jury is concerned that complainants may be convinced prematurely not to pursue a formal investigation. An inquiry is defined as a complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. The IPA keeps careful track of the classification of complaints reported to the IPA and IA offices. Any trends in case classifications or dispositions are reported to the City Manager and Council on a mid-year and annual basis. In 2004, of the 335 external complaints, 35.2% were (re)classified as inquiries. This rate is a concern to the Grand Jury. Information received by the IPA on inquiries does not include the names of the officers involved in the incidents and could thereby mask excesses by specific officers.

An additional concern is the requirement for the complainant to sign the Boland Admonishment (California Penal Code § 148.6) in order to have a complaint investigated. The form indicates that the complainant has been informed that it is a

misdemeanor to file a false complaint against a police officer. The Grand Jury learned that this section of the Penal Code was recently held to be unconstitutional, as a violation of the First Amendment and equal protection clause, in the decision of *Hamilton v. City of San Bernardino*, C.D. Cal. 2004, 325 F. Supp.2d 1087. This opinion is being appealed to the Federal Appellate Court. The outcome of this appeal may influence the SJPD requirement that this form be signed by a complainant.

GRAND JURY INTERVIEWS WITH COMPLAINANTS

As a result of interviews with 13 individuals who believe they were harassed or racially profiled during vehicle stops or pedestrian stops, the Grand Jury has concerns about possible excesses on the part of individual SJPD officers. The Grand Jury has omitted details of these incidents to protect the identities of those involved.

- It appears that "suspicious" vehicles/drivers are sometimes stopped for what seem to be minor violations, such as a license plate light being out or failing to signal 100 feet before making a turn. In reviewing a number of these situations, the stop appears to have been a pretense to conduct a "fishing expedition" search to ascertain if the driver or passengers might be involved in other illegal activities, such as possessing drugs, firearms, etc.
- In some instances, where there is no visible problem, individuals may be asked to step out of the vehicle and allow a search of the vehicle when there is no evident probable cause for such a search. If the individual contests such action, it appears an officer's authority may be used to imply that the driver is impeding a legitimate investigation and, in some instances, to threaten arrest if cooperation is not granted.
- In several situations where an individual requests the officer's name and badge number, it appears that the officer views this as a confrontation and may result in a further verbal escalation and/or threat of arrest.
- Individuals have also been stopped while walking in downtown San Jose. Some complainants, for example, were accused of loitering (Health and Safety Code § 11530 et seq.) while waiting at a light rail station or bus stop during commuting hours. In some cases, individuals were patted down, handcuffed, and subsequently released. The impact of such treatment on the individual can be traumatic and give reason to believe that the SJPD does racial profiling.

In addition to these cases of likely excess, it appears there was at least one occasion of possible overcharging. In this case, multiple felony/misdemeanor charges were made and the individual was incarcerated for approximately two months. The case was ultimately resolved with only an infraction. Some allege that excessive charges are written up to cause higher bail assessments, to facilitate plea bargaining, or to dissuade individuals from wanting to visit the downtown area in the future.

DISCUSSIONS WITH THE SJPD AND IPA

Various complaints provided to the Grand Jury were reviewed with the SJPD administration. It was apparent that they do not condone such abuses and are determined to identify, counsel, and/or take appropriate action against any officer who is involved in abuses of authority. The Chief of Police has promoted ongoing outreach programs with various community action organizations to solicit specific inputs so he can be in a position to take action. Moreover, he indicated that he has received few specific complaints of racial profiling.

The Grand Jury learned that some complainants, intimidated by the bureaucracy or fearing retribution, may fail to complain to police authorities. This appears to be a primary reason that the SJPD continues to take the position that they are not aware of specific racial profiling accusations.

The IPA is only partially effective in resolving this impasse. The process used by the IA and the IPA in handling a civilian complaint incorporates four basic steps: the intake process, classification, investigation, and audit of the complaint. These procedures rely on IA for investigations. IPA currently only performs an audit function. As noted in the IPA Policies and Procedures:

“... A fundamental principal that IPA operates under is that a separate investigative body is not necessary because Internal Affairs will investigate citizen complaints in a fair, objective, and thorough manner. Therefore, maintaining these standards is a primary focus of the IPA.”

Procedures exist for cases in which the IPA disagrees with the assessment of the IA, but they are cumbersome and are ultimately resolved by referral in writing to the City Manager. The IPA has no independent investigatory authority.

In some other cities, a police Civilian Review Board offers another review option. An independent Civilian Review Board affords citizens an opportunity to air grievances, express concerns, and voice recommendations.

To patrol the EZ, hundreds of police officers and their cars are deployed, many on overtime, to cover special events and typical Friday and Saturday night activities. It is estimated that the overtime costs of this policing will be about \$840,000 during fiscal year 2005-2006. These costs result primarily from evening shift officers being held over to cover the 11:00 PM to 3:00 AM period – the clubs close at 2:00 AM.

Another issue which might contribute to tension between police and citizens is the length of the officers' shifts. Long shifts are known to produce stress, fatigue, and performance problems in many situations and overtime further exacerbates this issue.

OTHER FACTORS – THE SITUATION IS COMPLEX

The following additional information is provided for further insight into the problems facing the SJPD:

- There may be a perception that the SJPD is engaged in racial profiling, when in reality they are simply responding to a reported potential incident. The EZ features a large number of clubs which in some cases attract a specific minority group. After a night of entertainment, which may include use of alcohol and/or other substances, there is a possibility for altercations to which the SJPD must respond. In some cases, this results in confrontations with minority individuals.
- The EZ is also an attraction for individuals who may not be San Jose residents. Many individuals visit San Jose from other cities in the Bay Area, such as Oakland, Richmond, Milpitas, San Francisco, East Palo Alto, and as far away as Seaside. At the conclusion of a typical Friday or Saturday night, the clubs in the EZ, some of which may cater to particular ethnic groups, close at approximately the same time. Typically hundreds, if not thousands, of patrons exit the clubs at such times. The SJPD, in attempting to ensure a peaceful conclusion to the night's festivities, is organized to make sure that all patrons depart the various parking lots and do not loiter. The SJPD encourages an orderly exit out of the immediate EZ. This results in traffic being directed, without driver option, out to roads such as Highway 87, and in pedestrian traffic being controlled to prevent problems on the street. These control steps can be perceived as racial profiling, even though the primary SJPD objective is to keep peace and ensure that everyone departs the downtown San Jose area in an organized and calm manner.
- The Grand Jury noted, in its interviews with individuals alleging racial profiling, that a primary reason for individuals visiting the EZ is that they perceive San Jose to be a safe place. This creates a perplexing contradiction in that some of those alleging racial profiling also acknowledge that they continue to come to San Jose because they feel they will have a safe experience. On the other hand, many complainants indicated that their experiences have dissuaded them from ever wanting to return to San Jose.
- The City and SJPD are working with downtown club owners in an attempt to reduce congestion from simultaneous club closings. They have encouraged "soft closing" by staggering closing times and cutting down alcohol consumption as closing time approaches. To date, these efforts have been unsuccessful, in part because owners do not want to lose sales. Furthermore, longer departure times from the EZ may result in police incurring more overtime expense.

- The SJPD is working with downtown club owners to ensure that club patrons are of legal drinking age. The Grand Jury observed many young people, attempting to enter downtown clubs, are being "carded" by club personnel.
- The San Jose City Youth Protection Curfew Ordinance (§ 10.28.020) states that minors under the age of sixteen must be off the street from 10:00 PM to 5:00 AM and that minors under eighteen must be off the street from 11:30 PM to 5:00 AM. There are exemptions for minors under eighteen, which are itemized in Ordinance § 10.28.110. It is difficult for the SJPD to enforce these ordinances because of the large number of youths in the EZ.
- The SJPD has attempted to work with organizations such as the NAACP and ACLU to encourage individuals who believe they have been mistreated to come forward in confidence. The Chief of SJPD states that should conventional channels fail, he is willing to meet with any individuals who feel they have been mistreated by his department.

In discussions with the NCCJ, the positive effects of youth outreach programs, in which police officers participate, were emphasized. These programs provide direct person-to-person contact between youth and authority figures and have proven to be successful in promoting mutual respect and understanding of cultural diversity. For example, the Camp Everytown program (formerly Camp Anytown) has functioned for 50 years and is recognized as an effective youth violence prevention strategy. Former SJPD Police Chief, Bill Lansdowne, referring to youths stated: "It gives them the idea that who they are is important, not which group they belong to."

Conclusions

The Grand Jury believes there is no formal racial profiling program sanctioned by the SJPD. However, the Grand Jury does believe, based on direct observations and interviews with complainants, that there are individual instances of police excess which must be addressed by City management and SJPD, from the Chief down to the patrolling officers.

Finding 1

It appears there is some level of intentional and/or unintentional intimidation on the part of members of the SJPD. This is exhibited in many ways such as vehicle and pedestrian stops for relatively minor violations. In many cases these result in searches or pat downs without probable cause. Requests for police identification (name/badge number) are sometimes perceived by officers as confrontations which can contribute to escalating tension in a given situation.

Recommendation 1

The Grand Jury recommends that a pilot program be established so that in all contacts the officer provides, when feasible, a business card to the civilian which includes officer name and badge number. In addition, the card should include contact information for the SJPd, the Internal Affairs Office, and the Independent Police Auditor's Office. This would reduce the likelihood of confrontation when an officer is asked to provide this information.

Finding 2

Many individuals do not report perceived abuses or incidents of racial profiling due to concerns about retribution from the SJPd.

Recommendation 2

In addition to formal channels such as Internal Affairs and the Independent Police Auditor's Office, the Grand Jury recommends that an additional conduit for communicating in confidence with the SJPd be established. This might take the form of high-level SJPd officers serving as focal points for minority concerns. The Grand Jury recommends identifying officers whose ethnic backgrounds might make individuals more comfortable making complaints. This could encourage bringing to light specific concerns in confidence and without fear of retribution.

Finding 3

The IPA provides an alternate way for citizens to report police harassment or abuse. At present, citizen complaints are shared between the IPA and IA. Regardless of where a complaint is filed, any formal investigation is done by IA. The IPA only audits the results of investigations by IA and either agrees or disagrees with them. The IPA does not conduct independent investigations. In cases of unresolved disagreement between the IPA and IA, the IPA can request further investigation by writing to the City Manager.

Recommendation 3

The Grand Jury believes that the IPA's role and responsibilities should be expanded to allow a level of investigatory powers in addition to its current audit responsibilities. The Grand Jury recommends that a review of similar police audit functions in other large cities be initiated. This should identify models which could be used to augment the IPA mission.

Finding 4

The City of San Jose does not have a police Civilian Review Board, as exists in some other large cities.

Recommendation 4

A task force should be convened to explore and determine whether or not a Civilian Review Board would be an appropriate additional mechanism for citizens to report cases of racial profiling or other abuse.

Finding 5

Outreach programs can be effective in promoting understanding between persons of all ethnic backgrounds and sources of authority such as the SJPD.

Recommendation 5

SJPD training should continue to include participation in community outreach programs.

Finding 6

The cost to the City of San Jose of policing the EZ is significant. During fiscal year 2005-2006, police overtime costs are stated to be about \$840,000. Also, long shifts may contribute to officer stress, fatigue, and performance degradation.

Recommendation 6

Even given labor agreements, the SJPD should reassess its current shift schedules to minimize holding officers past their assigned shifts.

Finding 7

The EZ club owners and the SJPD have differing priorities in maximizing business profits and in maintaining order.

Recommendation 7

The City management and SJPD should continue to work to establish a more synergistic relationship with EZ merchants. For example, club closings might be staggered to ease street congestion. Consideration should be given to having club

owners participate in subsidizing patrolling costs. In no case should police officers be employed by club owners.

Finding 8

The San Jose Youth Protection Curfew Ordinance is not widely enforced, in part because of the large numbers of youths present at peak times in the EZ.

Recommendation 8

The City, and especially the SJP, should work with community organizations to encourage parental responsibility in overseeing youth activities and to promote adherence to curfew ordinances.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 1st day of May 2006.

Thomas C. Rindfleisch
Foreperson

References

Documents

1. San Jose Independent Police Auditor 2004 Year End Report.
2. San Jose Police Department Arrest Records, July 1, 2005 through December 31, 2005.
3. San Jose Independent Police Auditor Policies and Procedures (<http://www.sanjoseca.gov/ipa/PolicyProcedures.html>, last visited April 19, 2006).
4. 2003-2004 Santa Clara County Civil Grand Jury report, "Inquiry into the City of San Jose Independent Police Auditor" (<http://www.sccsuperiorcourt.org/jury/GJreports/2004/SJOfficeIndependentPoliceAuditor.pdf>, last visited April 20, 2006).
5. United States Census Bureau 2004 American Community Survey demographic profile for San Jose, CA (<http://factfinder.census.gov/>, last visited May 1, 2006).

Interviews

1. November 22, 2005 through March 22, 2006, Thirteen interviews with complainants making racial profiling claims.
2. November 23, 2005, President, San Jose/Silicon Valley Chapter of the National Association for the Advancement of Colored People.
3. December 1, 2005, February 3, 2006, and March 27, 2006, Three Interviews with Community Activists.
4. December 12, 2005, January 6, 2006, March 6, 2006, and March 24, 2006, Chief, San Jose Police Department and Staff.
5. December 21, 2005, San Jose Downtown Club Owner.
6. January 20, 2006, San Jose Downtown Association.
7. February 6, 2006, and April 10, 2006, San Jose Independent Police Auditor.
8. February 10, 2006, and March 14, 2006, Santa Clara County Office of the Public Defender.
9. February 15, 2006, National Conference for Community and Justice.
10. February 17, 2006, Palo Alto Police Chief and Staff.

Interviews (continued)

11. February 18, 2006, American Civil Liberties Union of Northern California, San Jose Office.
12. March 17, 2006, Asian Law Alliance.
13. April 10, 2006, Office of the Vice Mayor of the City of San Jose.

Meetings Attended

1. March 23, 2006, San Jose/Silicon Valley Chapter of the National Association for the Advancement of Colored People.
2. April 19, 2006, Task Force on Problems in Downtown San Jose at San Jose City Hall.

Appendix A 2004 Population Statistics for San Jose

The overall population breakdown for San Jose by ethnic group is shown in the table below, derived from the United States Census Bureau 2004 American Community Survey demographic profile for San Jose, CA (<http://factfinder.census.gov/>).

Ethnic Group	Population	%
White	294,175	33.7%
Hispanic or Latino	277,044	31.7%
Asian	256,632	29.4%
Multiple races	19,542	2.2%
African American	17,651	2.0%
Native Hawaiian/Pacific Islander	4,149	0.5%
American/Alaskan Native	3,091	0.4%
Other race	<u>1,598</u>	<u>0.2%</u>
Total	873,882	100.0%