

I. INTRODUCTION

Establishment of the Office

The Independent Police Auditor's Office (IPA) opened its doors to the public on September 13, 1993. The office was established for the purpose of auditing the investigations of citizen complaints alleging misconduct by members of the San Jose Police Department (SJPD). The IPA is independent from all other City entities and reports directly to the Mayor and to the City Council.

Competent Staff

The IPA is staffed by three well-educated and competent individuals. The Independent Police Auditor is an attorney with a background in criminal law; the Intake Coordinator has a Juris Doctorate degree; and the Administrative Assistant has a Bachelor's degree. Additionally, all three staff members are bilingual: the Independent Police Auditor and the Intake Coordinator are fluent in Spanish, while the Administrative Assistant is fluent in Vietnamese.

Functions of the Office

The Office of the Independent Police Auditor has three primary functions: (1) it serves as an alternative forum where citizens may file complaints; (2) it reviews the investigations of citizen complaints conducted by the San Jose Police Department's Professional Standards & Conduct Unit (PSC); and (3) it promotes public awareness of a citizen's right to file a complaint. The Independent Police Auditor routinely meets with various groups and organizations to increase public awareness of a citizen's right to file a complaint.

Reporting Requirements

This is the Year End Report and the fourth report produced by the Office of the Independent Police Auditor pursuant to the requirements of the San Jose Municipal Code Section 2.06.020c.

This ordinance requires that the Auditor's report include:

- A. A statistical analysis documenting the number of complaints by category, the number of complaints sustained and the actions taken;
- B. An analysis of trends and patterns; and
- C. Specific recommendations for change.

Contents of First Quarterly Report

The first report addressed general impressions of the San Jose Police Department, the Professional Standards and Conduct Unit and how they interrelated with the Office of the Independent Police Auditor. Additionally, the first report included statistical data, which covered the number and type of complaints received and audited during the first quarter of operation. Finally, it included specific recommendations for changes in the intake, the classification and the processing of complaints against the San Jose Police Department.

Contents of Second Quarterly Report

The second quarterly report dealt with the San Jose Police Department's response to the Office of the Independent Police Auditor's First Quarterly Report which revealed the creation of a new system for classifying complaints. This new system contains four classifications of complaints: Formal, Informal, Procedural and Policy. Misconduct Complaints are divided into two categories: Formal and Informal. The other two categories are Procedural and Policy Complaints. This new system created a more accurate and concise method of classifying complaints. As a result, all complaints are now better documented which make auditing possible.

The Informal Misconduct Complaint category was introduced as a new concept and has been in place since January of 1994. An audit of this new category resulted in a preliminary indication that this informal method of handling complaints was accomplishing its intended dual purpose:

to assist first-line supervisors in the handling of minor transgressions involving their officers and to accommodate complainants who prefer not to file a Formal Complaint.

Several patterns and trends were identified in the second report. However, there was insufficient data to conduct a proper analysis during the second quarter.

Contents of Third Quarterly Report

The third quarterly report included third quarter statistics under both the new and old classification systems and the results of the audit using the new classification system.

A survey of 48 Informal Complaints and 72 Procedural Complaints was conducted to evaluate this new classification system. The survey revealed that PSC was adequately complying with the established guidelines for handling these complaints.

The following issues concerning the San Jose Police Department, the Professional Standards & Conduct Unit and the Office of the Independent Police Auditor were addressed in the third report:

1. Length of time taken to complete investigations.
2. Need for an observation policy.
3. Issues with the drunk in public arrests.
4. Issues concerning the operations of the Office of the Independent Police Auditor.

Contents of Fourth Report

This fourth report includes one year of cumulative statistics and a recapitulation of the accomplishments of this office's first year in operation. In an effort to standardize the reporting periods to segments which coincide with the calendar year, this report will also include statistics

for the fifth quarter which covers the time period between October 1 and December 31 of 1994. Future reports will be prepared on a biannual basis in accordance to the change adopted by the City Council on September 6, 1994. Biannual reports will be from January to June and July to December.

This report analyzes the accomplishments of the Office of the Independent Police Auditor and the changes at the Professional Standards & Conduct Unit and the San Jose Police Department.

In assessing the effectiveness of this office the mandates of the City Ordinance, which prescribes the duties of this office, and the recommendations by the Santa Clara County Grand Jury on how to improve the citizen complaint process are used.

Two new issues are also discussed in this report. These issues are:

- A. A revision of the consent to search procedures.
- B. A fundamental change in the investigation of citizen complaints is recommended.

This report concludes with the general observations of the Independent Police Auditor as it relates to the functions of this office and the Professional Standards & Conduct Unit.

II. STATISTICAL DATA

A. METHODOLOGY

From September 13, 1993, to December 31, 1994, IPA has kept track of the number and type of complaints that have been audited during the past five quarters. The statistical data in this report was gathered in this office and also at PSC. The statistics include the old method and the new method of classifying complaints. Prior to the inception of this office, PSC used a two-tier system to classify complaints: Misconduct and Procedural.

However, on June 15 of 1994, PSC fully implemented the new system that consists of four categories (Formal, Informal, Procedural and Policy)¹ and has had a direct impact on how statistics are presently gathered from the previous periods. Formal Misconduct complaints include those complaints filed by citizens (Citizen-Initiated Complaints) and those complaints initiated by the Office of the Chief (Department-Initiated Complaints). Formal Misconduct Complaints are reported by the number of cases and allegations, whereas the Informal, Procedural and Policy Complaints are reported by the number of complaints only. The statistics in this report focus primarily on the number of allegations.

The statistics collected by this office will differ from those collected and disseminated by the PSC in some respects. The statistics focus primarily on the number of allegations received and not the number of complaints. For example, a single complaint filed by a citizen indicating that unnecessary force was used to effectuate his/her arrest may also state that the officer was rude, or that the officer improperly searched this person. This individual would have made a single complaint with three different allegations: Unnecessary Force, Rude Conduct, and Unlawful Search.

¹ See Appendix 1: Defining Complaints.

The number of allegations reported is taken directly from the face sheets submitted by the Professional Standards & Conduct Unit. PSC classifies the type and number of allegations.

On the other hand, PSC uses the prevailing case method of classification. It designates the allegations a prevailing number and the most serious allegation will determine how the complaint will be classified. PSC provided the statistics for the years 1992 and 1993. Only the 1994 statistics can verify by this office.

The Auditor reviews all complaints alleging excessive or unnecessary force: Citizen-Initiated Complaints are fully audited; however, the Department-Initiated Complaints are partially reviewed because the complete file is not given to the Auditor for review. The unnecessary force cases, which were filed before the inception of this office but subsequently closed, are also sent to the Auditor for review, at the Auditor's request. The Auditor is also required to review at least 20% of all other misconduct complaints, in addition to the unnecessary force complaints. Other types of misconduct complaints involve allegations for Discrimination/Harassment, Unlawful Arrest, Unlawful Search, Rude Conduct, Unofficerlike Conduct, Excessive Police Service, Improper Procedure, Missing/Damaged Property, Failure to Take Action and Delay in Response². All Informal, Procedural and Policy Complaints are also audited.

B. YEAR END STATISTICS

Total number and type of complaints

² See Appendix 2: Misconduct Allegations.

1.	Formal Complaints:	493
	a. Citizen Initiated (CI)	274
	b. Department Initiated (DI)	72
	c. Closed CI	110
	d. Closed DI	37
2.	Informal Complaints	144
3.	Procedural Complaints	729
4.	Policy Complaints	15
5.	In-Progress Complaints ³	5

The aforementioned is a breakdown of the total number of complaints. The total number of all categories of complaints submitted for some form of review from September 13, 1993 to December 31, 1994 was **1386**. The total number of Formal Misconduct Complaints included cases that were filed prior to the inception of this office but which were closed and received during the operation of this office. Formal Misconduct Complaints were broken down by the different types of allegations.

C. THREE-YEAR COMPARATIVE ANALYSIS

For statistical comparisons, the time period from September 13, 1993, through September 30, 1994, which covers the first year of operation of this office, will be compared with the two previous years respectively⁴. Analysis of the statistical data will focus primarily on the Formal Complaints. This type of complaint involved the most serious cases, and each case is divided into individual allegations with individual findings thus making analysis of this data possible. There are several areas that a three-year statistical comparison and analysis of the available data will seek to address. This analysis will compare the total number of cases filed in the two years prior to the inception of the IPA to the first year of operation of this office.

³ These complaints are awaiting classification by the PSC; therefore, the total number in each of the four categories mentioned above is subject to change after these complaints are classified.

⁴ See Appendices 3A: Citizen-Initiated Cases / Allegations Chart and 3B: Department-Initiated Cases / Allegations Chart.

CITIZEN-INITIATED FORMAL COMPLAINTS

<u>REPORTING PERIOD</u>	<u>TOTAL CASES</u>	<u>INCREASE</u>	<u>PERCENTAGE</u>
9/93 to 9/94	243		
9/92 to 9/93	173	+70 =	40.5 % increase
9/91 to 9/92	175	+68 =	38.9 % increase

ALLEGATIONS CONTAINED IN THE ABOVE COMPLAINTS

<u>REPORTING PERIOD</u>	<u>ALLEGATIONS</u>	<u>INCREASE</u>	<u>PERCENTAGE</u>
9/93 to 9/94	665		
9/92 to 9/93	427	+238 =	55.7 % increase
9/91 to 9/92	370	+295 =	79.7 % increase

UNNECESSARY FORCE ALLEGATIONS IN THE ABOVE COMPLAINTS

<u>REPORTING PERIOD</u>	<u>ALLEGATIONS</u>	<u>INCREASE</u>	<u>PERCENTAGE</u>
9/93 to 9/94	204		
9/92 to 9/93	167	+37 =	22.2 % increase
9/91 to 9/92	130	+74 =	57.0 % increase

DEPARTMENT-INITIATED FORMAL COMPLAINTS

<u>REPORTING PERIOD</u>	<u>TOTAL CASES</u>	<u>INCREASE</u>	<u>PERCENTAGE</u>
9/93 to 9/94	82		
9/92 to 9/93	55	+27 =	49.0 % increase
9/91 to 9/92	54	+28 =	51.8 % increase

ALLEGATIONS IN DEPARTMENT-INITIATED COMPLAINTS

<u>REPORTING PERIOD</u>	<u>ALLEGATIONS</u>	<u>INCREASE</u>	<u>PERCENTAGE</u>
9/93 to 9/94	122		
9/92 to 9/93	63	+59 =	93.6 % increase
9/91 to 9/92	75	+47 =	62.6 % increase

This study analyzes Formal Misconduct Complaints, which include Citizen and Department-Initiated Complaints. The other three complaint categories in their new form were not implemented until June of 1994, thus no comparison will be possible for several reporting

periods. The following questions were studied:

- What impact did the IPA have in the number of citizen complaints filed? Number of allegations? Number of Unnecessary Force allegations?
- What impact did the IPA have in the number of Department-Initiated Complaints?
- Did the number of sustained cases increase relative to the number of cases closed?
- What is the type of discipline imposed?
- What is the ratio of officers receiving multiple complaints?

D. ANALYSIS

The above three-year statistics reflect an increase in the total number of Citizen-Initiated cases filed in the first year of operation of IPA as compared to the two previous years. There was an increase of 40.5% in the 1993-1994 year over 1992-1993 and 38.9% increase over 1991-1992.

In the first year of operation, IPA witnessed a remarkable increase in the number of allegations per case filed. The 243 cases filed in the period covering September 13, 1993, through September 30, 1994, produced 665 allegations, an increase of 55.7 % over year 1992-1993 and a 79.7 % increase over year 1991-1992.

The total number of Unnecessary Force allegations filed in 1993-1994 also increased by 22.2% over 1992-1993 and by 57.0% over 1991-1992.

The same was true for Department-Initiated cases. There was an increase of 49% over year 1992-1993 and a 52% increase over 1991-1992 year. The number of allegations from those complaints initiated by the Office of the Chief produced a massive increase of 94% over year 1992-1993 and 63% over 1991-1992 year.

All the contributing factors for the increase in the above-mentioned statistics cannot be quantitatively or qualitatively measured; however, some factors giving rise to this increase in statistics are the following:

1. IPA served as a quality control monitor. All classifications of complaints were closely scrutinized by this office to insure that the proper category and number of complaints are recorded.
2. Public awareness of the citizen complaint process increased through media coverage and meetings with community and professional groups, which lead to an increase in the number of complaints filed.
3. Proper classification of complaints under the new system gave rise to the total number of Formal Misconduct Complaints. Misconduct complaints are no longer classified as Procedural.
4. Accurate documentation of citizen complaints at PSC had a direct correlation to properly classifying complaints thus increasing the number of total Formal Misconduct Complaints. The improvement of interpersonal skills by PSC investigators may have reduced the number of withdrawn citizen complaints.
5. Closer scrutiny of facts in the complainant's statement identified separate misconduct acts which gave rise to a greater number of allegations per case.
6. Closer scrutiny of facts in the complainant's statement identified all the involved officers thus increasing the number of allegations per officer.
7. The establishment of IPA may have influenced the increase in Department-Initiated Complaints and the high number of allegations within those complaints.

It can be deduced that the creation, implementation and oversight functions of the IPA has had a positive impact and direct correlation to the increase of total complaints filed.

Sustained Cases⁵

A three-year comparison in the number of sustained cases cannot be accurately conducted at this time for several reasons. A total of 148 or 60% of the 243 cases filed between September 13,

⁵ See Appendix 4: Definitions of Findings.

1993, to September 30, 1994, are still open as compared to 11% open cases filed between 9/13/92 and 9/30/93 and 0% open between 9/13/91 and 9/30/92 cases. The disposition of some of these 1993-94 open cases will not be known for at least six more months.

Below is a table reflecting the closed cases and the sustained rate respectively as of 9/30/94.

CITIZEN-INITIATED SUSTAINED CASES

9/93 to 9/94	95 cases closed	18 sustained = 18.9% sustained rate
9/92 to 9/93	154 cases closed	26 sustained = 16.9% sustained rate
9/91 to 9/92	175 cases closed	27 sustained = 15.4% sustained rate

The above statistics reflect that the percentage of sustained cases as of September 30, 1994, are greater than the years 1992-93 and 1991-92. However, the disparity in total number of cases compared in the three years is too great to deduce that the overall sustained rate for the first year of operation of the Office of the Independent Police Auditor will exceed the previous two years. To date the statistics do reflect that the number of sustained cases has increased by 2%.

DEPARTMENT-INITIATED SUSTAINED CASES

9/93 to 9/94	61 cases closed	48 sustained = 78.6% sustained
9/92 to 9/93	55 cases closed	45 sustained = 81.8% sustained
9/91 to 9/92	54 cases closed	44 sustained = 81.4% sustained

The sustained rate for the 1993-94 year is very close to the two previous years for the Department-Initiated cases. It should be noted that 25% of the cases filed between 1993 and 1994 are still open while all the cases filed in the two previous years have all been closed. This will have an impact on the percentage of sustained cases for 1993-94.

Discipline Imposed

PSC provided to the Office of the Independent Police Auditor a four-year comparative analysis of the sustained cases and the type of discipline imposed.⁶ This analysis included the discipline

⁶ See Appendices 5A: Citizen-Initiated Disciplines Imposed Chart, 5B: Department-Initiated Disciplines Imposed Chart, and 5C: CI and DI Disciplines Imposed Chart.

imposed for Citizen-Initiated (CI), Department-Initiated (DI) Complaints and a combination of both types of complaints. The following is a list ranked by the most frequent type of discipline imposed.

<u>TYPE OF DISCIPLINE IMPOSED</u>	<u>CI</u>	<u>DI</u>	<u>COMBINED</u>
Documented Oral Counseling (DOC)	42%	21%	29%
Letter of Reprimand (LOR)	22%	36%	30%
Termination	8%	3%	5%
Informal Oral Counseling	7%	3%	4%
10 Hour Suspension	5%	16%	12%
20 Hour Suspension	5%	4%	4%
80+ Hour Suspension	4%	3%	4%
Training	3%	2%	6%
Resigned/Retired	2%	6%	4%
40 Hour Suspension	1%	3%	2%
60 Hour Suspension	1%	0%	0%
Demotion	1%	3%	2%

Officers Receiving Complaints

The number of sworn personnel in the San Jose Police Department, as of July 2 of 1994, was 1205 with 880 assigned to Patrol duties. Of the open and closed cases, received at IPA for review from September 13, 1993, to December 31, 1994, there were approximately 545 different officers who received complaints. The majority of the officers receiving complaints were on patrol. Other officers who received complaints were from other related units such as Crime Prevention, Field Training Operations, Narcotics Unit, Street Crimes, Traffic Enforcement, and the Canine Unit.

Of the 545 officers who received complaints, there were 32 officers that had four or more complaints filed against them. The ratio of officers receiving four or more complaints to officers receiving one to three complaints is 5.9 to 100.

III. IMPROVEMENTS AT THE PROFESSIONAL STANDARDS & CONDUCT UNIT

Many changes have taken place at the Professional Standards & Conduct Unit (PSC). The Office of the Independent Police Auditor (IPA) was instrumental in bringing about these changes. Some changes were made independently by PSC subsequent to the creation of this office and other changes that were in progress came into fruition during this office's first year of operation.

In order to understand how the Professional Standards & Conduct Unit and the Office of the Independent Police Auditor interrelate, the following track a complaint from its inception to closure. These charts briefly describe the process that most citizen complaints follow.

COMPLAINANT FILES COMPLAINT AT

PROFESSIONAL STANDARDS	(OR)	INDEPENDENT POLICE
& CONDUCT UNIT		AUDITOR

INVESTIGATION OF COMPLAINT

1. If complaint originates at PSC, a copy is sent to IPA.
 2. If complaint originates at IPA, a copy is sent to PSC for investigation.
 3. PSC conducts preliminary investigation and classifies the complaint.
 4. Case is assigned to a PSC investigator to conduct the investigation.
 5. IPA is notified of upcoming interviews of witnesses or police officers.
 6. PSC writes a comprehensive investigative report and a finding is reached.
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COMPLAINT IS GIVEN A FINDING

1. If case does not contain sufficient evidence for a sustained finding the case is closed by PSC; however, all unnecessary force allegations require the Assistant Chief's approval before closure.
 2. If sustainable issues exist, the case is sent to the officer's chain of command for a finding and recommendation of discipline.
 3. Case is closed and sent to IPA for review.
 4. IPA concurs with finding or requests further investigation.
 5. PSC investigates further.
 6. IPA concurs or takes case to City Manager.
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The following is a partial condensed list of the changes that have taken place at PSC subsequent to the implementation of the Office of the Independent Police Auditor.

A. FILING A COMPLAINT

THEN	NOW
1. Complainants alleged that PSC officers did not listen to them and that the officers' conduct was rationalized prior to hearing all the facts.	Complainants are allowed to give an uninterrupted account of their complaint before asking investigative questions. Justifications are not made on behalf of the officers by the intake officer.
2. Complainants who filed multiple complaints alleged that they were labeled as trouble makers and not taken serious.	To avoid bias, PSC investigators are required to advise the Unit Commander of conflicts due to prior contacts.
3. Complainants' statements were tape recorded only and PSC offered no opportunity to check the contents.	Complainants statements in addition to being recorded are written. Complainants are given an opportunity to read, sign and receive a copy of their statement.
4. PSC had no written guidelines to safeguard against PSC officers investigating officer friends.	PSC officers are not assigned cases involving officers where a conflict may arise due to friendships.
5. Complainants alleged they left PSC with the feeling that they were neither believed nor would their complaint be investigated fairly.	PSC investigators receive ongoing training on improving and sensitizing their verbal skills and body language. Complaints about negative treatment at PSC has significantly declined.

B. PROCESSING A COMPLAINT

THEN	NOW
1. A complaint would either be classified as formal misconduct or entered in a procedural log by the intake PSC investigators.	PSC Commander approves all classifications of complaints providing consistency within the unit. The Auditor is consulted on ambiguous cases.
2. The procedural log contained only scant, handwritten notes that were very difficult to read or audit. Some cases that should have been classified as formal misconduct cases were improperly classified as procedural.	All complaints are documented in the same professional manner as Formal Misconduct complaints. They are typed in a standard form and are entered in a database system. A copy of each type of complaint is sent to the IPA three days after a complaint is received.
3. Complaints in the procedural log had no consequence to the officer.	These complaints are now part of the officer's PSC file and have cumulative consequences.
4. Complaints in the procedural log were not tracked by officer.	Formal, Informal and Procedural complaints are all tracked by officer name and badge number.
5. The procedural log was retained for four years and notes for one year.	Formal, Informal and Procedural complaints are retained for six years.
6. Complaints in the procedural log were not subject to judicial review.	These complaints are now provided to the courts when inquiring into an officer's alleged prior misconduct.
7. Informal complaints were entered in the procedural log with no follow up investigation or notice to the complainant or to the officer's supervisor.	Informal complaints are referred to the officers' immediate supervisor, the supervisor will talk to the officers and then contact the complainants upon request.
8. Complainants requesting to have their complaints handled informally had no input into the process.	Complainants are informed about the formal and informal process. The complainant makes the election of which method to choose.
9. Complaints in the procedural log were not subject to Intervention Counseling.	Formal, Informal and Procedural complaints are now part of the Intervention Counseling program.
10. Complaints could take as long as six months to classify.	All cases are classified within 30 days and assigned for investigation.
11. Many complaints took over one year to complete.	Seventy five percent of cases are now completed within 120 days.
12. Some witnesses were not interviewed until after three months to one year.	All witnesses, civilian and police will be interviewed within three months barring unforeseen circumstances.
13. Some investigations were not written until months after the interviews of the witnesses.	Summaries of the witnesses' interviews are written within 30 days and 75% of reports are prepared within 120 days, 100% within 300 days.
14. The manner in which a case was written could differ with each PSC investigator.	A standardized format is being used by PSC investigators including dates of interviews, witness and phone logs.
15. Complainants were not informed of the progress or status of their complaints.	Complainants receive written notice of the filing of their complaints within 30 days and updates every 60 days.
16. Complainants received a one-paragraph letter notifying them of the results of their complaints.	Complainants' letter is now a two-page letter informing them of the disposition of their case and of their right to contact the IPA for further review of their complaints.

C. OTHER IMPROVEMENTS WITHIN THE POLICE DEPARTMENT

THEN	NOW
1. People wanting to observe police practices alleged that they were discouraged or threatened with arrest.	A more detailed "Onlookers Policy" has been adopted and will be subject to revision in June of 1995. ⁷
2. Arrests for drunk in public at times did not contain the requisite documentation to substantiate the arrest.	Training on report writing of Drunk-in-Public cases is ongoing and reports containing the basis for the arrest will be retained. The police department is looking into making chemical tests available.
3. Frequent complaints were made about wrist injuries due to handcuffs not being double-locked.	As part of police officers on-going training, double locking handcuffs is emphasized. This has resulted in a reduction of this type of complaint.

⁷ See Appendix 6: Revised Onlookers Policy.

IV. ASSESSMENT OF THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

In order to create a framework by which to assess the effectiveness of the Office of the Independent Police Auditor, two documents were examined and analyzed. The first document was the San Jose City Ordinance, which established the Auditor's office. The second document was the investigation conducted by the Santa Clara County Grand Jury of the San Jose Police Department's Professional Standards & Conduct Unit. The following is a synopsis of these documents detailing the duties set forth by the ordinance and the recommendations made by the Grand Jury. After each duty or recommendation an explanation follows as to how this office has fulfilled the City Ordinance and how it has contributed to the implementation of the Grand Jury's recommendations to the Professional Standards & Conduct Unit.

A. SAN JOSE CITY ORDINANCE

The City of San Jose enacted an ordinance establishing the Office of the Independent Police Auditor. This ordinance sets forth the duties, jurisdiction, authority and limits by which this office must operate. An objective of the City Ordinance is for this office to increase public confidence in the San Jose Police Department's citizen complaint investigation process through an independent review. The following are excerpts from the City Ordinance followed by an explanation of how these mandates have been achieved.

1. Review of Investigations

Under the section entitled "Duties and Responsibilities," subsection (A), the Police Auditor shall review the investigations for their completeness, thoroughness, objectivity and fairness.

RESPONSE: The Auditor accomplishes this goal by reviewing the contents of the citizen complaint file. The entire investigation is forwarded to the Auditor's office upon completion of

the process. The contents of these files are examined. The contents include information such as the police reports, medical records, photographs, diagrams and all the taped interviews conducted in each particular case. The Auditor runs each case through a check list that includes four major areas: the written portion of the investigation, the quality of the oral interviews, the substantiation of the disposition and any particular issue or trend that the case may raise.

Specific issues for which the Auditor checks are in the following areas:

Investigation Write-up

- a. Were all the identified witnesses interviewed?
If not, why? The Auditor will send a request to conduct the interviews or have PSC explain what efforts were made to interview these witnesses.
- b. What efforts were made by the PSC investigators to find additional witnesses? Was a neighborhood canvass conducted? Were leads from the complainant or other witnesses developed?
- c. Did the investigation include any photographs or diagrams?
- d. Was the PSC investigator objective in writing the final comprehensive report? Were consistencies and inconsistencies between civilian witnesses pointed out? Were consistencies and inconsistencies between police officers also pointed out?
- e. Were the facts as represented in PSC reports consistent with the contents of the taped interviews?
- f. Did the PSC investigator base the finding on facts or conjecture?
- g. Was a conscious or subconscious bias in the officer's report detected?

Quality of Interviews

- a. Did the PSC investigator encourage the witness to feel at ease prior to beginning the interview?
- b. Was the witness allowed to give an uninterrupted statement?
Was the witness allowed to explain his/her answers?

- c. Did the PSC investigator interject his/her own personal opinions or rationalize the officer's behavior?
- d. Was the PSC investigator discourteous or confrontational?
- e. Were all relevant issues covered in the interview?
- f. Was there any discussion with the witness that was not recorded?
- g. Were the police and the civilian witnesses admonished not to discuss the case with other witnesses or officers?
- h. Were the questions leading, open-ended, and were follow-up questions asked?
- i. Was the PSC investigator's demeanor, intonation of voice different towards citizens than officers?
- j. Was applicable policy or law covered in the officer's interview?
- k. Was the overall manner of conducting the interview objective?

Finding of the Investigation

- 1. Was the finding supported by the evidence?
- 2. Was a preponderance of evidence standard used?
- 3. Was the finding in this case consistent with other similar cases?

Trends Noted:

- 1. Is this a new or previously noted trend?
- 2. Key words to enter in database.

Contact with the Complainants

In addition, the Auditor randomly contacts the complainants and civilian witnesses to ask them questions that the audit may raise or to compare their version of the facts to the representation of

those facts by PSC in the written reports. Complainants normally call the Auditor's office shortly after getting their disposition letter, which clearly states that they can contact the Auditor for further review. The Auditor will review the investigative steps with the complainant, which lead to the particular finding.

Site Checks

Another component of the review entails the Auditor visiting the scene. For example, the Auditor has gone to the complainant's home to inspect the area where the alleged misconduct occurred. Visiting the scene is one of the options that are available to the Auditor to help her get a better perspective of the surroundings described in the investigation. The Auditor will use the facts as stated in the case by the different parties and attempt to recreate the events. Factors such as lighting, vantage points, visual obstructions, blood stains, bullet holes, the size of the confinement area and the nature and layout of the physical structure are examined.

The Auditor has also inspected areas within the police department such as the booking area, the holding cells, the interview rooms, the sally-port area and others, for answers to questions raised during the audits of these complaints.

Related Agencies

Another important component of the audit is the verification of the evidence used by PSC to reach a finding. The Auditor confers on a regular basis with different key personnel at other agencies such as the Santa Clara County District Attorney's office. The Auditor met with District Attorney George Kennedy and his top staff to acquaint them with the functions of the Auditor's office. A process by which the Auditor can directly contact Deputy District Attorneys mentioned in the investigations was established. For example, a finding of exonerated on an unlawful arrest may be based in part, on PSC consulting with a Deputy District Attorney on the propriety of the arrest. Therefore, it is necessary to verify that such advice was in fact given and

acted upon.

The Auditor also met with the Chief Probation Officer, Dennis P. Handis, and the Commanders of the Main Jail and Elmwood Rehabilitation Center. The purpose of this meeting was to discuss and establish procedures for when an investigation involves both San Jose police officers and Santa Clara County correctional officers and/or if it involves displacing the responsibility for the alleged misconduct.

Audits of citizen complaint investigations, as described above, require a detailed and methodical process.

2. Unnecessary Force Cases

The Auditor is required to review a certain number of complaints annually. The Auditor must review all the complaints against police officers, which allege excessive or unnecessary force.

RESPONSE: All Unnecessary Force cases are automatically sent to this office for review. The Auditor is notified of all scheduled interviews involving witness and subject officers. Prior to the interviews, all available information is sent to the Auditor. At the conclusion of the investigation 100% of these cases are sent to the IPA for review. These cases are closely scrutinized by applying the auditing principals described in issue number one. These investigations are very lengthy and require many hours to adequately audit them.

3. Other Complaints

The ordinance also states that no less than twenty (20%) percent of all complaints, other than unnecessary force, will be audited.

RESPONSE: The Auditor currently reviews approximately 80% of all misconduct complaints

beside the 100% of Unnecessary Force Complaints. In addition 100% of Procedural, Informal and Policy Complaints are audited. Procedural, Informal and Policy Complaints are not as extensive or as time consuming as the Formal Complaints. The greatest amount of time spent on these cases involves interaction with the complainants. In addition to auditing the cases for thoroughness, the Auditor's office contacts the complainants to insure that the complaints are being properly classified. Currently, the complaints are being properly classified.

4. Interviews of Civilian Witnesses

The Auditor is authorized to interview civilian witnesses who are a part of the PSC investigations.

RESPONSE: The disposition letter that is sent by PSC informs the complainants about the Auditor and the Auditor's functions. The Auditor receives many calls from these complainants. If the Auditor finds that certain witnesses were not contacted or additional witnesses were located, she will contact the witnesses or request PSC to interview the witnesses. All requests for additional interviews have been conducted by Professional Standards & Conduct officers.

5. Interview of Police Officers

In addition to civilian witnesses the Auditor may attend the Professional Standards & Conduct interview of any witness including but not limited to police officers.

RESPONSE: The Auditor has attended 54 officer interviews. These interviews are conducted at the Professional Standards & Conduct Unit or at the Bureau of Field Operations (BFO). All police officers are compelled to attend these interviews and to answer all questions. Police officer interviews are all tape recorded. Only subject officers are allowed to bring their lawyers or association representative. A subject officer, who could face criminal charges, is advised of his/her constitutional right to remain silent. However, if this right is invoked, the officer is then

read the Grant of Immunity Admonition, which in essence states that the officer must answer the questions or face discipline as severe as termination for insubordination. To date, no officer has refused to answer questions from the investigators or the Auditor.

The Auditor reviews the case with the PSC investigator before and after the interview. The Auditor provides the PSC investigator with questions and follow-up questions throughout the interview. The Auditor may request and review copies of interviews of police officers including those interviews in which the Auditor was not present and request that additional interviews of the subject officer be conducted.

6. Request for Added Investigation

The Police Auditor can request to the Police Chief for further investigation whenever the Police Auditor concludes that further investigation is warranted.

RESPONSE: There is a constant flow of investigative requests to the Professional Standards & Conduct Unit from the Office of the Independent Police Auditor. Most often communication is direct with the Professional Standards & Conduct investigator who is handling the particular complaint. Those closed complaints that are audited and further investigation is requested are done in writing. To date, no requests by this office for additional investigation has been denied.

7. Community Function

Under subsection B entitled "Community Function", any person may file a complaint with PSC or the Office of the Independent Police Auditor. The Auditor shall provide timely updates on the progress of PSC investigations to any complainant who so requests.

RESPONSE: A total of 119 complaints have been filed with the Independent Police Auditor's Office. These complainants will normally maintain contact with the IPA throughout the process.

The Auditor has also received several anonymous complaints, which have been fully investigated and audited. The Professional Standards & Conduct Unit writes a closing letter on every complaint, which includes reference to this office and a telephone number. Phone calls to the Independent Police Auditor's office from complainants occupy a large part of the office's time. It's not uncommon for the complainant to add more information, which requires additional investigation. During these calls, the Auditor will explain to the complainant why a certain finding was reached.

The Office of the Independent Police Auditor has two incoming, outside phone lines plus one city line. The City line is used primarily for internal calls to other City departments including the Professional Standards & Conduct Unit. Though we don't have the information to determine the number of calls made and received through the City line, telephone records indicate that the two other lines produced an average of 900 outgoing calls a month not including a minimum of 900 calls that were received. This is an average of 60 calls a day from the public.

The Auditor has met with over thirty community groups and organizations. These meetings range from one hour to one whole day. Significant time has been dedicated for interviews with various media sources such as radio, television and newspapers. In addition, the Office of the Independent Auditor staff has attended several training sessions.⁸

8. Reporting Function

Finally under subsection C, "Reporting Function", the Police Auditor shall file quarterly public reports. This section of the ordinance has been changed to biannual reports.

RESPONSE: Three quarterly reports have been filed in addition to this Year End Report.

Future reports will encompass six-month periods, which will run from January to June and July

⁸ See Appendix 7: List of Public Outreach.

to December. The City Ordinance requires that these reports contain three main components.

- a. Statistical analysis; documenting the number of complaints by category, the number of complaints sustained and the actions taken;
- b. analyze trends and patterns; and
- c. make recommendations.

The Office of the Independent Police Auditor has fulfilled all the duties and requirements as set forth by the City Ordinance.

B. GRAND JURY INVESTIGATION

The Santa Clara County Grand Jury conducted an investigation on February of 1993 and released a report entitled, "Citizen's Complaints and the San Jose Police Department: An Investigation." From this investigation the Grand Jury set forth 12 recommendations on how the Professional Standards & Conduct Unit can improve and better serve the community. These recommendations will each be addressed.

RECOMMENDATION (1): Divide the responsibilities of the Professional Standards & Conduct Unit to receive complaints (a) internal to the department and (b) external complaints by the public in effect restructuring a portion of the present Professional Standards & Conduct Unit, as an office of citizen complaints.

RESPONSE: The Office of the Independent Police Auditor and Professional Standards & Conduct Unit receive Citizen-Initiated Complaints. The Office of the Independent Police Auditor was specifically created to receive and audit external complaints known as Citizen-Initiated Complaints. Professional Standards & Conduct Unit receives both internal complaints known as Department-Initiated and external or Citizen-Initiated Complaints. The Independent

Police Auditor reviews all complaints filed by citizens for thoroughness and objectivity irrespective of where they are filed or investigated. The Professional Standards & Conduct Unit investigates Citizen and Department-Initiated Complaints with less serious cases going to other bureaus for investigation.

RECOMMENDATION (2): Maintain non-uniformed staff in an inviting office atmosphere and provide access to interpreters, if necessary.

RESPONSE: The Professional Standards & Conduct Unit is located away from the San Jose Police Department and provides a professional business like atmosphere. At PSC, all staff wear business attire and do not carry guns. The Office of the Independent Police Auditor is staffed by civilian personnel and is located downtown San Jose, away from both the San Jose Police Department and the Professional Standards & Conduct Unit.

At the Office of the Independent Police Auditor both the Auditor and the Intake Coordinator are bilingual in Spanish and English. The Administrative Assistant is bilingual in Vietnamese and English. At Professional Standards & Conduct Unit several investigators and the senior analyst are bilingual in English and Spanish. The San Jose Police Department and the Independent Police Auditor also have access to a pool of interpreters. Family members or friends of the complainants may act as interpreters, if the need should arise. Currently, no one has been turned away because of a language barrier.

RECOMMENDATION (3): Immediately establish a procedure that all complaints, whether received orally or in writing, will be uniformly prepared in writing and be reviewed directly with the complainant. The complainant must have the opportunity to agree in writing that the facts in the complaint are accurately stated.

RESPONSE: At the Office of the Independent Police Auditor, the Intake Coordinator writes a brief synopsis of the facts based on the complainant's statement. The complainant reads the synopsis and signs it. If the complainant cannot read or is a non-English speaker then the complainant is not asked to sign the complaint, but the complaint is read or translated for him/her. The complainant receives a copy of the synopsis. If the complaint is taken over the telephone, a copy of the complaint is sent to the complainant for review and signature. Furthermore, the complaining party has an opportunity to make any additions and or changes to their statement. The complaint is then sent to Professional Standards & Conduct Unit for investigation.

At PSC, if a complainant appears in person, the complainant's interview is tape recorded. The complainant is allowed to give an uninterrupted account of their complaint. A copy of the tape will be provided to the complainant once the investigation is complete and if the complainant so requests. The complainant's statement is also summarized in writing. All complaints are documented in the same manner in a standard form. Once the complaint is written the complainant is given an opportunity to read, sign and receive a copy of the statement.

RECOMMENDATION (4): Require personal interviews with the complainant(s) and all witnesses as an integral part of every investigation.

RESPONSE: Standard practice is for all parties who are involved with the complaint from civilian witnesses to officer witnesses to be personally interviewed unless circumstances dictate otherwise. The Auditor verifies that personal interviews are conducted by requesting all the tape recordings of the interviews and by attending the interviews of the witnesses and subject officers at her discretion. If in the review of the tapes or during an interview specific questions are not asked, then the investigator is asked to re-interview the witness or the Auditor contacts the witness directly to clarify the issues. The only people the Auditor does not directly contact are

the police officers. The Auditor may request PSC to re-interview the officers in the Auditor's presence to facilitate further questioning.

RECOMMENDATION (5): Immediately implement status report procedures to update the complainant at regular intervals.

RESPONSE: Complainants receive written notice of the filing of their complaint within 30 days. Updates of the status of the complaints are sent every 60 days. At the end of the investigation the complaining parties are sent a closing letter which includes information about the disposition of their case and their right to contact the Office of the Independent Police Auditor for further review of their complaint.

RECOMMENDATION (6): Work with appropriate community leaders to set up community locations where citizens can meet periodically and communicate with the staff of the office of citizen complaints in an unthreatening environment.

RESPONSE: The Office of the Independent Police Auditor is open to the public, located downtown and operated by a civilian staff. This office is located in a high-rise building, brightly decorated and furnished, creating an atmosphere that advances the professionalism of this office. The Office of the Independent Police Auditor is conveniently located near public transportation and validated parking is provided.

The Auditor has met and addressed at least 30 community and professional groups, both at the Auditor's Office and at neighborhood meetings. The Auditor highly publicizes her willingness to meet with the public and listen to their concerns. This objective has been advanced through various media groups such as Channel 5, 11, 14, 48, KARA-FM, KBAY-FM, KSJO-FM, San Jose Mercury News, El Observador, and the Daily Journal. The emphasis of this office is to offer

to the public a forum where a person can file a complaint without intimidation or fear.

Upon request, the Professional Standards & Conduct commander is available to meet with the public at the Professional Standards & Conduct Unit or at community gatherings.

RECOMMENDATION (7): Within the next six months, develop a responsive procedure and letter informing the complainant of the disposition of the complaint. Include specific information and an explanation of why the conclusion was reached. If necessary, get the approval from the Attorney General and all other legally required officials or organizations to clarify allowable language as to findings.

RESPONSE: The complainants' disposition letter is now a two-page letter informing them of the disposition of their complaint and their right to contact the Auditor for further review. Complainants can call the Auditor for an explanation of how the finding was reached. A major portion of the Auditor's time is devoted to replying to complainants' inquiries as a result of these letters.

RECOMMENDATION (8): After implementing the office of citizen complaints, publish information in at least three languages about the complaint process.

RESPONSE: The Office of the Independent Police Auditor published a trilingual brochure (English, Spanish, and Vietnamese) explaining the role of this office, who can initiate a complaint, how and where a complaint may be filed. The brochure is distributed throughout the City of San Jose.

The Professional Standards & Conduct Unit has also published information booklets which instructs citizens on how to file a complaint or give a commendation to an officer. The

information booklet is written in three languages (English, Spanish, and Vietnamese) and distributed throughout the City.

RECOMMENDATION (9): Develop an independent and effective appeals process within the next six months.

RESPONSE: The Independent Police Auditor's Office opened in September of 1993. This office accepts and reviews citizen complaints. The Office of the Independent Police Auditor has the authority to not only review the thoroughness of the investigation, but to reopen a case. A complainant can contact the Auditor and inquire into the finding of the complaint. The Auditor will listen to the complainant's version of the facts and why he/she feels the case should have been sustained. Keeping those concerns in mind the Auditor will review the case again. If the complainant has additional information or witnesses that were not known or were overlooked, then the Auditor will request that the case be reinvestigated by the Professional Standards & Conduct Unit. This process is done until the Auditor is satisfied that all available evidence was included in the investigation. If the Auditor finds that PSC refused to further investigate or that the finding is not supported by the evidence, then the Auditor will appeal the complaint to the City Manager, Mayor and ultimately the City Council.

RECOMMENDATION (10): Publicize the appeals process in the disposition letter to the complainant and in publicity to the community.

RESPONSE: The process of having a complaint reviewed by the Independent Police Auditor is in the disposition letter and included in the information booklets. Extensive media coverage has been given to the office and role of the Auditor.

RECOMMENDATION (11): Improve telephone procedures within San Jose Police Department

for referral to the office of citizen complaints.

RESPONSE: Existing policy states that any member of the San Jose Police Department who receives a citizen complaint must refer the complainant to PSC or to an on-duty Watch Commander. San Jose Police Department Communications Center personnel and San Jose Police Department Information Center personnel are informed of this responsibility. Brochures from both Professional Standards & Conduct Unit and Office of the Independent Police Auditor are available in the lobby of the San Jose Police Department.

RECOMMENDATION (12): Establish an automated system for recording, tracking, and reporting all complaints received by the Professional Standards & Conduct Unit of the San Jose Police Department.

RESPONSE: All PSC investigators are now equipped with a personal computer which is linked to a central database. All reports of investigation are prepared in standard, typed written form. Complaints are recorded and tracked by complainant's and officer's name. In addition, the IPA records and tracks all complaints. This dual-tracking system serves as a check and balance of the true number of complaints.

Conclusion

In assessing the effectiveness of this office, there are four stages in the citizen complaint process that without an oversight body like this office would allow officer's misconduct to go unaccountable. The four stages are the initial reporting of officer misconduct, the classification of the complaint, the investigation of the complaint and the finding of the investigation.

First Stage

An act or perceived act of unacceptable behavior by a San Jose police officer occurs.

At this stage, the behavior must be reported in order to set the review process in motion. The IPA provides a non-threatening forum in which citizens can file their complaints. If there isn't a forum where a citizen can feel comfortable to file a complaint, then unacceptable conduct by officers will go unreported and hence no accountability for their conduct.

Second Stage

After filing a complaint, the complaint must be properly classified.

The classification of a complaint determines the level of investigation and the consequences to the officer. The IPA monitors the classification of complaints to insure that classification of serious complaints fall into the Formal Misconduct. Three days after a complaint is filed with PSC, notice of the complaint is automatically sent to the Auditor for review. The Auditor also conducts surveys of those complainants who filed their complaint with PSC to compare their version of the facts and classification assigned by PSC.

Third Stage

After filing and classifying a complaint, proper investigation must be conducted.

One of the primary functions of the IPA is to oversee the quality, depth and objectivity of the investigations. If investigations are not conducted properly or there is a subconscious bias by the PSC investigator in favor of the officer, then these factors will directly impact the outcome of the investigations.

Fourth Stage

After the investigation is completed, the complaint is given a finding.

Interpreting the results of an investigation involves subjective reasoning; therefore, making this

part of the citizen complaint process the most vulnerable to abuse. The review aspect of the IPA serves as a quality control function which safeguards against improper outcomes of the investigations. A finding of sustain is given only by the officer's chain of command. If a complaint is not sustained by the Office of the Chief and there is sufficient evidence, then the Auditor can appeal the final outcome of a complaint to the City Manager and ultimately to the Mayor and the City Council.

The responsibility for imposing discipline is vested solely with the Chief of Police. The Auditor does not have authority to intervene in this area; however, the Auditor will publish the type of discipline imposed in the public reports.

Summation

The first year of operation of the Office of the Independent Police Auditor has resulted in the successful opening and organization of the office. This office has effectively performed its functions as prescribed by the City Ordinance and has assisted PSC in fulfilling all the Grand Jury's recommendations. This office has brought about meaningful changes to the Professional Standards & Conduct Unit. The Office of the Independent Police Auditor was instrumental in bringing about major changes in the areas of intake of citizen complaints, classification and documentation of complaints. It has also implemented the infrastructure by which an independent audit of citizen complaints can be effectively conducted.

V. NEW ISSUES

This report will address two new issues and will make recommendations for adoption and implementation by the San Jose Police Department.

A. COMPLAINANTS ALLEGE THAT THE POLICE CONDUCT UNLAWFUL SEARCHES

Unlawful Search Allegations

A review of 326 complaints has led to the identification of a pattern in 36 complaints involving disputes in consent to searches of the person, vehicle, or home. The recurring theme found among these complaints involved situations where the allegation was an unlawful search by a San Jose police officer and the dispute of facts was the issue of the consent.

The factual patterns noted in the audit of these 36 cases involved officers responding to calls for service, stopping a vehicle or detaining a person for questioning. The officers then searched the home, car, or person. The citizens alleged that they did not consent to the search and that the officers searched anyway. The Office of the Independent Police Auditor conducted a search for remedies to this issue and discovered that the San Jose Police Department's Duty Manual already has appropriate policy addressing this issue.

Applicable Duty Manual Sections

San Jose Police Department's Duty Manual, section L1933, addresses consent searches. Section L1933 specifically states that "(o)fficers may conduct a warrantless search of a person, vehicle, or dwelling whenever such officers have legally detained the person or vehicle or have legally entered a dwelling and obtained consent to search from a person having authority to give such consent."

Current Consent Form

The San Jose Police Department's Duty Manual has a Consent to Search Form, Number 202-54. The wording in section L1933 clearly imposes a duty on the officers to use the consent form. The use of this form is covered under section R 1257 of the Duty Manual and states verbatim, "this form is used whenever an officer determines that a search of a residence, dwelling, vehicle or other place or item is necessary and the person in control of the place or item to be searched is willing to give consent to officers to perform a warrantless search." (San Jose Police Department's Duty Manual, section R1257.) (Emphasis added.)

The Duty Manual further requires that the person giving consent sign the form in front of two witnesses. In the 36 cases audited none of the cases contained a form and no attempts to secure a form were recorded in the information this office reviewed.

These consent forms are necessary for the protection of both the citizens and the officers. These forms are important to inform and secure citizen's consent. Likewise, these forms protect the officers from citizens who complain that they did not consent to the search and that the officers acted unlawfully. The 36 complaints brought focus to the lack of use of the consent forms but did not provide enough evidence to conclude that the searches were in fact unlawful in all but one case.

Claims against the City of San Jose for Unlawful Search

Between September 1, 1993, and September 1, 1994, there have been a total of nine claims filed at the City Attorney's Office against the City of San Jose for Unlawful Searches. Three of the claims are pending lawsuits. Six of the claims were denied by the City. No money as of yet has been paid.

RECOMMENDATIONS:

San Jose Police Department's consent form contains more stringent requirements than what state and federal law mandates. There is no need for further policy, the problem lies with the enforcement of the use of this form. The following recommendations are offered:

1. Officer training or re-familiarization on the use of the consent form should be immediately implemented.
2. Supervisors should hold the officers accountable for the inclusion of these forms as part of the case investigation where consent was an issue, especially in searches of a home or dwelling. If the party refuses to sign but gives verbal consent, the form should indicate this refusal.
3. The consent form should be revised to simplified wording to encourage its use. The present form contains too many legal terms, which may appear confusing to the officers and the public.⁹
4. Officers who fail to use the consent form in the Duty Manual after training or re-familiarization should run the risk of a "Sustained" finding for Improper Procedure in a citizen complaint, alleging an Unlawful Search.

B. ON SCENE INVESTIGATIONS FOLLOWING A USE OF FORCE INCIDENT ARE LACKING IN PHYSICAL EVIDENCE

During the first year of operation a critical distinction that this office has found is the difference in the investigation of a citizen complaint and that of a criminal investigation. The administrative investigation of a citizen complaint is different from a criminal investigation in that the methods, style, and adversarial approach with which one associates criminal investigations are not present in citizen complaint investigations.

A fundamental change in the manner by which PSC investigations are conducted needs to take place. The focus of PSC investigations is concentrated on who is telling the truth: the complainant or the subject officer. How PSC arrives at this determination is through the

⁹ See Appendix 8: Consent to Search Form.

statements of all the parties involved.

In contrast, criminal investigations focus on determining whether a crime occurred and identifying the perpetrator. The statements of all the parties involved will also be taken but in addition physical evidence will be collected to corroborate the witness' statements. This corroboration of physical evidence determines in criminal investigations who is telling the truth.

A review of several hundred complaints revealed that the investigations of citizen complaints are lacking in physical evidence and that the findings are determined primarily on testimonial evidence. Physical evidence is tangible evidence such as blood stains, fingerprints, and weapons while testimonial evidence consist of oral or written statements.

Criminal investigations and PSC investigations, which are administrative in nature, differ in the emphasis and focus given to physical evidence. For example, in criminal investigations, physical evidence is extremely important and is often seen as the most reliable form of evidence. The San Jose Police Department places great importance in securing crime scenes for the purpose of collecting physical evidence, which will then become an integral part of the investigation.

In contrast, PSC investigations are lacking in this type of evidence. In cases alleging unnecessary force, the files will at best contain photos of the injuries of the complainants and/or officers. These photos are often of poor quality. For example, photos will depict the complainant's injuries but will not show the location in relation to where they occurred.

A complaint may not reach PSC until days or weeks after an incident happened. By that time some injuries, clothing, bloodstains and other evidence may not be visible or available.

Therefore, if this type of evidence is not collected immediately at the scene, a high probability exists that it will be lost.

Hypothetical Case

To best illustrate this point, below is a hypothetical situation based on a recurring fact pattern from actual citizen complaints. Officers A and B go to complainant's house to serve a warrant. It is standard police practice to separate witnesses. Officer A takes the complainant into another room away from visual or hearing range of Officer B and other family members.

Complainant's Version: Upon reaching the rear bedroom, complainant asked to see the warrant. Officer A perceiving his authority challenged proceeded to grab complainant by the neck and told him, "I don't have to show you anything." Complainant jerked away from Officer A's grip, causing Officer A to fall. Officer A chased and struck the complainant and other items in the room with his baton. Complainant alleged that Officer A struck him twice on the head with his baton and after complainant fell to the ground, Officer A kicked him repeatedly in the face, breaking his nose and splitting his lips.

Officer A's Version: Upon reaching the rear bedroom, Officer A closed the door so that the complainant's uncooperative behavior would not incite other family members. Officer A told the complainant to calm down, complainant became belligerent and assumed a fighting stance. Officer A told complainant to back off. Fearing for his safety, Officer A punched complainant once with his fist as the complainant advanced towards him. Complainant immediately fell, Officer A handcuffed and transported the complainant to the hospital without further incident. Officer A denied using the baton or kicking the complainant. He narrowed the encounter to the immediate area of the door.

A typical PSC investigation of the above scenario would contain interviews of the officers and the people in the house. As part of the file, initial photos of the complainant's injuries may or may not be available. This investigation would end up in a stale mate; the word of the officer against the complainant. Hence, this case would not be sustained.

Examples of Physical Evidence

In the above example, photos of the bedroom depicting signs of a struggle such as broken items, photos of blood spatter on the wall or carpet to show the position of the complainant or subject officer would be objective and important evidence to determine if the complainant struggled and was struck in different locations of the room or if the complainant was only punched once in one location.

Photos or a report depicting the presence or absence of blood on the leg of the officer's pants and/or shoes would be evidence that the officer did or did not kick the complainant. The officer's hand may show the presence or absence of evidence that he struck the complainant with the fist and not with the boot. A sketch or diagram of the room as it was at the time of the incident would also be helpful. Evidence of this kind is not found in PSC investigations.

It should be noted that PSC conducts very thorough investigations with the limited physical evidence that is collected. The problem is not with the quality of the investigations conducted but with the lack of evidence obtained at the scene to assist the PSC investigators.

Benefits of Physical Evidence

Presently, when a San Jose police officer uses force he/she has a duty to inform his/her supervisor. The supervising officer may or may not write a report of his/her observations. There is no duty by the officer involved or the supervising officer to gather evidence to corroborate the complainant's allegations of the officer's use of force. If physical evidence is not collected immediately at the scene, there is a high probability that it will not be subsequently available.

Without physical evidence or independent witnesses, the complainant is left to rely on his word against the officer's. Even when the alleged misconduct occurs in front of family members, seldom are friends or family members considered impartial or objective enough to sustain a

complaint because they would be viewed as biased. To allow available physical evidence to dissipate perpetuates a working environment where police brutality may go unpunished because of a lack of evidence to sustain a complaint.

Likewise, the lack of physical evidence creates the opportunity for fraudulent claims to be filed against the City of San Jose. This type of evidence would be extremely helpful in defending lawsuits.

False and unmeritorious complaints against police officers would easily be dismissed by the existence of physical evidence. A review of the complaints has also revealed that some complainants facing criminal charges will fabricate injuries or file complaints with the expectation that their criminal complaints will be dismissed. In other cases, the audits have revealed that complainants exaggerated their injuries, or deny assaulting or inflicting injuries on officers. The lack of independent, physical evidence denies police officers the means by which to conclusively absolve themselves of wrongdoing, thus leaving the credibility of the officers and the San Jose Police Department under a cloud of doubt in the public's eye.

RECOMMENDATIONS:

1. Once informed by an officer that force was used **and** that the force used required that an officer or other person receive medical care, an affirmative duty on the supervising officer should arise for the investigation and the immediate collection of physical evidence at the scene.

Training should emphasize that the collection of physical evidence should include all relevant evidence according to **both** the officer and the injured party's version of the facts.

2. A citizen may or may not tell a supervising officer about the origin of the injuries while at the scene. The treating physician is often the first person that the citizen will tell how the injuries were inflicted. It is not uncommon for a complainant to contact PSC directly. Therefore, if the

nature and origin of the complainant's injuries are first made known to Professional Standards & Conduct Unit, then PSC should be responsible for the collection of physical evidence and should make this a priority in the investigation of the complaint.

3. Training and equipment should be provided to enable officers to photograph complainants requiring medical care along with any other collateral injuries. PSC is diligent in photographing any visible injury. Problems arise in other units of the SJPd where reason such as the camera did not work or no camera was available has been given.

4. A detailed report written by the supervising officer or neutral officer describing the injuries as observed should be prepared. Predominantly, the only information of the nature and origin of the injuries is found in the report written by the officer inflicting the injuries.

5. The supervising officer should be ultimately responsible to see that witnesses and officers at the scene are identified. Officer's reports focus on information material only to the crime at hand and usually of an inculpatory nature to the suspect and/or complainant. Even when an arrest is not made, if a citizen is injured by an officer's use of force, efforts should be made to gather evidence about the nature and origin of the injuries.

SUMMATION

The crucial point emphasized in the above examples and recommendations is that the facts as stated by both the officer and the complainant should be investigated and a thorough collection of evidence should be conducted. The police have the responsibility of taking physical control of the scene. Therefore, it is these officers who are in the best position to gather the evidence. The police department needs to move away from relying primarily on testimonial evidence to reach a finding and focus more on physical evidence. To determine the veracity of a complaint primarily through oral statements places an insurmountable burden on the complainant. The burden should

not be placed on the citizen to be more credible than the officers. Even when both complainant and officer have equal credibility, under a preponderance of evidence standard, a tie would go in favor of the officer.

VI. UPDATE ON PRIOR RECOMMENDATIONS

The Office of the Independent Police Auditor has in previous quarterly reports submitted recommendations for the San Jose Police Department to review and adopt. The Office of the Independent Police Auditor made the following recommendations. The corrective action taken by the San Jose Police Department and other City branches shall follow.

Recommendation (1): Defining Procedural Complaints

In the first quarterly report, the Auditor recognized that some complaints, which alleged misconduct, were inappropriately classified by PSC as Procedural Complaints. The Auditor recommended a reformation of the Procedural classification by creating clear and uniform guidelines and definitions for the Professional Standards & Conduct officers to follow in making the distinction between Misconduct and Procedural Complaints.

Corrective Action: The San Jose Police Department adopted a new classification system and redefined the categories of complaints.

Recommendation (2): Auditing Procedural Complaints

The Auditor was unable to conduct an effective audit of Procedural Complaints because of the poor record-keeping techniques used at Professional Standards & Conduct Unit. Procedural Complaints were recorded in a procedural log which did not include the names of the involved officers, and only had a few words describing the nature of the complaint. Additionally, the scant and disorganized information, which was available for review, was in the handwritten notes of the respective Professional Standards & Conduct officers. Thus it was recommended for PSC to implement the use of the Procedure Complaint form, as mandated by their Duty Manual and type these forms.

Corrective Action: The Professional Standards & Conduct Unit is using a standardized typed Summary of Complaint form on all complaint categories. This form summarizes the complaint and allows the citizen to review, make changes if needed, sign the complaint, and receive a copy of the complaint.

Recommendation (3): Intervention Counseling and Procedural Complaints

Generally, intervention counseling was only applicable to those complaints which were deemed misconduct complaints. This program required any officer who received three or more misconduct complaints in a 12-month period to be counseled by their immediate supervisor, Bureau Chief and the Professional Standards & Conduct commander. It was recommended that the Intervention Counseling program be extended to the other type of complaints in order to meet the objective of providing counseling to officers who were receiving unusually high numbers of citizen complaints.

Corrective Action: The use of the Intervention Counseling program has been adopted with the new complaint classification system. Officers who receive three complaints within a 12-month period are identified and notified to attend the counseling session with their immediate supervisor. The Bureau Chief of the subject officer conducts the session with the Professional Standards & Conduct commander in attendance. Those officers who receive a combination of five or more Procedural and/or Informal Complaints within a 12-month period are also subject to Intervention Counseling. This program applies regardless of the *finding* of the complaint.

Recommendation (4): Potential Bias Within the Professional Standards & Conduct Unit

When a Professional Standards & Conduct officer has had significant prior contact with a complaining citizen, that PSC officer should not investigate that citizen's complaint. This would avoid the dangers of unconsciously reaching preliminary conclusions about the legitimacy of the complaint. Furthermore, it was recommended that a process should be established which permits

a Professional Standards & Conduct officer who has had significant interaction with the officer who is being investigated, to defer to another Professional Standards & Conduct officer.

Corrective Action: Investigators assigned to the Professional Standards & Conduct Unit and those supervisors conducting investigations outside of PSC, receive continuous training to prevent bias from affecting the outcome of citizens' complaints. If an investigator has had significant prior contact with the complaining citizen or significant interaction with the officer being investigated, the Unit Commander will reassign the case.

Recommendation (5): Potential Bias with Selecting Formal or Informal Procedure

The purpose for the informal handling of misconduct complaints is to address those cases involving minor transgression, such as rude conduct. The manner in which these Informal Complaints are handled is to bring the matter to the attention of the officer's supervisor without the need for a full Formal Misconduct investigation. Since there is an opportunity to influence the complainant in choosing the Informal over Formal Complaint process, it was recommended that the PSC intake officer use a script so that the decision by the complainant not be coerced, intimidated or too suggestive.

Corrective Action: To avoid influencing the complainant to choose the Informal Misconduct process over the Formal Misconduct process, a standardized form is read to all complainants explaining these two options. This will prevent individual investigator from delivering an inconsistent message on any given day. This form was approved for use by the Auditor and is operational as of August of 1994. In addition, the IPA randomly contacts the complainants to insure the proper use of this process.

Recommendation (6): Objectivity of the Professional Standards & Conduct Intake Process

Some citizens had complained that during the initial interview with PSC officers that these

officers either did not believe the complainants' account or the officers made them feel as though they, the complainants, had provoked the situation. It was recommended that the complainants be given an opportunity to give an uninterrupted account as to what occurred. Furthermore, PSC should train officers on how to change and improve their verbal and physical communication techniques in order for the citizens to leave the office with the perception that they were believed, taken seriously and that the complaints will thoroughly be investigated.

Corrective Action: The PSC investigators now receive weekly training in scheduled staff meetings regarding citizen perceptions. In the Summary of Complaint form, words that are likely to minimize the seriousness of a citizen complaint are not included. The investigators dress in professional office attire and do not display badges or service weapons. Active listening skills are employed by the intake officers and every possible attempt is made to make the citizens feel comfortable and leave with a feeling that their concerns have validity and will be objectively investigated.

Recommendation (7): Timetable Investigation of Formal Misconduct Complaint

The Professional Standards & Conduct Unit was not completing the investigation of the complaints within the timetable established in the official Program Management Report. This delay resulted in loss of credibility to both the PSC and the IPA. The timetable is as follows:

30 days	Classification of all cases
120 days	Completion of 75% of cases
300 days	Completion of 100% of cases

Corrective Action: Although PSC currently completes 45% of the cases within 120 days with the adoption of the new classification system for complaints and additional personnel at the PSC, continues progress towards reaching the stated goals is anticipated.

Recommendation (8): All Complainants and Witnesses Interviewed within Three Months

Complainants and witnesses were not interviewed in a timely manner. The result would be that memories would wane, witnesses disappeared and the issues would lose their urgency to the extent that some complainants no longer wanted to pursue the complaint. It was recommended for all the parties involved to be interviewed within a three-month period.

Corrective Action: The recommendation was adopted and is to apply to officers as well as citizen witnesses. Barring unforeseen circumstances, all the witnesses are interviewed within three months. The investigative file also contains a “Witness/Phone Log” sheet indicating the date and manner in which the investigator attempted contact. This procedure applies whether the case is retained at PSC or is routed to the involved officers chain of command for investigation and findings.

Recommendation (9): Standardize Format When Writing

It was recommended for PSC investigators to use a standardized format when writing the case summary of the investigation in order to facilitate and expedite the audits. The dates when the witnesses were interviewed should be clearly stated on the summary in order to know when the witnesses are being contacted and when if at all the witness is responding.

Corrective Action: As of June of 1994, a standardized format including the “Summary of Complaint” is being used by the PSC investigators. In the investigation section of the case, an outline form is utilized indicating a chronological overview of the entire case including the dates of officer, witness, and complainant interviews. The “Witness/Phone Log” supplements and supports the case overview.

Recommendation (10): Time from Investigation to Actual “Write-Up”

An area of concern was the time that transpired from when the information was gathered to when

the investigation was being written. In many cases there was a lapse of months from the time PSC investigators conducted recorded interviews of the witnesses to the time that the witness' statement was written. The concern was that important detail would be left out due to loss of memory. Also, time was wasted when the investigators had to reacquaint themselves with the case before writing the report, thus duplicating their efforts.

Corrective Action: With the new classification and additional officers assigned to PSC, investigations are written shortly after the interviews which in turn is minimizing the time it takes to close a case.

Recommendation (11): Complaints Classified Within 30 Days

It was recommended that complaints should be classified within one month after the received date because this reduced the overall amount of time required to complete an investigation and the cases would not be in a holding pattern for very long.

Corrective Action: This recommendation was adopted and implemented since June of 1994.

Recommendation (12): Complainants Contacted at Regular Intervals

It was recommended that the complainants be contacted regularly to apprise as to the status of their complaints. This should apply to all types of complaints. This is important in order for the complainants to feel that their complaint is being investigated properly.

Corrective Action: Upon receipt of the complaint, each complainant receives a 30-day letter from PSC indicating his/her complaint has been received and is being processed. Every 60 days thereafter another letter is mailed indicating the status of his/her complaint. This procedure will apply whether the complaint is retained at the Professional Standards & Conduct Unit or routed to the subject officer's bureau.

Recommendation (13): San Jose Police Department Should Adopt a Formal “Onlookers Policy”

An issue arose that dealt with allegations that citizens were dissuaded from observing or recording police related incidents. The importance of this issue was to safeguard potential witnesses in order to take steps to ensure their participation and availability since many times they are the deciding factor of whether the complaint will be sustained or not. Thus, it was recommended to the Department to adopt a formal “Onlookers Policy.”

Corrective Action: The Chief of Police has signed a new Rights of Onlookers at the Scene of an Incident Order. The new order includes the City Attorney’s recommended revisions. The Chief of Police has referred a review of other Cities’ policies to the Police Department’s Research and Development Unit. On the basis of their findings, the Unit will recommend to the Police Chief any changes to the existing order by June of 1995.

Recommendation (14): Provide Report Writing Training for Drunk in Public Cases

An audit of 240 complaints revealed that in 23 cases, officers who were arresting persons for being drunk in public failed to adequately document in the police reports the required elements. Without the written elements for Drunk in Public violations, these arrests appear to be pretextual. Training should be provided in properly documenting Drunk-in-Public arrests. These reports should all be retained as part of the case file.

Corrective Action: The recommendation was forwarded to the San Jose Police Training Unit to provide training to the patrol officers. Drunk in Public pre-booking sheets will be retained in the Records Unit.

Recommendation (15): Optional Chemical Testing for Drunk-in-Public Cases

In order for Drunk-in-Public arrests not to appear pretextual, a chemical test should be administered. Without the benefit of a chemical test to prove if the person had consumed some

alcohol, the only evidence is the officer's subjective observations that the complainant is drunk. Thus, the opportunity to take a chemical test should be provided.

Corrective Action: The San Jose Police Department responded by stating that this recommendation shall be reviewed by the Research and Development Unit of the San Jose Police Department before considering implementation of such a program. Legal, fiscal, and practical considerations must be evaluated including the overall impact upon the patrol division who make the vast majority of Drunk-in-Public arrests. The IPA will report in future reports the progress or action taken about this issue.

Recommendation (16): A Sample of All Reports Produced by the Police Department be Should Provided to the Auditor

The Auditor has on several occasions spent staff and police personnel time researching and gathering data that is already partially compiled in reports kept by the police department. Therefore, it is recommended that a sample of all reports produced by the police department be provided in order for this office to determine which would be helpful and/or applicable to the functions of this office.

Corrective Action: The police department has agreed to provide those relevant reports which are generated by various units within the Police Department and those routinely generated reports that are provided to the City Manager by the Professional Standards & Conduct Unit.

Recommendation (17): Funding for Equipment and the Development of a Database and Funds to Publish Additional Copies of the Trilingual Brochure

Funding was requested to purchase equipment in order to effectively track and identify trends which were manually conducted with obsolete equipment. A database is needed in order to identify patterns and trends in police officers' behavior from the audited complaints. This

information is contained in the files which must be returned in three months after the Auditor has reviewed them. By creating a database, the information can be stored in the computers to help the Auditor follow trends.

Funding for additional brochures was also requested in order for the Auditor to reach out to the community. It was important to make the community aware of the existence of this office as an alternative forum for the filing of a complaint. A survey conducted by the office revealed that the majority of the complainants were not aware of the existence of this office before they were contacted.

Corrective Action: San Jose City Council appropriated the funding to purchase more modern computer equipment. The City Manager has provided assistance in creating a database, and in providing support staff to enter the information in the existing files.

Finally, we were also allocated money to publish additional copies of the trilingual brochure, which will supplement our current supply.

Recommendation (18): Amendments and Finalization of the Policies and Procedures for the Office of the Independent Police Auditor

The policies and procedures by which this office operates needed to be amended and finalized to reflect on the job experiences that were not foreseeable at the time that they were written. The following is a list of issues and action taken concerning the operation of the Office of the Independent Police Auditor.

a. Publish biannual reports instead of quarterly reports.

The City Council agreed to amend the City Ordinance to require biannual reports rather than quarterly reports.

- b. Set a time by which the IPA procedures will be final.

The IPA policies and procedures have been implemented.

- c. Have the Auditor give input before the final draft of the procedures is adopted.

The IPA was instrumental in the final draft of the procedures.

- d. Establish the jurisdiction of IPA to determine whether complaints from San Jose Police Department employees involving incidents which occurred while they were employed by the department are outside of the jurisdiction of the Independent Police Auditor's Office.

The City Council limited the jurisdiction of the IPA to exclude employees and ex-employees whose complaint occurred while still employed by the San Jose Police Department.

- e. Determine the right to access of the IPA relevant to auditing confidential records in cases involving minors and sexual assault victims.

The IPA has the right to receive all information in the PSC files, including criminal histories and cases involving minors and sexual assault victims.

Recommendation (19): Sending Minor Complaints to BFO

In order to expedite the investigation of complaints at PSC, more of the less serious complaints should be sent to BFO for investigation.

Corrective Action: The above recommendation is adopted and implemented.

VII. CONCLUSION

The first year of operation resulted in a major overhaul of the citizen complaints process at the Internal Affairs Unit, now renamed Professional Standards & Conduct Unit. The emphasis of this new system is to continuously improve the manner in which complaints are received, classified and investigated.

In addition to improving the PSC investigator's interpersonal skills, the daily operations of the PSC has been raised to a higher, more professional level. A new Professional Standards & Conduct Unit Guidelines incorporating the changes at PSC was written and implemented. The PSC Commander also conducts regular training sessions at the police department to update all the officers of the changes at PSC and of the role of the Auditor.

Maintaining the physical and attitudinal changes that have taken place at PSC is an ongoing process. As different officers rotate into the unit, they bring with them their own opinions, biases and interpersonal skills. Since the inception of this office, there has been a 100% change in personnel at the Professional Standards & Conduct Unit. Officers are rotated out every two years or promoted into other units. The IPA acts as a monitor to insure that the new officers assigned to PSC assimilate into the new system.

The IPA has many outstanding features. Two frequently heard criticisms of this office is that the Auditor has no subpoena or investigative powers. A subpoena, according to Black's Law Dictionary, is defined as "a command to appear at a certain time and place to give testimony upon a certain matter." There are two types of witnesses in PSC investigations to whom subpoenas would apply: police officers and citizens. All police officers must attend and respond to the questions asked by PSC and the Auditor or face termination. Therefore, subpoenas are not needed to compel officers to appear for questioning.

Subpoenas would only apply and be used to force citizens to make themselves available and answer questions. Based on the Auditor's personal experience in criminal courts where witnesses are forced to appear under threat of contempt of court, the use of subpoenas often leads to negative reactions and alienation of the citizens. Therefore, subpoena power is not necessary.

The second criticism is that the Auditor has no investigative power. The fact is that the Auditor has the power to participate in every aspect of an investigation such as the interviewing of witnesses, inspection of the scene and access to all the evidence. Access to the investigation process is inherent in the Auditor duties. The only restriction imposed by the City Ordinance is that questioning of the police officers is done through a PSC investigator. This restriction does not preclude the Auditor from questioning the officers; it only adds an intermediary to repeat the questions from the Auditor to the officer. The contents of the Auditor's questions are not regulated by this intermediary.

The criticism in the above two areas is perhaps the result of misinformation or the deliberate refusal to acknowledge the many outstanding attributes of this office. Set forth are some of the many features of the Office of the Independent Police Auditor:

1. This office functions independently from the SJPD and all other City departments. This office monitors and has direct input on the entire citizen complaint process. The approach used by this office has been successful in obtaining the cooperation and not the alienation of the police department.
2. This office has total access to all PSC files, unlike some bifurcated systems that only review their own intake complaints.
3. By overseeing that the investigations of citizen complaints are done properly the need for a separate investigative body is eliminated, thus no duplication of efforts or expense is necessary.
4. The IPA reviews all complaints that lead to the identification of patterns and trends. This office makes specific recommendations to address the problems that are giving rise to the complaints. The root and not only the problem become the

focus of this office. Furthermore, these recommendations have thus far been implemented or are in process of being implemented.

5. The City Ordinance provides an appeal process for the Auditor to use by providing direct appeal to the City Manager, Mayor and City Council.
6. The Auditor receives public input by meeting with citizens, community groups and organizations. The IPA informs the public directly or through the reports it publishes.

In maintaining a progressive and informed ethic in this office, the Auditor regularly meets with members of the Bay Area Police Oversight Network (BAPON). The Auditor is one of the founders of this organization, which is composed of staff and commissioners of the civilian review boards of their respective cities. These cities include San Francisco, Novato, Richmond, Berkeley, Oakland, San Jose and Santa Cruz. The Auditor has direct contact with the working staff of these organizations, their working policies, procedures, public reports and on a monthly basis meets with representatives of these organizations. It is through the knowledge of the inter-workings of these other organizations that the Auditor is able to compare, improve and assess the effectiveness of the IPA.

There are several areas that the Auditor has targeted for this year; however, one area in particular that will receive immediate attention is informing and educating the public about the functions of this office. To this end, the Auditor will set up regularly scheduled meetings with various community and professional groups. The functions and effectiveness of this office need to be routinely communicated to the public. The IPA, through the support of the Mayor and City Council, pledges to make this office the best method of addressing citizen complaints.

APPENDIX 1

DEFINING COMPLAINTS

1. FORMAL: Complaints which alleged a serious violation of Department policy or a violation of law by an officer.
2. INFORMAL: Complaints involving allegations of minor transgressions on the part of a subject officer, refers to the officer of whom the complaint is about, which may be handled informally by bringing the matter to the attention of the officer's chain of command at the complainant's request. These are typically Rude Conduct complaints. However, if the complainant feels such conduct is in his/her opinion egregious that a Formal Complaint is warranted, the Professional Standards and Conduct Unit is then obligated to investigate this complaint as such. The complainant has ultimate control as to whether to treat the complaint as Formal or Informal.
3. PROCEDURAL: Complaints are defined in two separate portions. The first portion includes the following: "After the initial investigation by the Intake Officer, the Department determines the subject officer acted reasonably and within Department policy and procedure given the specific circumstances and facts of the incident that despite the allegation of misconduct, there is no factual basis to support the allegation." At the end of the investigation, the assigned finding will be "Within Department Policy."

The second portion of the definition includes: "The allegation is dispute of fact case wherein there is no independent information evidence or witnesses available to support the complaint and there exists another judicial entity which is available to process the concerns of the complaint." A finding of "No Misconduct Determined" will be assigned to the dispute of fact cases. For example, a person files a complaint alleging an Unlawful Search, where the complainant states that the police entered his/her home and conduct a search. After a preliminary investigation, the Professional Standards and Conduct officer discovers that the complainant is on parole and has a search clause. The case will be closed with a finding of "No Misconduct Determined."

4. POLICY: Complaints pertained to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid. A complaint of this nature could be for the disapproval of a towing ordinance. These complaints do not focus on the conduct of the officer but on the policy or law which the complainant disagrees.

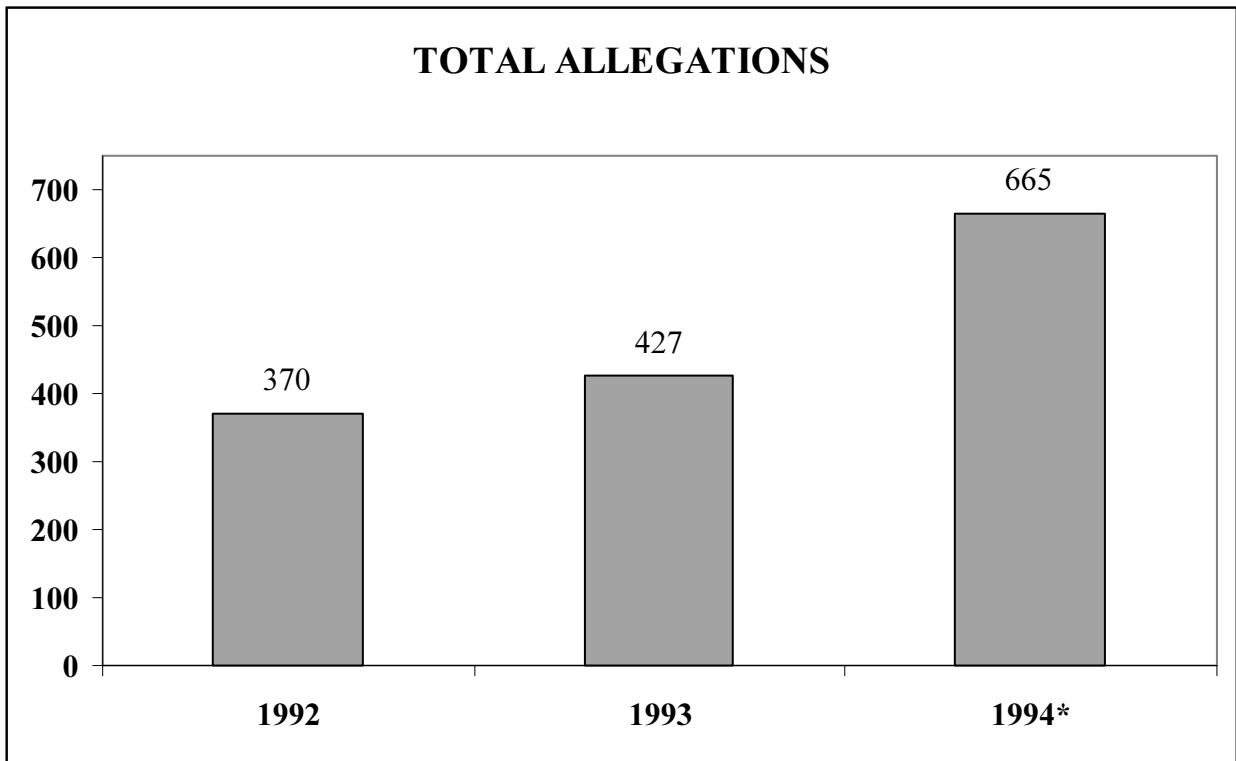
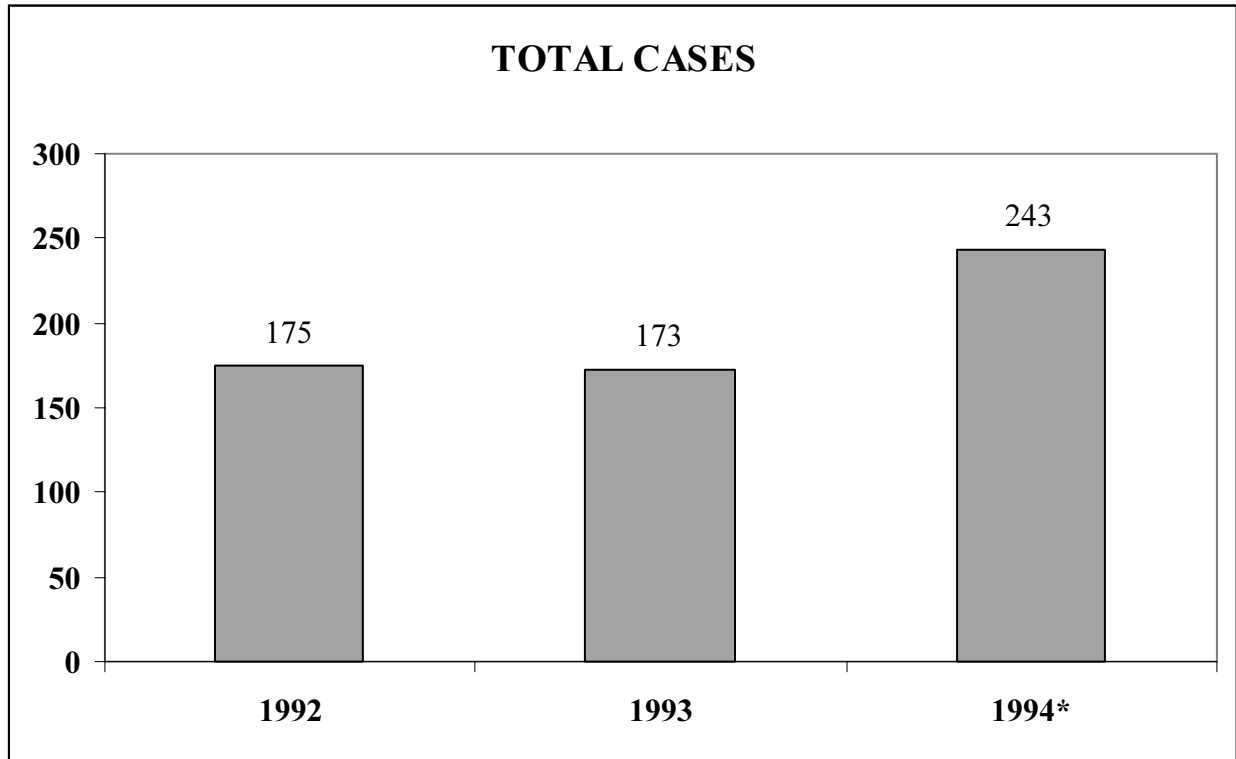
APPENDIX 2

MISCONDUCT ALLEGATIONS

For Formal Misconduct Complaints each investigation will involve one or more of the following general allegations:

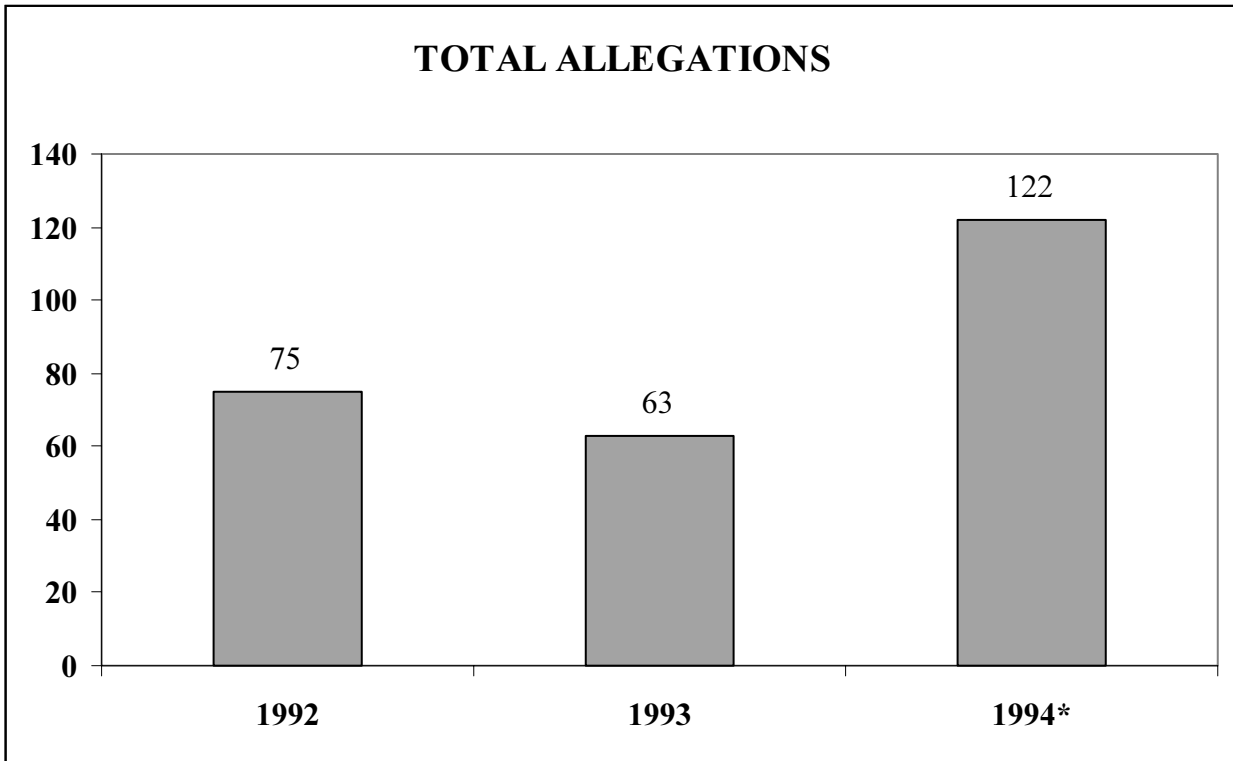
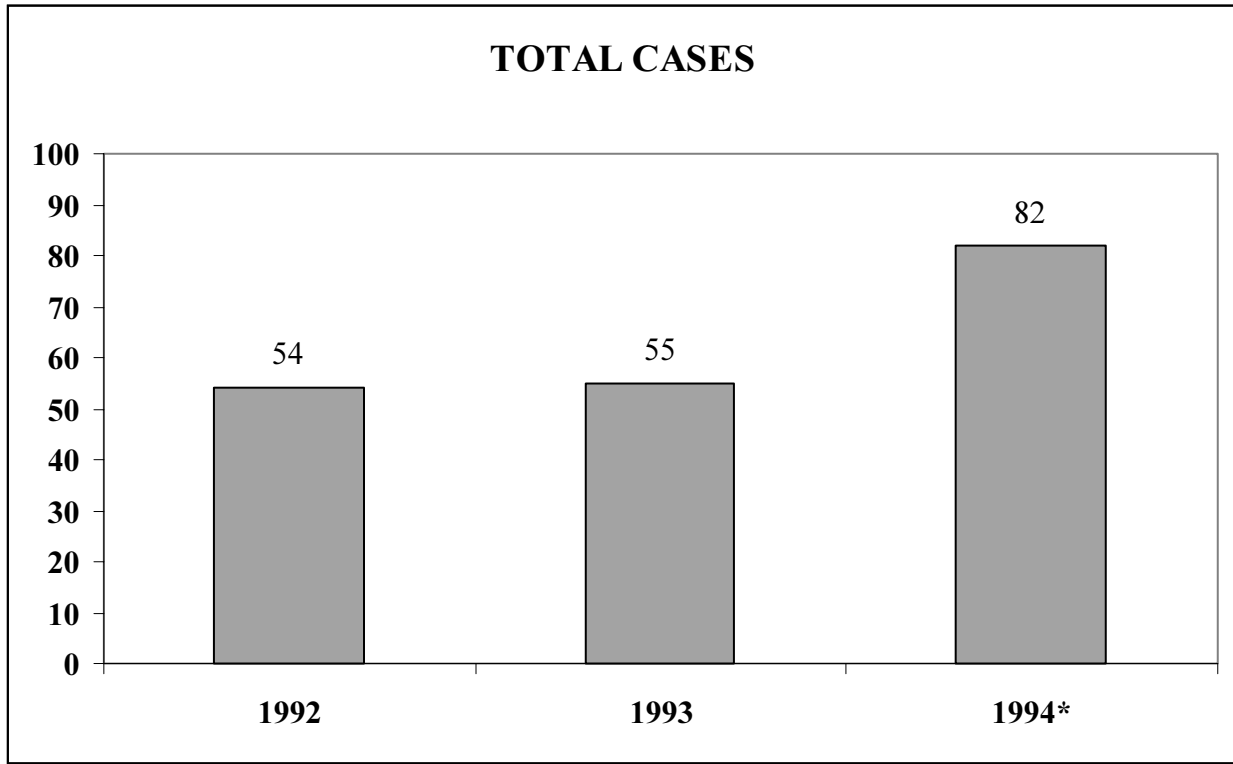
1. Unlawful Arrest
2. Unlawful Search
3. Unnecessary Force
4. Rude Conduct (abusive, threatening, profanity, poor attitude, etc., while on duty.)
5. Discrimination (sexual, racial, etc.)
6. Excessive Police Service (harassment, providing confidential information, etc.)
7. Improper Procedure (violation of City policy, duty manual)
8. Delay in Response / Slow Response
9. Failure to Take Action
10. Unofficerlike Conduct (off-duty behavior, violation of the law, drug / alcohol use, misuse of City property, gratuities, bribes, abuse of authority, etc.)
11. Missing / Damaged Property

APPENDIX 3A



* Year 1994 includes statistics up to September 30, 1994.

APPENDIX 3B



* Year 1994 includes statistics up to September 30, 1994.

APPENDIX 4

DEFINITIONS OF FINDINGS

1. **SUSTAINED:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.

2. **NOT SUSTAINED:** The investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove the allegation.

3. **EXONERATED:** The acts, which provided the basis for the complaint or allegation, occurred; however, the investigation revealed that they were justified, lawful and proper.

4. **UNFOUNDED:** The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when the individual member(s) or employee(s) named were not involved in the act or acts, which may have occurred.

5. **NO FINDING:** The complainant failed to disclose promised information to further the investigation; or the investigation revealed that another agency was involved and the complaint or complainant has been referred to that agency; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification.

APPENDIX 5A

SAN JOSE POLICE DEPARTMENT
PROFESSIONAL STANDARDS & CONDUCT UNIT

CITIZEN-INITIATED FORMAL MISCONDUCT COMPLAINTS

4-YR. COMPARATIVE ANALYSIS OF
 SUSTAINED CASES & DISCIPLINE IMPOSITION

	YR. 1991		YR. 1992		YR. 1993		YR. 1994		COMBINED	
	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.
Total Cases Closed	126	100%	164	100%	137	100%	190	100%	617	100%
Sustained	21	17%	26	16%	25	18%	33	17%	105	17%
Disciplines Imposed:										
10 Hr. Susp.		0%	3	11%	2	6%	1	3%	6	5%
20 Hr. Susp.	1	4%	3	11%		0%	2	6%	6	5%
40 Hr. Susp.		0%		0%	1	3%		0%	1	1%
60 Hr. Susp.	1	4%		0%		0		0%	1	1%
80+ Hr. Susp.	1	4%	1	4%	3	10%		0%	5	4%
D.O.C.	12	48%	8	30%	14	45	16	44%	50	42
Demotion	1	4%		0%		0%		0%	1	1%
Informal / Oral Couns.	1	4%	2	7%	3	10%	2	6%	8	7%
Resigned/Retired		0%		0%		0%	2	6%	2	2%
L.O.R.	6	24%	7	26%	3	10%	10	28%	26	22%
Termination	2	8%	3	11%	4	13%		0%	9	8%
Training		0%		0%	1	3%	3	8%	4	3%
Total	25	100%	27	100%	31	100%	36	100%	119	100%

NOTES/COMMENTS:

- The reason for the disparity between SUSTAINED cases and total DISCIPLINES is due to the fact that some cases involve more than one officer.
- 1992 & 1993 Data: Each excludes 1 officer previously terminated and accounted for in the yr. of termination.
- 1993 Terminations: includes an officer who failed probation before termination was implemented.
- Number of Reserve Officers in the Termination count: two in 1992.
- RESIGNED: This classification mostly includes officers who resigned before their termination could be implemented.

APPENDIX 5B

SAN JOSE POLICE DEPARTMENT
PROFESSIONAL STANDARDS & CONDUCT UNIT**DEPARTMENT-INITIATED
FORMAL MISCONDUCT
COMPLAINTS**4-YR. COMPARATIVE ANALYSIS OF
SUSTAINED CASES & DISCIPLINE IMPOSITION

	YR. 1991		YR. 1992		YR. 1993		YR. 1994		COMBINED	
	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.
Total Cases Closed	44	100%	49	100%	62	100%	71	100%	226	100%
Sustained	32	73%	40	82%	52	84%	52	73%	176	78%
Disciplines Imposed:										
10 Hr. Susp.	6	17%	4	9%	13	26%	6	12%	29	16%
20 Hr. Susp.	1	3%	3	6%	2	4%	1	2%	7	4%
40 Hr. Susp.	3	9%		0%	2	4%	1	2%	6	3%
60 Hr. Susp.		0%		0%		0%		0%		0%
80+ Hr. Susp.		0%		0%	3	6%	3	6%	6	3%
D.O.C.	7	20%	10	21%	5	10%	17	33%	39	21%
Demotion		0%		0%	2	4%	3	6%	5	3%
Informal / Oral Couns.	1	3%	3	6%		0%	1	2%	5	3%
Resigned/Retired	2	6%	3	6%	4	8%	2	4%	11	6%
L.O.R.	12	34%	22	47%	16	32%	15	29%	65	36%
Termination	1	3%	2	4%	3	6%		0%	6	3%
Training	2	6%		0%		0%	2	4%	4	2%
Total	35	100%	47	100%	50	100%	51	100%	183	100%

NOTES/COMMENTS:

- The reason for the disparity between SUSTAINED cases and total DISCIPLINES is due to the fact that some cases involve more than one officer.
- 1993 Data: Excludes 1 officer previously terminated and accounted for in the yr. of termination.
- RESIGNED: This classification mostly includes officers who resigned before their termination could be implemented.
- Number of Reserve Officers in the Termination count: one in 1994.

APPENDIX 5C

SAN JOSE POLICE DEPARTMENT
PROFESSIONAL STANDARDS & CONDUCT UNIT**CITIZEN-INITIATED &
DEPARTMENT-INITIATED
FORMAL MISCONDUCT
COMPLAINTS**4-YR. COMPARATIVE ANALYSIS OF
SUSTAINED CASES & DISCIPLINE IMPOSITION

	YR. 1991		YR. 1992		YR. 1993		YR. 1994		COMBINED	
	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.	QTY.	PCT.
Total Cases Closed	170	100%	213	100%	199	100%	261	100%	843	100%
Sustained	53	31%	66	31%	77	39%	85	33%	281	33%
Disciplines Imposed:										
10 Hr. Susp.	6	10%	7	9%	15	19%	7	8%	35	12%
20 Hr. Susp.	2	3%	6	8%	2	2%	3	3%	13	4%
40 Hr. Susp.	3	5%		0%	3	4%	1	1%	7	2%
60 Hr. Susp.	1	2%		0%		0%		0%	1	0%
80+ Hr. Susp.	1	2%	1	1%	6	7%	3	3%	11	4%
D.O.C.	19	32%	18	24%	19	23%	33	38%	89	29%
Demotion	1	2%		0%	2	2%	3	3%	6	2%
Informal / Oral Couns.	2	3%	5	7%	3	4%	3	3%	13	4%
Resigned/Retired	2	3%	3	4%	4	5%	4	5%	13	4%
L.O.R.	18	30%	29	39%	19	23%	25	29%	91	30%
Termination	3	5%	5	7%	7	9%		0%	15	5%
Training	2	3%		0%	1	1%	5	6%	8	3%
Total	60	100%	74	100%	81	100%	87	100%	302	100%

NOTES/COMMENTS:

- The reason for the disparity between SUSTAINED cases and total DISCIPLINES is due to the fact that some cases involve more than one officer.
- 1992 & 1993 Data: Excludes officers which were previously terminated and accounted for in the yr. of termination - one in 1992, and two in 1993.
- 1993 Terminations: includes an officer who failed probation before termination was implemented.
- Number of Reserve Officers in the Termination count: two in 1992; one in 1994.
- RESIGNED: This classification mostly includes officers who resigned before their termination could be implemented.

APPENDIX 6
REVISED ONLOOKERS POLICY

L1421.25 ONLOOKERS AT THE SCENE OF A DEMONSTRATION CIVIL DISTURBANCE OR OTHER INCIDENT: Onlookers shall be permitted to observe and overhear conversations in detention or arrest situations in public areas when it is reasonable to do so. Onlookers may remain in the vicinity as long as the presence of these persons does not interfere with the officers' duties or created a safety concern for the officer, person detained, or onlooker.

Onlookers have the right to record the incident, and the recording device (camera, video camera, tape recorder, and any film or tape from a recording device) cannot be seized by an officer at the scene except under the authority of a search warrant. If the immediate circumstances lead the officer to believe that the recording contains crucial evidence, the officer may ask the citizen to voluntarily surrender the recording material.

If the citizen refuses to give consent for the seizing of the recording material and there is a possibility of criminal prosecution or civil liability for the City or its employees arising out of the incident, the officer should ask for the name, address and telephone number of the onlooker who records the incident. If the onlooker refuses to provide identification, the officer should obtain any available information at the time that will allow investigators to identify the onlooker and obtain a search warrant for the recording materials.

Occasionally, onlookers may record incidents involving juveniles or victims of a sexual assault. In these circumstances, Department members are not obligated to advise the onlookers of the rights of privacy of these victims. A juvenile or victim of a sexual assault may take legal action against an onlooker who publishes or distributes recorded material that would not have otherwise been released by an agency of the criminal justice system.

Onlookers must maintain a reasonable distance when monitoring police activities depending on the circumstances. Onlookers are allowed to approach within hearing distance provided that the control of the situation can be maintained by the officer. Onlookers who are clearly at a reasonable distance will not be subject to a "move-on" order or threatened with arrest.

The sensitive nature of the situations requires that officers make every attempt to diplomatically resolve conflicts involving onlookers. Depending on the stability of the situation, officers will advise onlookers of their legal rights and limitations under this order. If an onlooker continues to create a disturbance, a supervisor will be called to resolve the conflict. All highly sensitive incidents will be reported immediately to a supervisor and recorded on a Crime Report to ensure documentation.

Nothing in this section is meant to restrict an officer from arresting any person who willfully resists, delays, or obstructs any peace officer in discharging his or her duties according to the provisions of Penal Code Section 148. Nor does this section restrict an officer from arresting any person who willfully commits a trespass as defined in Penal Code Section 602.

APPENDIX 7
LIST OF PUBLIC OUTREACH

1. COMMUNITY and PROFESSIONAL GROUPS:
 National Association for the Advancement of Colored People (NAACP)
 American Civil Liberties Union (ACLU)
 Santa Clara County Bar Association (SCCBA)
 Direct Action Alliance (DAA)
 Society for Hispanic Engineers & Professionals (SHEP)
 Bench/Bar/Media/Police Committee of SCCBA
 Lincoln Law School of San Jose
 Police Academy at Evergreen Valley College
 San Jose State University
 Human Relations Commission of Santa Clara County
 Santa Clara County Grand Jury
 Emergency Housing Consortium
 Pat - 7 Group, District 7
 City Hall in the Neighborhood, District 4
 Bay Area Police Oversight Network (BAPON)
 Kiwanis Pueblo de San Jose
 Story Road Business Association
 San Jose Youth Commission
 Chaboya Middle School
 San Jose Human Rights Commission
 Santa Clara Public Defender's Office
 Santa Clara County District Attorney's Office
 Santa Clara County Probation Department
 San Jose Police Officer's Association
 El Comite
 Irish Task Force
 Willow Glen Rotary Club

2. MEDIA:
 Channel 14, Mario del Castillo
 Channel 11, News & Comunidad del Valle, Daniel Garza
 Channel 48, Marina Hinostrosa
 Channel 5
 KLIV
 KSJO
 KBAY- Barry Poole
 El Observador, Mike Medina
 San Jose Mercury News, Rob Elder, Rodney Foo, Gina Olivares-Pagan
 Distribution of IPA brochure

3. PROFESSIONAL TRAININGS:
 Internal Affairs Investigator Course, San Jose State University
 Citizen's Police Academy, San Jose Police Department
 San Jose Management Conference
 Internal Affairs Training, Larry F. Estrada, Esq.
 Officer Safety, Michel Amaral, SJPD
 Patrol Operations & Enforcement Tactics, Michel Amaral, SJPD
 Community Policing, San Jose Police Academy
 Cultural Diversity, San Jose Police Academy

