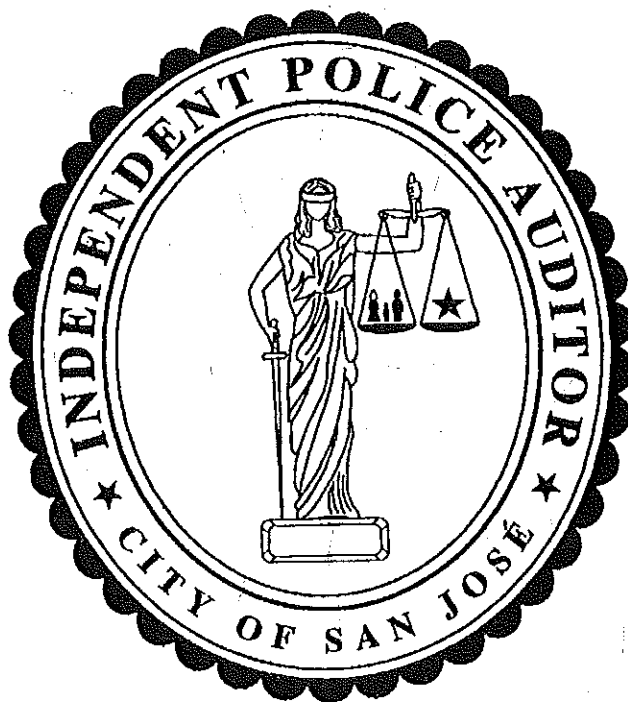


Year End Report ~ 1996

**OFFICE OF THE INDEPENDENT
POLICE AUDITOR**



A REPORT TO THE
SAN JOSÉ CITY COUNCIL

**TERESA GUERRERO-DALEY
INDEPENDENT POLICE AUDITOR**

THIS REPORT WAS REPRODUCED AT TAXPAYER'S EXPENSE.

You are welcome to keep this copy if it is useful to you.
If you no longer need this copy, you are encouraged to return it to:

**Office of the Independent Police Auditor
City of San José
4 North Second Street, Suite 650
San José, CA 95113**

We maintain an inventory of past audit reports and your cooperation
will help us save on extra copying costs.



CITY OF SAN JOSÉ, CALIFORNIA

Office of the Independent Police Auditor
4 North Second Street, Suite 650
San José, California 95113
Telephone (408) 977-0652
FAX (408) 977-1053

TERESA GUERRERO DALEY
Independent Police Auditor



February 6, 1997

Honorable Mayor and
Members of the City Council
801 North First Street, Suite 600
San José, CA 95110

Dear Honorable Mayor and Members of the City Council:

Attached you will find the 1996 Year End Report detailing the activities of the Office of the Independent Police Auditor (IPA). Included are the statistical data, the ongoing changes that have taken place at the San José Police Department's Professional Standards and Conduct Unit, and an update on previous issues and recommendations.

I am grateful for the cooperation of the members of the San José Police Department, the assistance of the Mayor's, City Manager's and City Attorney's office and your continued support.

Sincerely,

Teresa Guerrero-Daley
Independent Police Auditor

INDEPENDENT POLICE AUDITOR STAFF

Teresa Guerrero-Daley, Auditor Mrs. Guerrero-Daley is the Independent Police Auditor for the City of San José. She has experience as a lawyer specializing in criminal law. She obtained her Juris Doctor degree from Lincoln Law School and received a Bachelor of Science degree from San José State University. Prior to becoming a lawyer, Mrs. Guerrero-Daley was a Private Investigator for ten years. She worked major cases including Death Penalty cases. Mrs. Guerrero-Daley's prior experience also includes working as a Drug Enforcement Agent for the U.S. Department of Justice. She became the first female agent at the San José Drug Enforcement Administration Office. Mrs. Guerrero-Daley is the Co-founder and the past president of the San Mateo County La Raza Lawyers Association and of the Lincoln Law School Alumni Association. Mrs. Guerrero-Daley serves on several committees of the Santa Clara and San Mateo County Bar Associations. She is also a grader for the State Bar of California, Committee of Bar Examiners. Mrs. Guerrero-Daley is the Chair of Los Lupeños, a Mexican Cultural Institution and the Co-Chair for the Hispanic Charity Ball.

Mary Gonzales, Executive Assistant Ms. Gonzales received her Juris Doctor degree from the University of California, Hastings College of the Law. At Hastings Ms. Gonzales was a Public Interest Law Scholar, a member of the Moot Court Board, a student government representative, President of La Raza Law Students, Co-chair of the Public Interest Law Program and a Street Law teacher. Ms. Gonzales has worked as an attorney and a violence prevention community organizer and is involved with several community based legal organizations. She worked at a legal services support center before attending law school. Ms. Gonzales was the first person in her family to attend college and graduated on scholarship with a Bachelor of Science in Marketing from the University of Utah. Ms. Gonzales was a National Hispanic Scholar, an Upward Bound tutor and a member of the Mortar Board Honor Society.

José Manuel Cuéllar, Analyst A graduate of the University of California Santa Cruz, Mr. Cuéllar received a Bachelor of Art's Degree in Psychology with an emphasis in Social Psychology and Bilingual Memory Processes. While at UC Santa Cruz, he participated as a Research Assistant for the Latino Eligibility Study which assessed the lack of enrollment of eligible Latinos in higher education. Mr. Cuéllar was actively involved in campus organizations. Currently, Mr. Cuéllar is a Performing Company Member of Los Lupeños de San José where he participates in community outreach.

Lien N. Vong, Data Analyst Ms. Vong graduated from the University of California at Santa Cruz with a Bachelor of Science in Business Economics and a Bachelor of Art in Psychology. Ms. Vong was a member of the Asian Student Union Association at the University of Santa Cruz. Ms. Vong worked as Customer Service Representative in the banking industry prior to joining the IPA. Ms. Vong's native language is Cantonese, additionally, she speaks Mandarin and Vietnamese. The City of San José has been Ms. Vong's home for much of her life.

EXECUTIVE SUMMARY

INTRODUCTION

This report is a comprehensive report for the time period of January 1 to December 31, 1996. The reporting requirements in accordance with the mandates of the city ordinance were followed. The format used in this report is consistent with the 1995 Year End report. Included as an appendix are the election results of the amendment to the City charter through Measure E.¹

NEW ISSUE: CITIZEN REQUESTS FOR OFFICER IDENTIFICATION

During the process of conducting the audits of the investigation of citizen complaints, the IPA tracks issues which appear with some frequency. One such issue involves citizens requesting identification from police officers. These requests appear to result in conflicts between police officers and citizens.

A search of the IPA database for the last three years found 42 complaints where officer identification was the primary or an ancillary issue in the citizen complaint. These complaints were broken down into three areas for further analysis. A search of the San José Police Department's Duty Manual² was conducted for existing policy or guidelines describing when and how an officer should identify themselves in response to a request from the public. The SJPD Duty Manual requires that officers provide citizens with their identification. However, it does not specify in what manner. In addition, the Deputy Chief of the Bureau of Field Operation, the Research and Development Unit, and interviews with police officers were conducted to obtain their input on this issue.

A common thread in the sample of complaints identified above appears to be a conflict arising between the citizen and the officer following a request for either the officer's name, badge number or both. A breakdown of 40 citizen complaints was conducted. In 16 complaints, it was alleged that the officer's failure to provide identification was the primary factor in filing a complaint and in the remaining 24 cases, it was found to be an ancillary issue.

In 28 of the 40 complaints, the citizen's alleged request did not appear to have been made at a time when complying with the request would have jeopardized the officer's safety, or impede with the officer's duties. In two of the cases, the requests were appeared to have been made at a time when

¹See Appendix B (Election Results of Measure E by Council District).

²San José Police Department Duty Manual, section C1301.35, 1991

it was not prudent or safe for the officer to comply. In ten of the cases, the audit of the complaints failed to provide sufficient information to make a determination.

In 13 of the 40 complaints, the complainants alleged retaliatory conduct by the subject officer(s) after the complainant requested their name and badge number. The retaliatory conduct alleged ranged from threats of arrest to unnecessary use of force. The audit of the selected complaints revealed that in some situations the officers were willing to call out or point to their name tags. However, most of the times the complainants did not have pen and paper handy to write the officer's identifying information.

The police department currently provides officers with in-house business cards. However, it is not required that the officers use them as a means of identifying themselves to the public. Information obtained during the interviews of some officers revealed that while some officers were willing to write their names for the citizens, others candidly admitted that they would not, especially if the citizen displayed a bad attitude. Other officers responded that it was common practice to provide business cards to the public and saw the practice as a good public relations tool. The dissatisfaction with the appearance and process in obtaining business cards were some of the reasons stated for not using department issued cards.

RECOMMENDATION: In order to provide a meaningful manner of providing identifying information to the public while not creating an added task for the officer, it is recommended that every officer be provided department issued business cards to hand to citizen's inquiring about an officer's name and/or badge number. The process used for the creation of the business cards, the distribution to the officers and the dissemination to the public should be revised.

1996 POLICY AND PROCEDURAL CHANGES FOR 1996

Complaint Classification: In order to ensure that use of force cases are investigated in a timely and thorough manner, two categories of use of force complaints will be implemented. The first (Class I) will involve those complaints in which the complainant required medical assistance for their injuries. These cases will be given priority and their investigation will be completed within 180 days.

The other use of force category (Class II) will include those complaints in which the complainant did not require medical care, such as tight handcuffs, bruising, pushing, shoving, etc.

Length of Time to Complete Investigations: The time line for investigation completion of citizen complaints was examined in 1996. Because the old goals were confusing and were not being met, a new set of goals will be implemented in 1997. The timeline will require that 100% of the investigations be classified within 30 days. Class I use of force cases must be completed within 180 days and 100% of all investigations must be completed within 365 days.

UPDATES ON PRIOR ISSUES AND RECOMMENDATIONS

New Computer System: To make the sharing of complaint information between the offices more efficient, a new computer link-up between the IPA and the PSCU was studied and designed. With the help of an outside consultant and police and city computer data managers, a system was devised which will begin testing in February, 1997. The new system will enable the IPA to have more timely complaint information without compromising data security. The complaint database system will continue to be housed at the PSCU, however, the IPA will have on-line access through San José's fiber optic cable connection.

RECOMMENDATION: There is no additional recommendation at this time.

Internet Access: In the 1996 Mid-year report, the IPA requested to be added to the City of San José's internet connection. The recommendation of connecting the IPA to the City Network which was suggested in the 1996 Midyear Report has not yet been realized. However, the installation of the new computer system, (discussed in the previous section), will enable the IPA to utilize the City's fiber optic cable network to link the IPA with the PSCU as well as the City network. Once the connection to the City network is made, the IPA will be added to the City's Web Page and E-mail system.

RECOMMENDATION: There is no further recommendation at this time.

The Boland Admonishment: A law that makes it a misdemeanor to knowingly file a false misconduct allegation against any peace officer also requires that the complainant sign an admonishment form. All Boland Admonishment cases received an intake investigation. An audit form was implemented for cases closed because of the Boland Admonishment; the audit results will be reported in the 1997 Midyear report.

RECOMMENDATION: There is no additional recommendation at this time.

Additional Space at PSCU: A pending recommendation made in the 1995 Year End Report³ was to secure office space which would adequately serve as an interview room when receiving a complaint or for interviewing witnesses and police officers. At this time, office space adjacent to the PSCU is available. Negotiations are currently underway to annex this space.

RECOMMENDATION: Finalize the annexation of the available space.

Audit of Department Initiated Complaints: Department-Initiated complaints are those complaints which allege a serious violation of Department policy or a violation of law by an officer; these formal complaints are initiated by the Chief of Police.⁴ Such complaints may involve internal police personnel issues or may involve citizen complaints. For example, a citizen may file a complaint with serious allegations (like the use of force or sexual assault) and then not follow through with the complaint. Because of the seriousness of the allegations, a Department-Initiated complaint may be initiated by the Chief of Police. The issue of whether the IPA should audit Department Initiated cases was researched by the City Attorney's Office. A memorandum presented to the Mayor and City Council with the 1994 IPA's Year End Report, concluded that the IPA has jurisdiction to audit Department-Initiated complaints that have a nexus to a citizen complaint.

In the last three years, four different PSCU Commanders have been assigned to this unit. Each time a new Commander begins at the PSCU, the issue arises over the IPA's authority to audit Department Initiated complaints. Currently, the new commander at the PSCU is awaiting further instructions from the City Attorney's Office to determine if certain Department Initiated complaints have a nexus to a citizen before making them available to the IPA for review. This disruption in the process of auditing complaints creates unnecessary delay in auditing these complaints.

RECOMMENDATION: The City Attorney's memorandum to the City Council dated October 3, 1994, should be updated and become part of the IPA and the PSCU written policies and procedures. It should be clearly stated that those complaints initiated by the Chief of Police having a nexus to a citizen complaint should be processed and audited in the same manner as a Citizen Initiated complaint. In addition, this policy should state that it will be given full force and effect by subsequent PSCU Commanders.

³See Appendix N (Independent Police Auditor's Recommendations).

⁴See Appendix D (Classification of Complaints).

Off-Duty Employment Guidelines: The IPA's 1995 Year End report raised the need to establish guidelines for off-duty employment by San José Police Officers. Several recommendations were made.

An evaluation of the process used by the San José Police Department to monitor and flag problems arising from off-duty employment revealed that there is a lack of oversight by the Department's management. Conflicts of interest between private employers and police officers were identified. Other problems included a lack of supervision from the Police Department or private employer; a lack of documentation of the officer's off-duty activities; a lack of accountability of hours and type of off-duty jobs and the use of police uniforms.

The San José Police Department is currently conducting an in-depth study of the existing Duty Manual guidelines; identifying and analyzing the benefits and detriments of secondary employment; gathering information and knowledge from other cities with comparable demographics; and drafting policies and procedures that will improve the services and work conditions for officers working off duty.

RECOMMENDATION: Complete and implement the new guidelines as soon as possible.

YEAR END COMPLAINT STATISTICS

The number of new complaints (581) filed at the Professional Standards and Conduct Unit (PSCU) and at the Office of the Independent Police Auditor (IPA) increased by 27% as compared to the same time period in 1995. The chart below reflects the increase in each classification but does not include (36) In-process complaints waiting to be classified.

Comparison of All Classifications⁵

Period Received	CI	DI	IN	PO	PR	Total Complaints	1996 Compared To Previous Years
Jan. - Dec. 1996	242	82	93	37	91	545	
Jan. - Dec. 1995	176	71	95	8	106	456	20%
Jan. - Dec. 1994	217	75	67	17	75	451	21%

The number Formal Complaints initiated by a citizen increased from 176 complaints in 1995 to 242 in 1996. The number of Formal Complaints initiated by the Chief of Police increased from 71 in 1995 to 82 in 1996. The total number of allegations in 1996 also increased in both citizen and

⁵See Appendix G (Three Year Comparison of all Case Classifications).

department initiated cases. However, for the third year in a row, the number of Unnecessary Force allegations decreased in 1996 by 17%.

SUSTAINED RATE FOR CITIZEN INITIATED FORMAL COMPLAINTS

Period Received	Cases Filed	Open	Closed	Sustained Cases	Sustained Rate
Jan. - Dec. 1996	242	99	143	7	5%
Jan. - Dec. 1995	176	32	144	11	8%
Jan. - Dec. 1994	217	8	209	25	12%

The sustained rate of citizen initiated complaints varies until all cases from the listed years are closed.

Intervention Counseling: Twelve IC sessions occurred between January to December 1996. Twenty-five percent (25%) of the subject officers received no subsequent complaint from the IC date to December 31, 1996.

Statistical Background of Subject Officers: A statistical area tracked by the Office of the Independent Police Auditor (IPA) is the background of the subject officers for complaints received between January 1 and December 31, 1996. Specific areas include the police unit⁶, gender, ethnicity, and years of experience of the subject officer.⁷ Most complaints involved officers assigned to the Bureau of Field Operations where the ratio of male officers and ethnicity were in direct proportion to the number of officers working for SJPd of which they also had two to four years of experience.

Statistical Background of Complainants: The (IPA) utilizes a Voluntary Questionnaire⁸ to request information about the statistical background of complainants. The survey requested information such as the complainant's occupation, primary language, ethnicity, educational level, gender, age range, and type of referral to either the IPA or the PSCU. The occupation of the complainants was varied, the primary language indicated is English, the highest ethnicity noted was Hispanic/Latino, 39% indicated some college education, 55% were male, and the highest age range was 31-59 years.

Complaints and Allegations by Council District: The following table illustrates the total number of all complaints received by each City Council District; however, the complaints

⁶The police unit of the subject officer at the time of the complaint incident.

⁷The subject officer refers to the sworn member of the San José Police Department who received a complaint.

⁸See Appendix J (The Office of Independent Police Auditor Voluntary Questionnaire).

categorized as In-Process are not included because their classification is pending for this reporting period.

Summary of Complaints Received⁹

January 1 - December 31, 1996

Districts	Type of Complaints					TOTAL COMPLAINTS	%
	CI	DI	IN	PO	PR		
1 JOHNSON	8	2	5	3	8	26	5%
2 POWERS	21	3	10	2	6	42	8%
3 PANDORI	75	43	23	18	26	185	34%
4 FERNANDES	13	8	8	3	3	35	6%
5 DIAZ	28	4	8	4	10	54	10%
6 FISCALINI	26	6	11	2	13	58	11%
7 SHIRAKAWA, JR.	18	0	5	2	7	32	6%
8 WOODY	16	3	11	2	4	36	7%
9 DIQUISTO	13	2	3	0	9	27	5%
10 DANDO	20	3	9	1	3	36	7%
UNK/OCL ¹⁰	4	8	0	0	2	14	3%
TOTAL CASES	242	82	93	37	91	545	100%¹¹
%	44%	15%	17%	7%	17%	100%	

CONCLUSION

There were three major goals set for the 1996 calendar year by the IPA. These goals were (1) to prioritize Unnecessary Force cases so that the investigations are completed sooner, (2) to automate the transfer of information from the PSCU to the IPA, and (3) to create a semiannual IPA newsletter. These goals were met.

Goals for 1997: As a result of the change in the City Charter, one of the short term goals for 1997 will be to transition the IPA personnel into employees of the City of San José. There are no known changes in the method of operation of the Office of the Independent Police Auditor (IPA) that will be affected by the charter change. It is anticipated that the IPA will benefit from the established infrastructure of the City of San José by becoming a permanent city department.

With the advent of the computer linkage and new database system which will be in place for the PSCU and the IPA, another goal for 1997 is to revise, create and analyze some of the current audit forms, existing IPA policies and procedures and prior recommendations.

⁹See Appendix K (Classification of Complaints by Council District).

¹⁰Unknown/Outside City Limit

¹¹The data was rounded off to the nearest percentage.

TABLE OF CONTENTS

1996 Year End Report

I.	Introduction	1
A.	Background.....	1
B.	Charter Change.....	1
C.	Functions of the Office.....	1
D.	Reporting Requirements.....	1
E.	Contents of the 1996 Year End Report.....	2
II.	New Issue	2
A.	Citizen Requests for Officer Identification.....	2
III.	Policy and Procedural Changes	6
A.	Complainant Classification.....	6
B.	Length of Time to Complete Investigations.....	6
IV.	Updates on Prior Issues and Recommendations	6
A.	New Computer System.....	6
B.	Internet Access.....	7
C.	The Boland Admonishment.....	7
D.	Additional Space at PSCU.....	8
E.	Audit of Department-Initiated Cases.....	9
F.	Off-Duty Employment Guidelines.....	10
V.	Year End Complaint Statistics	11
A.	An Increase in Complaints.....	12
B.	Three Year Comparison of all Case Classification of Complaints.....	12
C.	Time to Classify and Complete all Complaints.....	13
VI.	Analysis of Formal Complaints	15
A.	Citizen-Initiated Formal Complaints.....	15
B.	Department-Initiated Formal Complaints.....	18
VII.	Discipline Imposed	19
A.	Officers Separated From SJPD.....	21
VIII.	Intervention Counseling	22
IX.	Statistical Background of Subject Officers	23
A.	Unit of the Subject Officer.....	24
B.	Gender of the Subject Officer.....	25
C.	Ethnicity of the Subject Officer.....	26
D.	Years of Experience of the Subject Officer.....	26
X.	Statistical Background of Complainants	27
A.	Complainant Referral to the IPA or the PSCU.....	28
B.	Occupation of the Complainant.....	29
C.	Educational Level of the Complainant.....	30
D.	Ethnicity of the Complainant.....	30
E.	Primary Language of the Complainant.....	31
F.	Gender of the Complainant.....	31
G.	Age of the Complainant.....	32
XI.	Gay/Lesbian Related Complaints	32

TABLE OF CONTENTS

1996 Year End Report

XII.	Complaints and Allegations by Council District	32
A.	District 1: Trixie Johnson.....	35
B.	District 2: Charlotte Powers.....	36
C.	District 3: David Pandori.....	38
D.	District 4: Margie Fernandes.....	40
E.	District 5: Manny Diaz.....	41
F.	District 6: Frank Fiscalini.....	42
G.	District 7: George Shirakawa, Jr.....	44
H.	District 8: Alice Woody.....	45
I.	District 9: John Diquisto.....	47
J.	District 10: Pat Dando.....	48
K.	UNKNOWN/OUTSIDE CITY LIMIT (UNK/OCL).....	49
XIII.	Conclusion	51
XIV.	Table of Appendices	53

I. INTRODUCTION

A. BACKGROUND

In 1993, the San José City Council, by ordinance, created the Office of the Independent Police Auditor (hereafter referred to as "IPA") to review the investigations by the San José Police Department's Professional Standards and Conduct Unit (hereafter referred to as "PSCU") of citizen complaints¹ alleging misconduct by members of the San José Police Department (hereafter referred to as "SJPD") and to make recommendations with regard to Police Department policies and procedures. The IPA was established independent from all other City departments reporting directly to the Mayor and to the City Council. The IPA and the staff were employed by "at will" contracts with the City which were terminable at any time and renewable on an annual basis by majority vote of the City Council.

B. CHARTER CHANGE

The leadership of the City of San José demonstrated its commitment to the long term support for independent review of citizen complaints relating to police misconduct and to the auditor model of police oversight by proposing to the voters a change to the City Charter. Thus on November 5, 1996, by majority vote, as seen on the Measure E² voting results,³ the citizens of San José voted to amend the charter to give the Office of the Independent Police Auditor, charter status, which provides the same protection and autonomy as the City Auditor. The Police Auditor will be appointed by the City Council to serve four-year terms subject to removal during a term only by a vote of at least ten of the eleven City Council members. The City Charter can be amended only by vote in municipal election therefore, the elimination or major changes in the duties and responsibilities of the Office of the Independent Police Auditor can occur only by a vote of the people.

C. FUNCTIONS OF THE OFFICE

The IPA has three primary functions: (1) it serves as an alternative forum where citizens may file a complaint; (2) it reviews the investigations of citizen complaints conducted by the San José Police Department's Professional Standards and Conduct Unit; 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.

D. REPORTING REQUIREMENTS

The IPA reports are prepared on a semiannual basis.⁴ The Midyear reports cover the period from January through June. The Year End reports contain a comprehensive statistical analysis of the entire

¹Citizen complaint is denoted as a complaint filed by an individual, not reflective of U.S. citizenship.

²See Appendix A (City of San José Charter Amendment).

³See Appendix B (Election Results of Measure E by Council District).

⁴In accordance with the change adopted by the City Council on September 6, 1994.

year. This is the eighth report produced by the IPA pursuant to the requirements of the San José Municipal Code Section 2.06.020c. This report covers from January 1, 1996 through December 31, 1996. As required by ordinance this report includes:

- 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;
- C. Specific recommendations for change.

E. CONTENTS OF THE 1996 YEAR END REPORT

The following information is included in this report:

- New issue: Citizen Requests for Officer Identification
- Changes at the Professional Standards and Conduct Unit and the Office of the Independent Police Auditor
- Updates on Prior Issues and Recommendations
- Three one-year blocks of statistics comparatively analyzed from January through December for the years 1994 through 1996
- A statistical background of subject officers and complainants
- An analysis of complaints and allegations by San José City Council Districts

II. NEW ISSUE

A. CITIZEN REQUESTS FOR OFFICER IDENTIFICATION

1. BACKGROUND

During the process of conducting the audits of the investigation of citizen complaints, the IPA tracks issues which appear with some frequency. One such issue involves citizens requesting identification from SJPD police officers. These requests appear to result in conflicts between police officers and citizens. In order to understand why conflict results from a seemingly routine request, a further breakdown of the complaints was conducted.

2. METHODOLOGY

A search of the IPA database for the last three years produced 42 complaints where officer identification was the primary or an ancillary issue in the citizen complaint. This search was not exhaustive or all inclusive because only a brief synopsis of the complainant's statement in each case is

automated which would facilitate the identification of complaints where this was an issue. In addition, the PSCU investigators classifying the complaints and allegations do not always include an officer's failure to identify themselves as an issue for investigation. Two of the 42 complaints were not yet classified and therefore were not factored in.

A search of the San José Police Department's Duty Manual⁵ was conducted for existing policy or guidelines describing when and how an officer should identify themselves in response to a request from the public. The SJPD Duty Manual does not specify the means by which officers should identify themselves. Duty Manual section C1301.35 states,⁶

"Consistent with officer safety and protection of public, Department members, while acting in an official capacity, will supply their name, rank and position, and similar identifying information in a professional manner to any person who may inquire."

In addition, the Deputy Chief of the Bureau of Field Operation, the Research and Development Unit, and interviews with five (5) police officers were conducted to obtain their input on this issue.

3. ANALYSIS

Three areas of inquiries were examined in the 40 classified complaints. The following are the results:

- a. Was the failure to provide identification a factor in filing a complaint?
 - In 16 cases, the officer's failure to identify him/herself was listed as an allegation.
 - In 24 cases, the officer's failure to identify him/herself was not listed as a primary allegation but was found to be an ancillary issue.
- b. Was the request for identification reasonable?
 - In 28 of the 40 complaints, the citizen's alleged request did not appear to have been made at a time when complying with the request would have jeopardized the officer's safety or impede the officer's duties.
 - In 2 of the complaints, the alleged citizen's request for identification appeared to have been made at a time when it was not prudent or safe for the officer to comply.
 - In 10 cases the audit of the complaint failed to provide sufficient information to make a determination.
- c. Cases where the complainant alleges that they experienced retaliation for requesting identification.

⁵San José Police Department Duty Manual, 1991.

⁶San José Police Department Duty Manual section C1301.35, 1991 (effective 10/03/76).

- In 13 of the 40 complaints, the complainants alleged retaliatory conduct by the subject officer(s) after the complainant requested their name and badge number.

Interviews of five (5) officers were conducted to obtain their input on the methods used to provide identification to citizens.

- a. All of the officers interviewed carried business cards as a means of identification. These business cards were not department issued cards and had been purchased by the individual officer. Some of the reasons stated for not using department issued cards were the following:
 - Forms to request business cards are not readily available.
 - Only a small number of (30 to 50) cards are issued at a time.
 - Restrictive deadlines in which to make the request should be changed.
 - There is a slow turn around after the request for business cards is submitted.
 - Department issued business cards do not have a professional appearance.
 - The officer's assigned unit is not printed, i.e. Robbery, Sexual Assaults.
 - There is no flexibility in making the cards more useful. For example, having a designated area where the officer can write the case number.
- b. Officers were also asked about their opinions in using business cards as the recommended means of identifying themselves. The following were their responses.
 - Using business cards as a primary means of identification is common practice.
 - Use of business cards is a good customer service practice.
 - If use of business cards becomes mandatory, the police department should pay for the cost.
 - Would not want to see it become mandatory.
 - Would be one more item to carry.
 - If style and/or quality not satisfactory, the officer would have to carry two sets of business cards.

A common thread in the sample of complaints identified above appears to be a conflict arising between the citizen and the officer following a request for either the officer's name, badge number or both. The majority of these complaints did not indicate that the officer's unwillingness to provide their names or badge numbers was connected to an officer safety issue or a significant interference with their duties.

It is unknown to what extent the citizen's or officer's demeanor played a role in creating the conflict nor the subsequent impact when the citizen informed the officer of their intent to file a complaint. However, in at least 13 of the cases the complainants alleged that they experienced retaliatory conduct from the officer. The retaliatory conduct alleged by the complainant ranged from threats of arrest to unnecessary use of force.

At least 16 complaints where the citizen complained that the officer(s) refused to provide a name or badge number may have been prevented had there been a routine non-confrontational method for the officer to respond to the citizen's request.

In addition, in 24 complaints filed in 1996, the subject officers were not identified. Identifying officers in every complaint requires a significant expenditure of human resources by PSCU. Often citizens don't know the names of the officer(s) involved in their complaints and at times don't even involve SJPD officers. When a complainant is told that their complaint cannot be investigated because the San José Police Department was unable to identify the officer(s) involved in their complaints, it affects the public's confidence in the citizen complaint process.

Police officers as employees of the City of San José have a duty to identify themselves upon request by a member of the public. The police department currently provides officers in-house business cards however, it is not required that the officers use them as a means of identifying themselves to the public. The audit of the selected complaints revealed that in some situations the officers were willing to call out or point to their name tags. However, most of the times the complainants did not have pen and paper handy to write the officer's identifying information. Information obtained during the interviews of some officers revealed that while officers were willing to write their names for the citizens, others candidly admitted that they would not, especially if the citizen displayed a bad attitude.

RECOMMENDATION: In order to provide a meaningful manner of providing identifying information to the public while not creating an added task for the officer, it is recommended that every officer be provided with department issued business cards to hand to citizen's inquiring about an officer's name and/or badge number. The process used for the creation of the business cards, the distribution to the officers and the dissemination to the public should be revised.

III. POLICY AND PROCEDURAL CHANGES

A. COMPLAINT CLASSIFICATION

In order to ensure that use of force cases are investigated in a timely and thorough manner, two categories of use of force complaints will be implemented in 1997. The first category designated as Class I use of force, will involve those complaints in which the complainant required medical assistance for their injuries. It is anticipated that prioritizing these cases will expedite the investigative process while ensuring that evidence is preserved and witnesses are contacted in a more timely manner. The intent of this classification is to resolve serious use of force cases within 180 days.

Class II use of force cases will include those complaints in which the complainant did not require medical care. For example, this category would include complaints of tight handcuffs, bruising, pushing, shoving, etc. These cases will be expected to close within 365 days.

B. LENGTH OF TIME TO COMPLETE INVESTIGATIONS

The timeline for investigation completion was examined and new goals will be implemented in 1997. The completion goal established in 1994 required that 75% of the investigations from citizen complaints be completed within 120 days. The second goal was to complete 100% of all investigations within 300 days. The classification goal is counted as the number of days between the time that a complaint is filed to when the complaint is assigned for investigation. The goals cover only the actual investigation time. Despite these goals, as of December 31, 1996, nine (9) cases received in 1994 were still open while 37 cases received in 1995 remained open and under investigation.

Because the old goals were confusing and were not being met, a new set of goals will be implemented in 1997. The timeline requires that classification of 100% of the investigations within 30 days. Class I use of force cases are to be completed within 180 days. Also, 100% of all investigations are targeted for completion within 365 days.

IV. UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

A. NEW COMPUTER SYSTEM

To make the sharing of complaint information between the offices more efficient, a new computer link-up between the IPA and the PSCU was studied and designed. With the help of an outside consultant and police and city computer data managers, a system was devised which will begin testing in February 1997. The new system will enable the IPA to have more timely complaint information without compromising data security. The complaint database system will continue to be housed at the

PSCU, however, the IPA will have on-line access though the City of San José's fiber optic cable connection.

A meeting was held with the IPA, the City Manager's office, the PSCU, the Information Systems Department, and members of the San José Police Department. The operation, security and installation of the system was discussed. Final plans for full implementation of the computer system were made and are only waiting hardware installation.

RECOMMENDATION: There is no recommendation at this time.

B. INTERNET ACCESS

In the 1996 Midyear report, it was recommended that the IPA be added to the City of San José's internet connection. This recommendation has not yet been realized. However, the installation of the new computer system, will enable the IPA to utilize the City's fiber optic cable network to link the IPA with the PSCU as well as with the City Network. Once the connection to the City Network is made, the IPA will be added to the City's Web Page and E-mail system.

RECOMMENDATION: Once the new computer system is installed, access to the internet will be established. No further recommendation is required at this time.

C. THE BOLAND ADMONISHMENT

A law authored by California State Assembly Member Paula Boland (Republican, Granada Hills) became effective on January 1, 1996. Codified at California Penal Code Section 148.6,⁷ the law makes it a misdemeanor to knowingly file a false misconduct allegation against any peace officer. Any law enforcement agency accepting an allegation of misconduct must have the complainant read and sign a specified information advisory known as the Boland Admonishment.⁸

An audit form was implemented to address cases closed because a lack of the Boland Admonishment. The Boland Admonishment audit results will be reported in the 1997 Midyear report. As part of the auditing process, the IPA reviewed all of the related police reports submitted for each complaint closed due to a lack of a signed admonishment. Reviewing the reports helped the IPA determine whether further investigation was merited despite the lack of a signed admonishment. The PSCU and the IPA determined on a case-by-case basis whether the facts and the allegations of a particular complaint necessitated further investigation.

⁷West's California Codes, Penal Code, 1996 Compact Edition.

⁸See Appendix C (Boland Admonishment).

The following tables show the type of complaints closed due to the Boland Admonishment, and the breakdown of the complaints by allegation.

Type of Complaints⁹ Closed Due to a Lack of a Boland Admonishment¹⁰

Period Received	CI	PR	IN	Total Cases	PSCU Initiated	IPA Initiated
Jan. - Dec. 1996	47	19	19	73	55	18

**Citizen-Initiated Allegations Closed With a No Finding¹¹
Due to a Lack of a Boland Admonishment**

Period Received	RC	IP	UF	UA	MDP	US	DH	UC	Total Allegs.
Jan. - Dec. 1996	23	17	14	8	5	3	1	1	72
%	32%	24%	20%	11%	7%	4%	1%	1	72

<i>Legend</i>	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

As of December 31, 1996, 73 complaints were closed because of a lack of a signed admonishment. Of those 73 cases, 18 were filed at the IPA and 55 at the PSCU. The 73 complaints out of a total of 235 cases represented 31% of all cases classified during 1996.¹² Of the closed cases, five (5) were reopened as Department-Initiated cases.

The IPA is committed to ensuring that misconduct complaints are investigated as fully as possible under current law. The IPA will continue to closely monitor complaints closed because of the admonishment and request more thorough investigations where appropriate. The IPA should continue to monitor complaints related to the Boland Admonishment and the PSCU should continue to conduct intake investigations.

RECOMMENDATION: There is no action requested at this time.

D. ADDITIONAL SPACE AT PSCU

BACKGROUND: A pending recommendation made in the 1995 Year End Report was to secure office space which would adequately serve as an interview room when receiving a complaint or for

⁹See Appendix D (Classification of Complaints).

¹⁰See Appendix C (Boland Admonishment).

¹¹See Appendix E (Definition of Findings).

¹²The 235 cases include Citizen-Initiated, Informal and Procedural complaints. This 31% rate is derived from 73 lack of Boland complaints divided by the 235 relevant complaints.

interviewing witnesses and police officers. The PSCU does not have a conference room where an intake officer can meet or interview multiple complainants. Currently, an office shared by three people is used to intake complaints which does not offer privacy nor does it promote the public's trust in going to the PSCU to file a complaint. The intake officers, who conduct a most challenging job, need to work in an environment that fosters patience, tolerance and empathy for the complainants.

UPDATE: At this time, office space adjacent to the PSCU is available. Negotiations are currently underway to annex this space.

RECOMMENDATION: The recommendation is to finalize the annexation of the available space.

E. AUDIT OF DEPARTMENT-INITIATED CASES

BACKGROUND: Department-Initiated complaints are those complaints which allege a serious violation of Department policy or a violation of law by an officer; these formal complaints are initiated by the Chief of Police.¹³ Such complaints may involve internal police personnel issues or citizen complaints. For example, a citizen may file a complaint with serious allegations (like the use of force or sexual assault), and then not follow through with the complaint. Because of the seriousness of the allegations, a Department-Initiated complaint may be initiated by the Chief of Police.

In 1994, the issue of whether the IPA should audit Department-Initiated cases was researched by the City Attorney's Office and a memorandum presented to the Mayor and City Council with the IPA's 1994 Year End Report. The City Attorney concluded that the IPA has jurisdiction to audit Department-Initiated complaints that have a nexus to a citizen complaint.

RECURRING PROBLEM: In the last three years, four different PSCU Commanders have been assigned to this unit. Each time a new Commander begins at the PSCU, the issue arises over the IPA's authority to audit Department-Initiated complaints. Currently, the new commander at the PSCU is working with the City Attorney's Office to determine if certain Department-Initiated complaints have a nexus to a citizen before making them available to the IPA for review. This disruption in the process of auditing complaints creates unnecessary delay in auditing these complaints.

RECOMMENDATION: The City Attorney's conclusion documented in a memorandum to the City Council dated October 3, 1994 addressing this issue, should be updated and become part of the IPA and the PSCU written policies and procedures. It should be clearly stated that those complaints initiated by the Chief of Police having a nexus to a citizen complaint should be processed and audited

¹³See Appendix D (Classification of Complaints).

in the same manner as a Citizen Initiated complaint. In addition, this policy should state that it will be given full force and effect by subsequent PSCU Commanders.

F. OFF-DUTY EMPLOYMENT GUIDELINES

The IPA's 1995 Year End report raised the need to establish guidelines for off-duty employment by San José Police Officers. Several recommendations were made. Off-duty employment contributes greatly towards helping the Police Department successfully meet the increase in demand for police services.

Off-duty jobs are supplemental employment considered to be secondary in importance and subject to the approval by the officer's chain of command. They are also subject to discipline, and to citizen complaints.¹⁴ Officers work most secondary jobs as civilians and during the officer's days off. Off-duty jobs can include officers working in full uniform or in civilian clothes. In 1995, approximately 50% of the San José police officers worked off-duty jobs.

Statistical and substantive information from citizen complaints filed against officers working off-duty jobs was compiled and analyzed. An evaluation of the process used by the San José Police Department to monitor and flag problems arising from off-duty employment revealed that there is a lack of oversight by the Department's management.

The Duty Manual provides some guidelines by which to regulate the type, the number and the conduct of officers engaged in off-duty employment. A lack of enforcement renders Duty Manual guidelines ineffective. Most officers provide the required documentation such as applications for work permits and time sheets, but there is no verification or random auditing of its contents.

Conflicts of interest between private employers and police officers were identified. Other problems included a lack of supervision from the Police Department or private employer; a lack of documentation of the officer's off-duty activities; a lack of accountability of hours and type of off-duty jobs and the use of police uniforms. In addition, increased stress and fatigue produced by secondary jobs can have a negative impact on police officers' services to the public.

The San José Police Department is currently conducting an in-depth study of the existing Duty Manual guidelines; identifying and analyzing the benefits and detriments of secondary employment; gathering information and knowledge from other cities with comparable demographics; and drafting policies and procedures that will improve the services and work conditions for officers working off-duty.

¹⁴See footnote 1.

RECOMMENDATION: Complete and implement the new guidelines as soon as possible.

V. YEAR END COMPLAINT STATISTICS

The following is a breakdown of the total 581 complaints received from January 1 to December 31, 1996.¹⁵ The number of Citizen-Initiated (CI), Department-Initiated (DI), Informal (IN), Policy (PO), Procedural (PR) and the complaints still In-Process¹⁶ are based on the data gathered by the Office of the Independent Police Auditor (IPA) as of December 31, 1996.¹⁷ The IPA initiated 27% of the total complaints received from January 1 to December 31, 1996.¹⁸ There was a 27% increase in complaints filed in 1996 compared to 1995.

All Complaints Received¹⁹

January 1- December 31, 1996

Classification of Complaints	Complaints Received
Citizen-Initiated (CI)	242
Department-Initiated (DI)	82
Informal (IN)	93
Policy (PO)	37
Procedural (PR)	91
In-Process ²⁰	36
Total	581

¹⁵Three percent (3%) differential occurred due to the timing difference of data shared between the IPA and the PSCU.

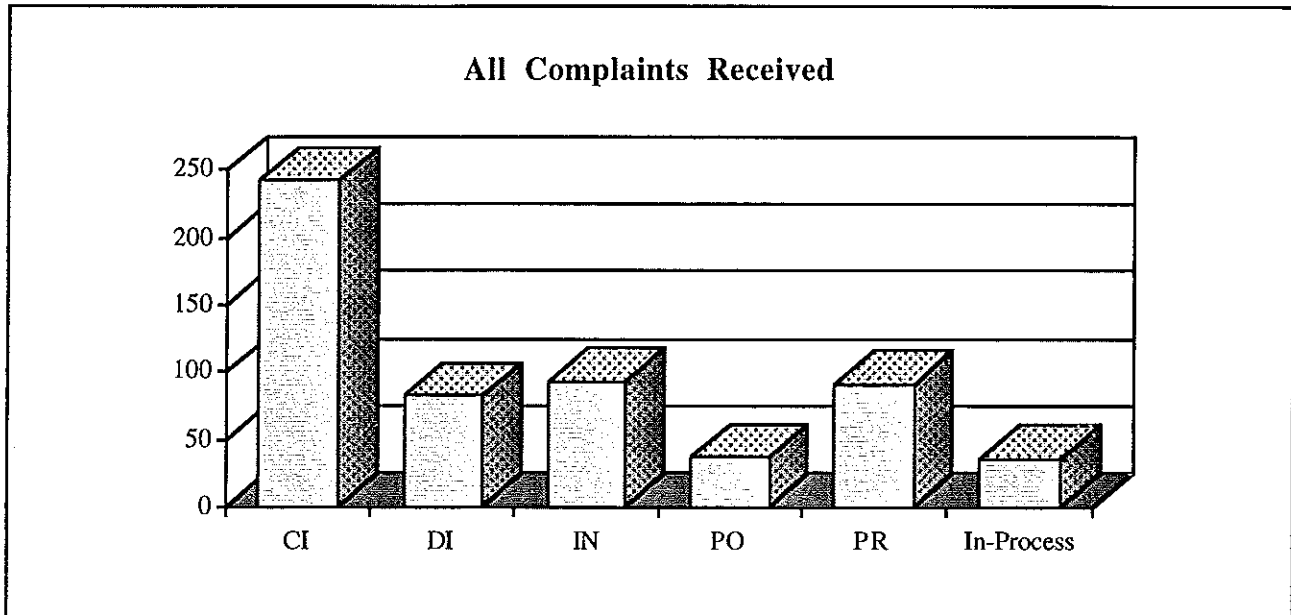
¹⁶The In-Process category includes complaints that have been initiated, but not yet classified.

¹⁷See Appendix D (Classification of Complaints).

¹⁸Excluding the Department-Initiated complaints, the IPA initiated 123 out of the 463 complaints initiated from January 1 to December 31, 1996.

¹⁹See Appendix F (All Complaints Received in 1996).

²⁰The In-Process category includes complaints that have been initiated, but not yet classified.



A. AN INCREASE IN COMPLAINTS

The number of new complaints filed at the Professional Standards and Conduct Unit (PSCU) increased 17% in 1996 compared to the same time period in 1995. Also, the number of complainants utilizing the Office of the Independent Police Auditor (IPA) for complaint intake increased 29% for this reporting period (January 1 through December 31, 1996) compared to the same time period in 1995.

The following number of complaints were received by the IPA and the PSCU from January 1 through December 31, 1996.²¹

Intake	Complaints Received	Complaints Received	Complaints Received
	Jan. - Dec. 1994	Jan. - Dec. 1995	Jan. - Dec. 1996
IPA	55	95	123
PSCU	321	290	340
Total	376	385	463

B. THREE YEAR COMPARISON OF ALL CLASSIFICATION OF COMPLAINTS

The table below indicates the types of cases received and classified in the three time periods. The total complaints do not include the In-Process category of complaints that have not been classified.²² From January 1 to December 31, 1996, the total cases received increased 20% in comparison to 1995, and increased 21% in comparison to 1994.

²¹Complaints classified as Citizen-Initiated, Informal, Procedural, and Policy. These complaints do not include Department-Initiated complaints.

²²Thirty-six (36) In-Process cases were pending classification as of December 31, 1996.

Comparison of All Classifications²³

Period Received	CI	DI	IN	PO	PR	Total Complaints	1996 Compared To Previous Years
Jan. - Dec. 1996	242	82	93	37	91	545	
Jan. - Dec. 1995	176	71	95	8	106	456	20%
Jan. - Dec. 1994	217	75	67	17	75	451	21%

The following breakdown shows the complaints received during the three-year time periods by each classification:

- **Citizen-Initiated (CI):** In 1996, the number of CI complaints increased 38% over 1995 and 12% over 1994.
- **Department-Initiated (DI):** In 1996, the DI complaints increased 16% over 1995 and increased 9% over 1994.
- **Informal (IN):** The number of IN complaints received in 1996 decreased two percent (2%) as compared to 1995 and increased 39% in comparison to 1994.
- **Policy (PO):** There were 37 PO complaints filed in 1996. Eight complaints were filed in 1995, and 17 complaints were filed in 1994. The increase is over 100% compared to the same time periods in 1995 and 1994.
- **Procedural (PR):** There was a 14% decrease of PR complaints generated during 1996. However, there was a 21% increase compared to the PR complaints received in 1994.

C. TIME TO CLASSIFY AND COMPLETE ALL COMPLAINTS

The length of time to classify a complaint is counted by the number of days from the received date of the complaint to the date when the complaint is assigned to an officer for investigation. The length of time to complete an investigation is calculated as the number of days from the assigned date of the complaint until the investigation is completed.

The targeted goal for complaint classification is 30 days. The PSCU is responsible for classifying all complaints. The targeted length of time to complete 75% of the cases is 120 days and the goal for completing all investigations is 300 days. The following table illustrates the actual percentage of the complaints classified and completed within the goal, and the percentage of the goal achieved. The complaints used for the classification statistic were **received** between January 1 and December 31, 1996. The complaints providing the time to complete the investigation statistic were **closed** between January 1 and December 31, 1996.

²³See Appendix G (Three Year Comparison of all Case Classifications).

**Complaints Received and Investigated
by the Professional Standards & Conduct Unit (PSCU)²⁴**

Goal	Cases Achieved the Goal	Total Cases	Actual %	Percentage Achieved the Goal
30 days -- Classification of all complaints by PSCU (received between January 1 - December 31, 1996)	389	433	90%	90%
120 days -- Completion of 75% of cases (closed between January 1 - December 31, 1996)	349	473	74%	99%
300 days -- Completion of 100% of cases (closed between January 1 - December 31, 1996)	408	473	86%	86%

In 1996, four hundred thirty-three (433) total cases were received and investigated by the PSCU. Three hundred eighty-nine (389) of the complaints investigated by the PSCU were classified within 30 days from the received date of the complaint, which accounted for 90% classified. Thus, ninety percent (90%) of the classification goal was achieved. Four hundred seventy-three (473) cases were closed in 1996. Three hundred forty-nine (349) of the 473 cases were completed by the PSCU investigators within 120 days, which accounted for 74% of the complaints completed. This comprised 97% of the stated goal. Four hundred eight (408) of the 473 cases were completed by the PSCU investigators within 300 days from the assigned date, which accounted for 86% of the complaints completed. Thus, eighty-six percent (86%) of the 100% completion goal was achieved.

**Complaints Received by the PSCU and Investigated
by an Outside Bureau²⁵**

Goal	Cases Achieved the Goal	Total Cases	Actual %	% of Goal Achieved
30 days -- Classification of all complaints (received between January 1 - December 31, 1996)	44	112	39%	39%
120 days -- Completion of 75% of cases (closed between January 1 - December 31, 1996)	44	104	42%	56%
300 days -- Completion of 100% of cases (closed between January 1 - December 31, 1996)	67	104	64%	64%

In 1996, one hundred twelve (112) cases were received by the PSCU and assigned to an outside bureau for investigation. Forty-four (44) of the complaints assigned to an outside bureau for investigation were classified within 30 days from the received date of the complaint, which accounted for 39% classified. Thus, thirty-nine (39%) of the classification goal was achieved. One hundred four cases were closed in 1996. Forty-four (44) of the 104 cases were closed by an investigative bureau

²⁴These complaints initiated at the IPA or the PSCU.

²⁵An outside bureau may include Bureau of Administration (BOA), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Technical Services (BTS), or Office of the Chief (COP).

within 120 days, which accounted for 30% completed. This comprised 56% of the established goal. Sixty-seven (67) of the 104 cases were completed within 300 days from the assigned date, which accounted for 64% total completion rate. Thus, sixty-four percent (64%) of the goal was achieved. Timeliness in classifying complaints and completing investigations continues to be a concern and is addressed in the "Updates on Prior Issues and Recommendations" section (see page 6).

VI. ANALYSIS OF FORMAL COMPLAINTS

A. CITIZEN-INITIATED FORMAL COMPLAINTS

The following statistical analysis will focus on a type of complaint initiated by citizens, and classified as Citizen-Initiated Formal complaints.²⁶ These complaints involve the most serious misconduct allegations. The CI Formal cases are divided into separate allegations with individual findings.²⁷ And are the only type of complaints filed by a citizen for which discipline can be imposed. The time periods used for statistical comparisons are from January 1 through December 31 for the years 1994 through 1996. The analysis will compare the total number of cases and allegations for the aforementioned periods, respectively.

There was an increase in CI Formal complaints for 1996 in comparison to the previous two years. The following is the statistical data for CI Formal complaints categorized by allegations for the three time periods:

1. CITIZEN-INITIATED FORMAL CASES AND ALLEGATIONS

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total CI Allegs.	%	Total CI Cases ²⁸	%
Jan. - Dec. 1996	11	0	18	117	34	106	33	13	116	44	492		242	
Jan. - Dec. 1995	10	3	14	78	37	81	36	11	140	43	453	9%	176	38%
Jan. - Dec. 1994	15	8	25	101	54	112	57	24	199	34	629	-22%	217	12%

Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

²⁶See Appendix D (Classification of Complaints).

²⁷See Appendix H (Misconduct Allegations) and Appendix E (Definition of Findings).

²⁸See Appendix I (Citizen- and Department-Initiated Sustained Cases).

The above information includes all cases **initiated** during the specified time frames regardless of the subsequent status.²⁹ Two hundred forty-two (242) CI Formal complaints were received in 1996. As shown on the far right column of the above table, 1996 showed a 38% increase when compared to the CI Formal complaints received in 1995 and a 12% increase when compared to the CI Formal complaints received in 1994.

The number of allegations increased in comparison to 1994. The 242 CI Formal complaints filed in 1996 produced 492 allegations, generating a nine percent (9%) increase in the number of allegations over 1995 and a decrease of 22% over the 1994 time period. The percentages comparing the number of allegations are displayed next to the total allegations category on the above table.

2. CITIZEN-INITIATED FORMAL UNNECESSARY FORCE ALLEGATIONS

Period Received	UF Allegations	1996 UF Allegations Compared with Previous Years
<i>Jan. - Dec. 1996</i>	116	
<i>Jan. - Dec. 1995</i>	140	-17%
<i>Jan. - Dec. 1994</i>	199	-42%

The Citizen-Initiated (CI) Formal complaints produced one hundred sixteen Unnecessary Force (UF) allegations in 1996. When compared to the previous two time periods, UF allegations decreased by 17% over 1995 and decreased by 42% when compared to the same period in 1994.

The Office of the Independent Police Auditor (IPA) tracks the type of force the subject officers used as alleged by the complainant. The following table lists the number and type of force allegedly used by the subject officer(s). This information was taken from the 79 CI Formal cases alleging Unnecessary Force. Each complaint may allege more than one type of force.

²⁹The status of a complaint is either open (under investigation) or closed (investigation completed).

Trends from Unnecessary Force Complaints

January 1 - December 31, 1996

Type of Alleged Unnecessary Force			
Hands	52	Knee	6
Feet	18	Car (officer)	3
Baton	11	Object	3
Tight Handcuffs	10	Canines	2
Chemical Agent	6	Gun (officer)	1

The information for these statistics was based on the type of force the subject officers used as alleged by the complainants. The subject officers' use of hands, such as pushing or slapping a complainant, accounted for 46% of the different types of force alleged by the complainants. The alleged use of force from the subject officers' feet, such as leg sweeps or kicking the complainant, comprised 16% of the distribution. The use of the baton for striking or injuring the complainant accounted for ten percent (10%) of the alleged types of force used by the subject officer. Tight handcuffs causing pain or injury to the wrists of the complainant accounted for nine percent (9%) of the different types of force alleged by the complaints.

3. CITIZEN-INITIATED FORMAL SUSTAINED COMPLAINTS

Period Received	Cases Filed	Open	Closed	Sustained Cases	Sustained Rate
Jan. - Dec. 1996	242	99	143	7	5%
Jan. - Dec. 1995	176	32	144	11	8%
Jan. - Dec. 1994	217	8	209	25	12%

The above table indicates the number of complaints filed in 1994 to 1996 including their status as of December 31, 1996. The sustained rate in the table above was derived from the number of sustained cases divided by the number of closed cases. If one allegation of the complaint was sustained, then the entire complaint was considered sustained. As of December 31, 1996, eight CI Formal complaints out of 217 CI Formal complaints filed in 1994 remain open and 32 CI Formal complaints out of 176 CI Formal complaints filed in 1995 remain open.

There were 242 cases filed between January 1 and December 31, 1996, one hundred forty-three (143) cases were closed and 99 cases were under investigation. From those closed cases, seven (7) cases were sustained. The sustained rate varies for 1994 to 1996 until all the cases filed for each time period close. The sustained rate for closed cases filed in 1996 was five percent (5%), the 1995 sustained rate was eight percent (8%) and the 1994 sustained rate was 12%.

B. DEPARTMENT-INITIATED FORMAL COMPLAINTS

The following statistical analysis focuses on complaints classified as Department-Initiated (DI) Formal complaints.³⁰ As with Citizen-Initiated (CI) Formal complaints, the DI Formal complaints also include the most serious complaint allegations. The complaints initiated by the Chief of Police known as DI Formal complaints, can involve either internal or external issues. For example, a DI Formal complaint may involve a situation where an officer is alleged to have engaged in conduct unbecoming an officer, such as driving under the influence of alcohol. A DI Formal complaint may also involve a citizen who does not follow through with the complaint but the allegation is so serious that the Chief of Police initiates an investigation.

The DI Formal complaint is divided into separate allegations with individual findings.³¹ The time periods used for statistical comparison are January 1 through December 31 for the years 1994 through 1996. The analysis compares the total number of cases and allegations for the specified time periods. The following table shows the statistical data for the DI Formal complaints categorized by allegations for the three time periods:

1. DEPARTMENT-INITIATED FORMAL CASES AND ALLEGATIONS

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total DI Allegs.	%	Total DI Cases ³²	%
Jan. - Dec. 1996	5	0	1	43	11	5	0	38	2	0	105		82	
Jan. - Dec. 1995	6	0	10	36	6	5	1	50	2	0	116	9%	71	15%
Jan. - Dec. 1994	5	0	6	58	1	7	1	36	2	0	116	9%	75	9%

<i>Legend</i>	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

The previous table includes all allegations from the cases **initiated** during the specified time frames regardless of the subsequent status.³³ Eighty-two (82) DI Formal complaints were filed in 1996. The number of DI Formal complaints increased 15% compared to the same time period for 1995. An increase of nine percent (9%) in the total number of DI Formal cases also occurred in comparison to 1994. These percentages are illustrated on the far right column of the previous table.

³⁰See Appendix D (Classification of Complaints).

³¹See Appendix H (Misconduct Allegations) and Appendix E (Definition of Findings).

³²See Appendix I (Citizen- and Department-Initiated Sustained Cases).

³³The status of a complaint is either open (under investigation) or closed (investigation completed).

The 82 DI Formal complaints produced 105 allegations during 1996. This resulted in a nine percent (9%) decrease in DI Formal allegations compared to the same time period in 1995 and 1994. The percentage comparisons of the number of allegations for the relevant time periods are displayed next to the total allegations category in the previous table.

Two Unnecessary Force allegations were received each year for 1994, 1995, and 1996. The two DI Formal complaints filed in 1996 generated the following types of alleged force used by the subject officer: the use of a baton, a canine, feet, and an object.

2. DEPARTMENT-INITIATED FORMAL SUSTAINED CASES

Period Received	Cases Filed	Open	Closed	Sustained Cases	Sustained Rate
Jan. - Dec. 1996	82	27	55	39	71%
Jan. - Dec. 1995	71	5	66	50	76%
Jan. - Dec. 1994	75	1	74	51	69%

The above table indicates the number of DI Formal complaints filed in the years 1994 to 1996 and their status as of December 31, 1996. The sustained rate was derived from the number of sustained cases divided by the closed cases. If one allegation in the complaint was sustained, then the entire complaint was considered sustained. For example, there were 82 DI cases filed during 1996, and 55 cases closed. From those closed cases, 39 cases were sustained. The sustained rate for 1996 was 71%.³⁴ In comparison, the sustained rate for 1995 was 76%, and 69% in 1994. The sustained rate for 1994 to 1996 is subject to change until all of the cases filed for each time period close.

VII. DISCIPLINE IMPOSED

Discipline is imposed only on complaints classified as Formal complaints. The Formal complaints can be initiated either by a citizen in the Citizen-Initiated (CI) Formal complaints or by the Chief of Police in the Department-Initiated (DI) Formal complaints. The CI or DI Formal complaints are further broken down by allegations. An officer receives discipline based on the entire complaint and not based on each separate allegation.³⁵ For example, an officer may have had three allegations sustained, but only received one letter of reprimand as a discipline imposed for the three sustained allegations. An officer may receive training and/or counseling, even though the allegation in a complaint is not

³⁴This 71% sustained rate was derived from the 39 sustained cases divided by the 55 closed cases.

³⁵See Appendix H (Misconduct Allegations) and Appendix E (Definition of Findings).

sustained.³⁶ The table below indicates the number of disciplines imposed for the CI and DI complaints closed during the year of 1996.³⁷ The complaints closed during this time period were initiated from 1994 through 1996. The number of disciplines imposed may be greater than the number of closed complaints because a complaint may have more than one discipline, depending on the number of officers per complaint.

Formal Complaints Closed with Discipline

Closed between January 1 - December 31, 1996

Classification of Complaints	Disciplines Imposed	Complaints with discipline	Year Complaints Filed		
			1996	1995	1994
Citizen-Initiated	33	30	16	10	4
Department-Initiated	70	67	49	15	3
TOTAL	103	97			

The following tables indicate the percentage breakdown of discipline given to subject officers from CI Formal and DI Formal complaints closed during the year of 1996.³⁸ The disciplines are shown by the most frequent type of discipline imposed.

Discipline Imposed for Citizen-Initiated Formal Cases

Closed between January 1 - December 31, 1996

Type of Disciplines Imposed	CI Disciplines	Distribution
Training and/or Counseling	16	48%
Documented Oral Counseling (D.O.C.)	6	18%
Letter of Reprimand (L.O.R.)	6	18%
Officer Retired	2	6%
120-Hour Suspension	1	3%
Resignation Pending Termination	1	3%
Termination	1	3%
Total	33	100%

³⁶For example, officers who resign pending termination list a No Finding instead of a Sustained allegation. Also, some officers may receive Training and/or Counseling for a Not Sustained or Exonerated allegation.

³⁷See Appendix D (Classification of Complaints).

³⁸Discipline given to sworn members of the San José Police Department.

Discipline Imposed for Department-Initiated Formal Cases

Closed Between January 1 - December 31, 1996

Type of Disciplines Imposed	DI Disciplines	Distribution
Documented Oral Counseling (D.O.C.)	24	34%
Letter of Reprimand (L.O.R.)	17	24%
Resignation Pending Termination	7	10%
Training and/or Counseling	6	9%
10-Hour Suspension	4	6%
20-Hour Suspension	3	4%
Officer Retired	2	3%
Termination	2	3%
40-Hour Suspension	1	1%
80-Hour Suspension	1	1%
120-Hour Suspension	1	1%
160-Hour Suspension	1	1%
Pay Reduction	1	1%
Total	70	100%

Training and/or Counseling accounted for 48% of the CI Formal disciplines compared to 9% for DI Formal cases. Documented Oral Counseling accounted for 34% of the disciplines in DI Formal cases compared to 18% of the disciplines in CI Formal cases. A Letter of Reprimand was more frequent (24%) in the DI Formal cases than in the CI Formal cases (18%).

A. OFFICERS SEPARATED FROM SJPD

Eleven subject officers were either terminated or resigned pending termination from the San José Police Department as a result of CI Formal and DI Formal complaints closed during 1996. Three subject officers were terminated; one officer was from a CI Formal case and two officers were from two DI Formal cases. Eight subject officers resigned pending termination from the San José Police Department; one officer was from a CI Formal case and seven officers were from seven DI Formal cases. The seven DI complaints, which produced the seven resignations pending termination, involved multiple allegations of Unofficerlike Conduct, Discrimination/Harassment, and Improper Procedure. The three complaints which generated the terminations were closed in 1996, although the complaints were filed in 1994 and 1995. The three complaints leading to the terminations involved multiple allegations of Unofficerlike Conduct and Improper Procedure. These allegations were all sustained. Four officers retired before the completion of their investigation of a CI Formal or DI Formal complaint. All together, fifteen (15) officers with a pending or closed complaint, were separated from the SJPD in 1996.

VIII. INTERVENTION COUNSELING

The Intervention Counseling Program is used as an "early warning system" to track police officers with complaint histories for the purpose of providing guidance. To receive Intervention Counseling (IC), the subject officers must meet the following criteria:

1. Three or more investigations of Citizen-Initiated or Department-Initiated complaints within a 12-month period.
2. Five or more investigations involving Informal or Procedural complaints or a combination with Citizen-Initiated or Department-Initiated complaints within a 12-month period.

During Intervention Counseling, the subject officers meet with the Deputy Chief of their bureau, the Professional Standards and Conduct Unit Commander and their immediate supervisor for informal counseling. This informal counseling session involves a review of the issues with the subject officer³⁹ in a positive attempt to assist him/her. No formal record is made of the substance of the IC session.

A monthly review of the internal investigation files is conducted by the Professional Standards and Conduct Unit (PSCU) to ensure that subject officers meeting the Intervention Counseling criteria are identified in a timely manner. When Department members are identified as a result of this review, a memorandum is written by the PSCU Commander to the subject officer's Bureau Chief requesting the scheduling and completion of Intervention Counseling.

Intervention Counseling (IC)

Time Period of Intervention Counseling	Total Number of Intervention Counseling Sessions	Number of Subsequent Complaints from IC Date to December 31, 1996					
		0 ⁴⁰	1	2	3	4	5+
<i>Jan. - Dec. 1996</i>	12	3	5	4	0	0	0
<i>Jan. - Dec. 1995</i>	19	9	8	0	1	0	1
<i>Jan. - Dec. 1994</i>	22	5	3	5	2	3	4

The previous table lists the number of IC sessions between January 1 and December 31 for the years 1994 through 1996. The number of subject officers with subsequent complaints from their Intervention Counseling date should not be compared due to the differences in time between the 1996, 1995, and 1994 sessions. A longer time period from the IC date increases the possibility of having subsequent complaints.

³⁹Subject officer refers to the sworn member of the San José Police Department of whom the complaint is about.

⁴⁰This value represents the number of subject officers that received no complaints since their Intervention Counseling (IC) date.

Twelve IC sessions occurred in 1996. Twenty-five percent (25%) of the subject officers received no subsequent complaint from the IC date to December 31, 1996. Forty-two percent (42%) of the subject officers received one subsequent complaint from the 1996 IC date. Thirty-three percent (33%) of the subject officers received two complaints from the 1996 IC date to December 31, 1996.

Nineteen IC sessions occurred during 1995. Forty-seven percent (47%) of the subject officers have not received any subsequent complaints since they were counseled in 1995. Forty-two percent (42%) of the subject officers have received only one complaint since they were counseled in 1995. However, one subject officer received three subsequent complaints and another received five subsequent complaints since the 1995 IC date.

During 1994, twenty-two IC sessions were conducted. Twenty-three percent (23%) of the subject officers have received no subsequent complaint and another 23% of the subject officers have received two complaints from the IC date to December 31, 1996. Eighteen percent (18%) of the subject officers have received five or more subsequent complaints since the IC date in 1994. Three officers have received one complaint and another three received four complaints, and two officers received three complaints since the 1994 IC date.

In addition to Intervention Counseling, the police administration has implemented other methods to address officers receiving multiple complaints. For example, subject officers and their supervisors may enter into a written agreement whereby certain steps are identified and followed in an effort to deter the alleged misconduct from reoccurring.

IX. STATISTICAL BACKGROUND OF SUBJECT OFFICERS

A statistical area tracked by the Office of the Independent Police Auditor (IPA) is the background of the subject officers from Citizen-Initiated, Department-Initiated, Informal, and Procedural complaints received between January 1 and December 31, 1996. Specific areas include the police unit,⁴¹ gender, ethnicity, and years of experience of the subject officer.⁴² Out of the total 308 subject officers who received complaints in this reporting period, 233 officers received one complaint, 53 officers received two complaints, 16 officers received three complaints, seven (7) officers received four complaints, and three (3) officers received five complaints.

⁴¹The police unit of the subject officer at the time of the complaint incident.

⁴²Subject officer refers to the sworn member of the San José Police Department of whom the complaint is about.

In the complaints received in 1996, eighty eight percent (88%) of the subject officers were ranked as Officers versus 91% in 1995. In 1996, 12% of the subject officers were ranked as a Sergeant or above compared to nine percent (9%) in 1995.⁴³

There were 73 complaints in which the subject officer's name was omitted due to the lack of signature on the Boland Admonishment and 24 complaints listed an unknown officer due to lack of identification or because the complaints were withdrawn. The unknown officers, officers no longer working in the San José Police Department (SJPD), and non-sworn officers are not part of the police background data. One hundred sixteen (116) cases received in 1996 have 119 unknown officers identified. Two (2) complaints have two (2) officers no longer working in the SJPD. Twenty-three (23) cases have 27 non-sworn officers.⁴⁴

A. UNIT OF THE SUBJECT OFFICER

The following tables list the units of subject officers from complaints received from January 1 to December 31, 1996.

Bureau of Field Operations (BFO) Units	
January 1 - December 31, 1996	
Patrol	356
Narcotics Enforcement Team (NET)	23
Traffic Enforcement	14
Merge	11
Field Training	9
Street Crimes	7
Violent Crime Enforcement Team	5
K-9	4
Airport	2
Special Operations	2
Administration	1
School Liaison	1
Total incidents from BFO	435

Subject officers from the Bureau of Field Operations (BFO) Units accounted for 61% of all units from complaints; specifically, the patrol unit accounted for 82% of the units within BFO. There is more police-to-citizen contact within the BFO, thus increasing the likelihood of complaints involving a BFO police unit.

⁴³The rank of the subject officer as of December 31, 1996. The subject officer can be ranked as Officer, Sergeant, Lieutenant, Captain, Deputy Chief, Assistant Chief, or Chief.

⁴⁴Non-sworn officers are dispatchers and reserve officers.

Bureau of Investigations (BOI) Units	
January 1 - December 31, 1996	
Homicide/Crime Scene	7
Juvenile Crimes	5
Sexual Assault/Child Exploitation	5
Burglary/Fraud	4
Robbery/Night General	4
Narcotics/Covert Investigations	3
Drug Enforcement Admin.	2
Traffic Investigation Unit	2
Violent Crimes Unit	2
Total incidents from BOI	34

The Bureau of Investigations (BOI) Units comprised five percent (5%) of the total units from complaints received in 1996.

The Bureau of Technical Services (BTS) Units, specifically the Information Center, Warrants, and Training units, accounted for two percent (2%) of the police units from complaints received during the year of 1996.

The Intelligence, the Public Information, and the Vice unit within the Office of the Chief accounted for one percent (1%) of the total units. The Administration, the Background, the Photo Lab, the Police Activities League, the Recruiting, and the Training unit within the Bureau of Administration (BOA) also accounted for one percent (1%) of the units from complaints received in the year of 1996.

B. GENDER OF THE SUBJECT OFFICER

The following statistics report the gender of the subject officers from complaints received between January 1 and December 31, 1996.

Gender	Number of Officers receiving Complaints ⁴⁵	% of Officers receiving Complaints	Number of Officers in the Police Dept. ⁴⁶	% of Officers in the Police Department
Male	281	91%	1177	92%
Female	27	9%	103	8%
Total	308	100%	1280	100%

In 1996, two hundred eighty-one (281) male officers received complaints which comprised 91% of the officers receiving complaints. Male officers comprised 92% of all officers in the Police Department.

⁴⁵308 officers received at least one complaint during the specified time period. 223 officers received one complaint, 55 received two complaints, 16 officers received three complaints, seven (7) officers received four complaints, and three (3) officers received five complaints.

⁴⁶San José Police Department.

Twenty-seven (27) female officers received complaints in this time period, which accounted for nine percent (9%) of the officers receiving complaints. In the Police Department, female officers accounted for eight percent (8%) of the gender distribution. The number of officers receiving complaints is proportionate to the gender distribution of officers in the Police Department.

C. ETHNICITY OF THE SUBJECT OFFICER

The following table displays the ethnicity of subject officers from complaints received between January 1 and December 31, 1996.

Ethnicity	Number of Officers receiving Complaints⁴⁷	% of Officers receiving Complaints	Number of Officers in the Police Dept.⁴⁸	% of Officers in the Police Department
White / Euro. Amer.	192	62%	824	64%
Hispanic	66	21%	275	21%
Asian American	23	7%	89	7%
African American	21	7%	65	5%
Filipino American	4	1%	20	2%
Native American	2	1%	7	1%
Total	308	100%	1280	100%

The White/European American officers comprised 62% of officers receiving complaints in 1996 and accounted for 64% of the Police Department ethnic distribution. Hispanic officers accounted for 21% of the total number of officers in complaints, which is directly proportional to the distribution of Hispanic officers in the Police Department. Asian American and African American officers represented seven percent (7%) of officers receiving complaints, accounting for seven percent (7%) and five percent (5%), respectively, of the officers in the Police Department. Overall, the ethnic distribution of officers receiving complaints closely followed the ethnic distribution of officers in the Police Department.

D. YEARS OF EXPERIENCE OF THE SUBJECT OFFICER

The following table lists the subject officers' years of experience in the San José Police Department as of December 31, 1996. These statistics arose from the complaints received between January 1 and December 31, 1996.

⁴⁷308 officers received at least one complaint during the specified time period. 223 officers received one complaint, 55 received two complaints, 16 officers received three complaints, seven (7) officers received four complaints, and three (3) officers received five complaints.

⁴⁸San José Police Department.

Years of Experience	Number of Officers receiving Complaints ⁴⁹	% of Officers receiving Complaints	Number of Officers in the Police Dept. ⁵⁰	% of Officers in the Police Department
0-1+	41	13%	144	11%
2-4+	73	24%	180	14%
5-6+	36	12%	118	9%
7-10+	42	14%	181	14%
11-15+	46	15%	241	19%
16+	70	23%	416	33%
Total	308	100%	1280	100%

Subject officers with two to four years of experience received the highest number of complaints between January 1 and December 31, 1996. These officers comprised 24% of officers receiving complaints and accounted for 14% of all officers in the San José Police Department. Officers with more than 16 years of experience followed closely, accounting for 23% of all officers receiving complaints while comprising 33% of all officers in the Police Department. In proportion to the total number of officers in the Police Department with the respective years of experience, officers with two to four years of experience accounted for the highest ratio of officers receiving complaints.

Nearly all San José officers with three years or less of experience are assigned to the BFO Patrol Unit, which has more police-to-citizen contact. Consequently, the high citizen contact may generate more complaint incidents. With the passage of time, the officers may transfer out of the Patrol Unit into other specialized units. Officers return to the BFO for a minimum of one year after a specialized unit assignment, which is typically three years.

X. STATISTICAL BACKGROUND OF COMPLAINANTS

The Office of the Independent Police Auditor (IPA) utilizes a Voluntary Questionnaire⁵¹ to request information about the statistical background of complainants. The sole purpose of the Voluntary Questionnaire is to monitor statistical trends in an effort to better serve the complainant and the community. This survey was implemented on April 17, 1995.

⁴⁹308 officers received at least one complaint during the specified time period. 223 officers received one complaint, 55 received two complaints, 16 officers received three complaints, seven (7) officers received four complaints, and three (3) officers received five complaints.

⁵⁰San José Police Department.

⁵¹See Appendix J (The Office of the Independent Police Auditor Voluntary Questionnaire).

Complainants completed 480 questionnaires in 1996. There were 73 complainants who chose not to complete the Voluntary Questionnaire, which accounted for 16% of the 463 complaints. There were 463 complaints⁵² received between January 1 and December 31, 1996; one hundred twenty-three (123) complaints were initiated by the IPA and 340 complaints were filed at the PSCU. There may be more questionnaires than complaints received in a time period because each complaint may have more than one complainant listed. Of the 480 questionnaires completed by the complainants, one hundred thirty-six (136) were from the IPA and 344 were from the PSCU.

There were seven questions in the survey to which the complainants self-reported the answers on the Voluntary Questionnaire. The survey requested information such as the complainant's occupation, primary language, ethnicity, educational level, gender, age range, and type of referral to either the IPA or the PSCU.

A. COMPLAINANT REFERRAL TO THE IPA OR THE PSCU

Question 1: How was the complainant referred to the IPA or the PSCU?

Type of Referral January 1 - December 31, 1996	To IPA	To PSCU	Total	%
City Official	14	11	25	5%
Friend/Relative	30	76	106	22%
Media	15	11	26	5%
Personal Knowledge	11	39	50	10%
Police	11	89	100	21%
Organization	22	6	28	6%
Other	25	22	47	10%
Unspecified	8	90	98	20%
Total	136	344	480	100% ⁵³

As shown above, twenty-two percent (22%) of the complainants were referred to the PSCU and to the IPA by a friend(s) or relative(s). Twenty-six percent (26%) of the complainants initiating their complaint at the PSCU were referred by the Police Department,⁵⁴ and eight percent (8%) of the complainants initiating their complaint at the IPA were referred by the Police Department. Eleven percent (11%) of the complainants initiated their complaint at the PSCU and eight percent (8%) of the complainants initiated their complaint at the IPA through their own personal knowledge of the particular agency. Ten percent (10%) of the complainants stated another source of referral not listed in

⁵²Department-Initiated cases are not included in this number because there are no questionnaires completed for this classification. The 463 complaints include only those complaints classified as Citizen-Initiated, Informal, Procedural, and Policy.

⁵³Data was rounded off to the nearest percentage.

⁵⁴San José Police Department.

the Voluntary Questionnaire.⁵⁵ For example, referrals from this category may include the IPA brochure, an attorney, or the phone book.

B. OCCUPATION OF THE COMPLAINANT

Question 2: What was the most current occupation of the complainant?

Occupation					
January 1 - December 31, 1996					
Administration ⁵⁶	32	Financial field ⁵⁷	3	Mover	4
Analyst	2	Food Services	11	Paper Delivery	1
Attorney	4	Gardener	3	Parking	1
Buyer (unspecified)	1	Hairstylist	1	Probation	3
Car Detailing	1	Journalist	4	Production	20
Child Care	3	Homemaker	20	Retail/Sales/Cashier	23
Community Coordinator	3	Indecipherable occupation	2	Retired	12
Computer	8	Industrial	4	Security/Bouncer	6
Consultant	3	Inspector/Quality Control	4	Self-employed	7
Contractor/Construction	11	Insurance	3	Scheduler/Planner	1
County Worker	3	Investigator	2	Shipping/Receiving/Warehouse	8
Counselor	2	Janitor/Cleaning	3	Student	33
Customer Service	5	Legal field ⁵⁸	3	Teacher/Principal	4
Disabled/Disability	14	Mail carrier/handler	6	Technician	10
Dispatcher	2	Maintenance	4	Unemployed	12
Driver/Trucker	8	Management/CEO	16	Unspecified	121
Engineer	2	Mechanic	4		
Entrepreneur	6	Medical/Health field	11		

The second question inquired about the complainant's current or latest occupation. The above table lists complainant occupations in alphabetical order. Occupations were diverse and ranged from "administration" to "unemployed".

⁵⁵This does not include the Unspecified referrals, in which the question was not answered by the complainant.

⁵⁶Administration includes: Administrative assistant, clerical, clerk, receptionist, and secretary.

⁵⁷The financial field includes: Financial advisor, collector, and billing operator.

⁵⁸The legal field includes: Legal clerk, legal secretary, court reporter, and law office employee.

C. EDUCATIONAL LEVEL OF THE COMPLAINANT

Question 3: What was the highest educational level completed by the complainant?

Educational Level		%
January 1 - December 31, 1996		
Ninth grade	15	3%
Tenth grade	16	3%
Eleventh grade	23	5%
Twelfth grade	141	29%
College 1	48	10%
College 2	56	12%
College 3	20	4%
College 4+	60	13%
Graduate Degree	10	2%
Unspecified	91	19%
Total	480	100%⁵⁹

The third question requested the highest educational level completed by the complainant. The responses ranged from persons who had not graduated from high school to complainants with advanced degrees. Twenty-nine percent (29%) of the complainants graduated from high school, and 39% indicated college education. The level of education of the complainants was higher than the average level of education reported in Santa Clara County.⁶⁰ According to the 1990 census, nineteen percent (19%) of the Santa Clara County population reported a high school education, and 31% attended college.

D. ETHNICITY OF THE COMPLAINANT

Question 4: What was the ethnicity with which the complainant primarily identified?

Ethnicity		%
January 1 - December 31, 1996		
White/Euro. Amer.	136	28%
Hispanic/Latino	164	34%
African American	61	13%
Asian American	7	1%
Filipino American	5	1%
Native American	8	2%
Vietnamese	5	1%
Unspecified	81	17%
Other	13	3%
Total	480	100%⁶¹

⁵⁹Data was rounded off to the nearest percentage.

⁶⁰Claritas/NPDC 1992, Population by race, education level - Santa Clara County. Market research firm, 1990 census data for Santa Clara County projected into the current year.

⁶¹Data was rounded off to the nearest percentage.

The fourth question requested the ethnic background of the complainant which is shown above. The ethnic composition of the complainants was predominantly Hispanic/Latino. Thirty-four percent (34%) of the complainants identified themselves as Hispanic/Latino and 28% identified themselves as White/European-American. African American complainants comprised 13% of the complainant distribution. Santa Clara County reported a 58% White population.⁶² The County also reported a 21% Hispanic population, a 17% Asian population, and a four percent (4%) African American population. More Hispanic and African American complainants were reflected in the complainant survey distribution than in the population distribution of Santa Clara County.

E. PRIMARY LANGUAGE OF THE COMPLAINANT

Question 5: What was the primary spoken language of the complainant?

Primary Language January 1 - December 31, 1996		%
English	360	75%
Spanish	34	7%
Vietnamese	3	1%
Other	76	16%
Unspecified	7	1%
Total	480	100%⁶³

English was the primary language spoken by 75% of the complainants completing a Voluntary Questionnaire. Seven percent (7%) of the complainants primarily spoke Spanish.

F. GENDER OF THE COMPLAINANT

Question 6: What was the gender of the complainant?

Gender January 1 - December 31, 1996		%
Male	265	55%
Female	214	45%
Anonymous	1	0%
Total	480	100%⁶⁴

The sixth question requested the gender of the complainant. Fifty-five percent (55%) of the complainants were male and 45% were female.

⁶²Ewel, Miranda, "Racial Split Emerges in Silicon Valley," *San Jose Mercury News*, 23 June 1996, 1A. Source: 1990 Census Data.

⁶³Data was rounded off to the nearest percentage.

⁶⁴Data was rounded off to the nearest percentage.

G. AGE OF THE COMPLAINANT

Question 7: What was the age range of the complainant?

Age Range January 1 - December 31, 1996		%
Under 18	11	2%
18-30	143	30%
31-59	234	49%
60+	15	3%
Unspecified	77	16%
Total	480	100%⁶⁵

The final question requested the complainant's age range. Forty-nine percent (49%) of the complainants were within the age range of 31-59 years, 30% were in the age range of 18-30 years. Complainants under the age of 18 accounted for two percent (2%) of the distribution and three percent (3%) of the complainants were over 60 years old.

The Voluntary Questionnaire information will continue to be requested from complainants. The process of collecting the Voluntary Questionnaire from each complainant is systematic in that each complainant either responded or declined.

XI. GAY / LESBIAN RELATED COMPLAINTS

The number of complaints involving a gay or lesbian issue was a trend tracked by the Office of the Independent Police Auditor (IPA) for complaints filed between January 1, and December 31, 1996. There were three gay or lesbian related complaints; one complaint was classified as Citizen-Initiated, and two were classified as Informal complaints. The allegations in the complaints involved Discrimination/Harassment. Compared to 1995, the number of gay or lesbian complaints did not change.

XII. COMPLAINTS & ALLEGATIONS BY COUNCIL DISTRICT

The data regarding the types of complaints received between January 1 and December 31, 1996 were organized by City Council District. In addition, Citizen-Initiated (CI) and Department-Initiated (DI)

⁶⁵Data was rounded off to the nearest percentage.

complaints were further categorized by the number and type of allegations.⁶⁶ The following table illustrates the total number of all complaints received by each City Council District; however, the complaints categorized as In-Process are not included because their classification is pending for this reporting period.

Summary of Complaints Received⁶⁷

January 1 - December 31, 1996

Districts	Type of Complaints					TOTAL COMPLAINTS	%
	CI	DI	IN	PO	PR		
1 JOHNSON	8	2	5	3	8	26	5%
2 POWERS	21	3	10	2	6	42	8%
3 PANDORI	75	43	23	18	26	185	34%
4 FERNANDES	13	8	8	3	3	35	6%
5 DIAZ	28	4	8	4	10	54	10%
6 FISCALINI	26	6	11	2	13	58	11%
7 SHIRAKAWA, JR.	18	0	5	2	7	32	6%
8 WOODY	16	3	11	2	4	36	7%
9 DIQUISTO	13	2	3	0	9	27	5%
10 DANDO	20	3	9	1	3	36	7%
UNK/OCL ⁶⁸	4	8	0	0	2	14	3%
TOTAL CASES	242	82	93	37	91	545	100%⁶⁹
%	44%	15%	17%	7%	17%		

<i>Legend</i>	
CI = Citizen-Initiated	PO = Policy
DI = Department-Initiated	PR = Procedural
IN = Informal	

⁶⁶See Appendix D (Classification of Complaints).

⁶⁷See Appendix K (Classification of Complaints by Council District).

⁶⁸Unknown/Outside City Limit.

⁶⁹Data was rounded off to the nearest percentage.

The table below specifies the number and type of allegations by City Council District from the CI and DI cases received from January 1 to December 31, 1996.

CITIZEN- and DEPARTMENT-INITIATED Allegations Received⁷⁰

January 1 - December 31, 1996

Districts	Type of Allegations										TOTAL ALLEGS.	%
	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US		
1 JOHNSON	0	0	0	4	4	5	0	0	2	4	19	3%
2 POWERS	2	0	1	11	4	5	1	2	9	1	36	6%
3 PANDORI	7	0	6	61	14	39	16	14	39	10	206	35%
4 FERNANDES	1	0	3	11	1	9	2	6	14	0	47	8%
5 DIAZ	1	0	0	17	6	12	8	3	11	11	69	12%
6 FISCALINI	1	0	2	15	4	7	1	4	12	4	50	8%
7 SHIRAKAWA, JR.	0	0	4	10	1	13	1	6	6	5	46	8%
8 WOODY	0	0	2	13	0	9	1	1	7	1	34	6%
9 DIQUISTO	0	0	1	9	2	7	1	1	7	3	31	5%
10 DANDO	4	0	0	7	9	5	2	4	11	5	47	8%
UNK/OCL ⁷¹	0	0	0	2	0	0	0	10	0	0	12	2%
TOTAL ALLEGS.	16	0	19	160	45	111	33	51	118	44	597	100%⁷²
%	3%	0%	3%	27%	8%	19%	6%	9%	20%	7%		

Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

Allegations are found in CI and DI Formal complaints only. There may be more than one allegation per complaint, therefore, the number of allegations and the number of complaints are different.

The following information shows the different type of complaints, the time when the incidents of the complaints arose⁷³ and allegations for each City Council District. The complaints providing these statistics were filed from January 1 to December 31, 1996. Complaints categorized as In-Process are not part of the following statistics because they were pending classification during this reporting period.

⁷⁰See Appendix L (Citizen- and Department-Initiated Allegations by Council District).

⁷¹Unknown/Outside City Limit.

⁷²Data was rounded off to the nearest percentage.

⁷³See Appendix M (Time of Incident by Council District).

A. DISTRICT 1: TRIXIE JOHNSON**Cases Filed - District One**

Period Received	CI	DI	IN	PO	PR	Dist. 1 Cases	Total Cases	%
Jan. - Dec. 1996	8	2	5	3	8	26	545	5%
Jan. - Dec. 1995	12	3	8	0	8	31	456	7%

Incidents that occurred within District One led to 26 complaints, which accounted for five percent (5%) of the 545 total cases classified from January 1, to December 31, of 1996. Citizen-Initiated (CI) and Procedural (PR) cases accounted for most of the complaints (31%) received from District One in 1996. The table above lists the different complaint classifications in District One. Compared to 1995, District One showed a sixteen percent decrease in complaints in 1996. Citizen-Initiated cases decreased by 33% while Procedural cases remained the same in comparison to 1996 and 1995.

Time of Incident - District One

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 1 Cases
Jan. - Dec. 1996	3	9	13	1	26
Jan. - Dec. 1995	7	7	16	1	31

Of the 26 total complaints received for District One, 50% of the incidents arose during the swing shift hours between 4:01 p.m. and 12 midnight.⁷⁴ The day shift, from 8:01 a.m. to 4:00 p.m., comprised 35% of the distribution. The graveyard shift, from 12:01 a.m. to 8:00 a.m., comprised 12% of the distribution. One complaint did not list a specific time for the complaint incident.

Citizen-Initiated (CI) Allegations - District One

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 1 CI Alleg.	Total CI Alleg.	%
Jan. - Dec. 1996	0	0	0	2	4	5	0	0	2	4	17	492	3%
Jan. - Dec. 1995	0	1	0	5	2	6	2	0	8	1	25	453	6%

The CI Formal complaint is the only type of complaint that is broken into allegations. The above figures represent the number of allegations from CI Formal complaints initiated by citizens. District One produced the least number of allegations compared to the other nine Districts. Eight (8) complaints generated 17 allegations, which contributed three percent (3%) of the total allegations received between January and December of 1996. Rude Conduct allegations were the highest percentage (29%) of allegations received for District One. Missing/Damaged Property and Unlawful

⁷⁴The time range given for each shift was not based on the San José Police Department's schedule because their work shifts overlap. The time ranges were based on three shifts in a 24-hour day, each shift accounting for eight hours of the day.

Search followed closely with 24% for this district. Compared to 1995, the allegations for District One decreased by 32% in 1996.

Department-Initiated Allegations - District One

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 1 DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	0	0	0	2	0	0	0	0	0	0	2	105	2%
Jan. - Dec. 1995	0	0	0	1	1	0	0	3	0	0	5	116	4%

The above statistics display the allegations in DI Formal complaints filed by the Chief of Police for District One. The two cases for this district produced two allegations involving Improper Procedure. Compared to 1995, there was a 60% decrease in DI allegations for District One in 1996.

Citizen- and Department-Initiated Allegations - District One

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 1 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	0	0	0	4	4	5	0	0	2	4	19	597	3%
Jan. - Dec. 1995	0	1	0	6	3	6	2	3	8	1	30	569	5%

District One generated 19 CI and DI allegations between January and December of 1996, which accounted for three percent (3%) of the total 597 CI and DI allegations. The Rude Conduct allegation had the highest percentage (26%) of CI and DI allegations for District One. Improper Procedure, Missing/Damaged Property, and Unlawful Search allegations followed closely with 21% for this district. In comparison to the allegations received between January 1 and December 31, 1995, there was a 36% decrease in allegations.

B. DISTRICT 2: CHARLOTTE POWERS

Cases Filed - District Two

Period Received	CI	DI	IN	PO	PR	Dist. 2 Cases	Total Cases	%
Jan. - Dec. 1996	21	3	10	2	6	42	545	8%
Jan. - Dec. 1995	16	2	4	1	10	33	456	7%

District Two received 42 complaints, which contributed eight percent (8%) of the total cases received between January 1 and December 31, 1996. Most of the complaints were in the CI category, which accounted for 50% of the cases. Compared to 1995, there was a 27% increase in total cases received for this district during this reporting period. There was a 31% increase in CI cases in 1996 compared to 1995 for District Two.

Time of Incident - District Two

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 2 Cases
Jan. - Dec. 1996	8	9	24	1	42
Jan. - Dec. 1995	8	12	12	1	33

Of the 42 total complaints received for District Two, fifty-seven (57%) of the incidents arose in the swing shift hours between 4:01 p.m. and 12:00 midnight.⁷⁵ The day shift, from 8:01 a.m. and 4:00 p.m., comprised 21% of the distribution. The graveyard shift, from 12:01 a.m. and 8:00 a.m., comprised 19% of the distribution. Compared to 1995, there was an 100% increase in incidents arising in the swing shift hours for District Two.

Citizen-Initiated Allegations - District Two

Period Received	DH	ES	FA	IP	MDF	RC	UA	UC	UF	US	Dist. 2 CI Alleg.	Total CI Alleg.	%
Jan. - Dec. 1996	2	0	1	11	4	5	1	0	8	1	33	492	7%
Jan. - Dec. 1995	2	0	2	10	2	8	4	0	12	6	46	453	10%

The above figures represent the number of allegations from CI Formal complaints initiated by citizens. From the 21 CI cases received in District Two, the table shows that 33 CI allegations were received in District Two. This contributed seven percent (7%) of the total CI allegations received between January 1 and December 31, 1996. The most frequent allegation received under this classification was the Improper Procedure allegation. Compared to 1995, the CI allegations for District Two decreased 28% for this reporting period. Compared to 1995, Unnecessary Force allegations decreased by 33% for District Two.

Department-Initiated Allegations - District Two

Period Received	DH	ES	FA	IP	MDF	RC	UA	UC	UF	US	Dist. 2 DI Alleg.	Total DI Alleg.	%
Jan. - Dec. 1996	0	0	0	0	0	0	0	2	1	0	3	105	3%
Jan. - Dec. 1995	0	0	1	2	0	0	0	1	0	0	4	116	3%

The three allegations from the three DI complaints received for this district were Unofficerlike Conduct and Unnecessary Force. The percentage of DI allegations for this district remained the same in comparison to 1995.

⁷⁵See footnote 74.

Citizen- and Department-Initiated Allegations - District Two

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 2 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	2	0	1	11	4	5	1	2	9	1	36	597	6%
Jan. - Dec. 1995	2	0	3	12	2	8	4	1	12	6	50	569	9%

District Two received 36 CI and DI allegations between January 1 and December 31, 1996 as compared to 50 allegations received in 1995. This reflected a 28% decrease in allegations for this reporting period. The decrease in the number of allegations in comparison to 1995 occurred in the Failure to Take Action, Improper Procedure, Rude Conduct, Unlawful Arrest, Unnecessary Force, and Unlawful Search allegations.

C. DISTRICT 3: DAVID PANDORI**Cases Filed - District Three**

Period Received	CI	DI	IN	PO	PR	Dist. 3 Cases	Total Cases	%
Jan. - Dec. 1996	75	43	23	18	26	185	545	34%
Jan. - Dec. 1995	45	37	27	1	31	141	456	31%

District Three received 185 complaints from January 1 and December 31, 1996. The complaints received from this district were significant because they accounted for 34% of the 545 total complaints received in 1996. This district received the highest number of complaints of all the districts, including the Unknown/Outside City Limit category. The CI and DI cases accounted for the highest number of complaints; CI cases contributed 41% of the complaints and DI cases contributed 23% of the total complaints received from District Three. The Office of the Chief, which is located in District Three, initiates the Department-Initiated⁷⁶ complaints, which explains why this district has the most DI complaints compared to the other nine Districts. Compared to 1995, there was a 31% increase in 1996 complaints. In every 1996 case classification, the number of complaints increased.

Time of Incident - District Three

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 3 Cases
Jan. - Dec. 1996	49	55	49	32	185
Jan. - Dec. 1995	30	44	55	12	141

Most of these complaints (30%) occurred during the daytime hours of 8:01 a.m. and 4:00 p.m., as displayed in the table above.⁷⁷ Incidents that occurred during the graveyard hours and the swing shift hours each accounted for 26% of the complaints. Complaint incidents that occurred during various times of the day comprised 17% of the complaints.

⁷⁶See Appendix D (Classification of Complaints)

⁷⁷See footnote 74.

Citizen-Initiated Allegations - District Three

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 3 CI Allegs.	Total CI Allegs.	%
Jan. - Dec. 1996	2	0	6	34	7	35	16	0	39	10	149	492	30%
Jan. - Dec. 1995	4	0	4	19	10	19	9	4	40	7	116	453	26%

The figures in the above table represent the number of allegations which are derived from Formal complaints initiated by citizens. The 75 CI complaints from this district produced 149 CI allegations, which were 30% of the total CI allegations. Most of the allegations in District Three were Unnecessary Force, specifically, UF allegations accounted for 26% of all allegations. The Improper Procedure and Rude Conduct allegations for this district accounted for 23% of the CI allegations.

Department-Initiated Allegations - District Three

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 3 DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	5	0	0	27	7	4	0	14	0	0	57	105	54%
Jan. - Dec. 1995	6	0	4	22	1	3	0	24	0	0	60	116	52%

District Three contributed 54% of the total DI allegations. Improper Procedure (47%) and Unofficerlike Conduct (25%) allegations accounted for most of the DI allegations.

Citizen- and Department-Initiated Allegations - District Three

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 3 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	7	0	6	61	14	39	16	14	39	10	206	597	35%
Jan. - Dec. 1995	10	0	8	41	11	22	9	28	40	7	176	569	31%

District Three generated 206 CI and DI allegations between January 1 and December 31, 1996 as compared to 176 allegations filed between January 1 and December 31, 1995. This accounted for a 17% increase in allegations for this reporting period. There were more Improper Procedure, Missing/Damaged Property, Rude Conduct, Unlawful Arrest, Unnecessary Force, and Unlawful Search allegations filed during this reporting period. In comparison to 1995, there were three percent (3%) fewer Unnecessary Force allegations from District Three.

Overall, District Three had the highest number of complaints and allegations compared to all other districts. District Three encompasses the downtown area which has a denser population than the other districts and generates more police-to-citizen contacts.

D. DISTRICT 4: MARGIE FERNANDES**Cases Filed - District Four**

Period Received	CI	DI	IN	PO	PR	Dist. 4 Cases	Total Cases	%
Jan. - Dec. 1996	13	8	8	3	3	35	545	6%
Jan. - Dec. 1995	10	0	7	2	5	24	456	5%

District Four had 35 complaints during the period from January 1 to December 31, 1996 which accounted for six percent (6%) of the total complaints. There was a 46% increase in the number of cases for this district compared to 1995.

Time of Incident - District Four

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 4 Cases
Jan. - Dec. 1996	5	10	17	3	35
Jan. - Dec. 1995	4	7	11	2	24

Forty-nine percent (49%) of the 17 complaints occurred during the swing shift, between 4:01 p.m. and 12 midnight.⁷⁸ The daytime hours, from 8:01 a.m. to 4:00 p.m., produced 29% of the complaints, which is consistent with the 1995 figure.

Citizen-Initiated Allegations - District Four

Period Received	DH	ES	FA	IP	MDF	RC	UA	UC	UF	US	Dist. 4 CI Alleg.	Total CI Alleg.	%
Jan. - Dec. 1996	1	0	3	6	0	8	2	1	14	0	35	492	7%
Jan. - Dec. 1995	0	0	1	5	2	2	1	0	6	1	18	453	4%

The preceding table indicates that the thirteen CI complaints in this district, generated 35 allegations. These allegations accounted for seven percent (7%) of the 492 total CI allegations received in 1996. The Unnecessary Force category comprised 40% of the allegations which was the highest number of allegations.

Department-Initiated Allegations - District Four

Period Received	DH	ES	FA	IP	MDF	RC	UA	UC	UF	US	Dist. 4 DI Alleg.	Total DI Alleg.	%
Jan. - Dec. 1996	0	0	0	5	1	1	0	5	0	0	12	105	11%
Jan. - Dec. 1995	0	0	0	0	0	0	0	0	0	0	0	116	0%

The eight (8) DI complaints from this district produced 12 DI allegations, accounting for 11% of the total DI allegations received in this reporting period. The Improper Procedure and Unofficerlike Conduct allegations each accounted for 45% of the DI allegations from District Four.

⁷⁸See footnote 74.

Citizen- and Department-Initiated Allegations - District Four

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 4 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	1	0	3	11	1	9	2	6	14	0	47	597	8%
Jan. - Dec. 1995	0	0	1	5	2	2	1	0	6	1	18	569	3%

District Four produced 47 CI and DI allegations between January and December 1996. This is an 161% increase in allegations, since 18 CI and DI allegations were filed in 1995. There were eight more Unnecessary Force allegations received in this reporting period compared to the same time period of 1995, which is an 133% increase in UF allegations. Also, there were more Missing/Damaged Property, Failure to Take Action, Improper Procedure, Rude Conduct, Unlawful Arrest, and Unofficerlike Conduct allegations filed for this district during this reporting period.

E. DISTRICT 5: MANNY DIAZ**Cases Filed - District Five**

Period Received	CI	DI	IN	PO	PR	Dist. 5 Cases	Total Cases	%
Jan. - Dec. 1996	28	4	8	4	10	54	545	10%
Jan. - Dec. 1995	20	4	7	0	10	41	456	9%

District Five received 54 complaints which accounted for ten percent (10%) of the 545 complaints filed in 1996. Most complaints (52%) received from this district were CI cases. Compared to 1995, there were eight (8) more complaints, which is a 40% increase in the district for this reporting period. Overall, more complaints were received for each classification listed in the table above.

Time of Incident - District Five

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 5 Cases
Jan. - Dec. 1996	11	18	24	1	54
Jan. - Dec. 1995	10	15	15	1	41

The previous table displays the incident time for the complaints received from District Five.⁷⁹ Forty-four percent (44%) of the complaints from this district arose from incidents occurring during the swing shift, from 4:01 p.m. to 12 midnight, the daytime incidents contributed 33% of the complaints. The graveyard shift, from 12:01 a.m. to 8:00 a.m., comprised 20% of the complaints.

Citizen-Initiated Allegations - District Five

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 5 CI Allegs.	Total CI Allegs.	%
Jan. - Dec. 1996	1	0	0	16	6	12	8	0	11	11	65	492	13%
Jan. - Dec. 1995	1	2	3	8	4	11	3	1	9	7	49	453	11%

⁷⁹See footnote 74.

Of the twenty-eight (28) CI complaints received in this district, 65 allegations were produced which contributed 13% to the total CI allegations received during 1996. The previous table displays allegations associated with this district. Rude Conduct accounted for 18% of the CI allegations, Improper Procedure accounted for 25%, and Unnecessary Force and Unlawful Search each comprised 17%. District Five produced the second highest number of CI allegations in all the districts.

Department-Initiated Allegations - District Five

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 5 DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	0	0	0	1	0	0	0	3	0	0	4	105	4%
Jan. - Dec. 1995	0	0	3	5	0	0	0	1	0	0	9	116	8%

Four DI complaints generated three Unofficerlike Conduct allegations and one Improper Procedure for District Five, as shown in the above table. This contributed four percent (4%) to the total DI allegations received during 1996. Compared to 1995, a decrease of 56% occurred in the DI allegations for this district in this reporting period. Failure to Take Action and Improper Procedure allegations decreased while Unofficerlike Conduct allegations increased for this district.

Citizen- and Department-Initiated Allegations - District Five

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 5 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	1	0	0	17	6	12	8	3	11	11	69	597	12%
Jan. - Dec. 1995	1	2	6	13	4	11	3	2	9	7	58	569	10%

District Five generated 69 CI and DI allegations between January 1 and December 31, 1996 as compared to 58 allegations filed in 1995, which is a 19% increase of CI and DI allegations. Three more Unnecessary Force allegations were filed during this reporting period as compared with the same time period of 1995. There was an increase in Improper Procedure, Missing/Damaged Property, Rude Conduct, Unlawful Arrest, Unofficerlike Conduct, and Unlawful Search allegations filed during this reporting period.

F. DISTRICT 6: FRANK FISCALINI

Cases Filed - District Six

Period Received	CI	DI	IN	PO	PR	Dist. 6 Cases	Total Cases	%
Jan. - Dec. 1996	26	6	11	2	13	58	545	11%
Jan. - Dec. 1995	15	5	10	1	10	41	456	9%

From January 1 to December 31, 1996, District Six produced 58 complaints, which comprised 11% of the complaints distribution. Citizen-Initiated complaints accounted for 45% of the total cases received in District Six. The table above displays the number of cases received in this district. Compared to

1995, this district received an increase of 41% in complaints during this reporting period. There was an increase in all complaint classifications for this reporting period.

Time of Incident - District Six

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 6 Cases
Jan. - Dec. 1996	18	10	18	2	58
Jan. - Dec. 1995	14	14	13	0	41

The table above displays the time of incident that led to a complaint in District Six.⁸⁰ The graveyard shift hours and swing shift hours each accounted for 31% of the complaints from this District. The daytime hours comprised 17% of the complaint incidents.

Citizen-Initiated Allegations - District Six

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 6 CI Alleg.	Total CI Alleg.	%
Jan. - Dec. 1996	1	0	2	11	3	7	1	0	12	4	41	492	8%
Jan. - Dec. 1995	0	0	1	9	2	6	3	1	11	5	38	453	8%

The breakdown of the number of CI allegations from District Six are provided in the preceding table. There were 41 CI allegations derived from 26 CI complaints; these allegations contributed eight percent (8%) of all CI allegations received during 1996. The most common allegation for District Six was Unnecessary Force, which accounted for 29% of the 41 CI allegations. The Improper Procedure allegation followed closely, comprising 27% of the CI allegations.

Department-Initiated Allegations - District Six

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 6 DI Alleg.	Total DI Alleg.	%
Jan. - Dec. 1996	0	0	0	4	1	0	0	4	0	0	9	105	9%
Jan. - Dec. 1995	0	0	0	2	2	0	0	1	0	0	5	116	4%

The nine DI allegations accounted for nine percent (9%) of the total DI allegations received in this reporting period. The table above lists the DI allegations for District Six. Improper Procedure and Unofficerlike Conduct each contributed 45% of the nine (9) DI allegations.

Citizen- and Department-Initiated Allegations - District Six

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 6 CI & DI Alleg.	Total CI & DI Alleg.	%
Jan. - Dec. 1996	1	0	2	15	4	7	1	4	12	4	50	597	8%
Jan. - Dec. 1995	0	0	1	11	4	6	3	2	11	5	43	569	8%

⁸⁰See footnote 74.

District Six produced 50 CI and DI allegations between January 1 and December 31, 1996; this is a 16% increase in allegations in comparison to the allegations filed in the year of 1995. One additional Unnecessary Force allegation from this district was filed during this reporting period compared to 1995. Also, there were more Discrimination/Harassment, Failure to Take Action, Improper Procedure, Rude Conduct, and Unofficerlike Conduct allegations filed during this reporting period.

G. DISTRICT 7: GEORGE SHIRAKAWA, JR.

Cases Filed - District Seven

Period Received	CI	DI	IN	PO	PR	Dist. 7 Cases	Total Cases	%
Jan. - Dec. 1996	18	0	5	2	7	32	545	6%
Jan. - Dec. 1995	19	5	7	0	9	40	456	9%

District Seven generated 32 complaints during this reporting period which comprised six percent (6%) of the 545 total complaints received between January 1 and December 31, 1996. The CI complaints accounted for 56% of the complaints received for this district. The preceding table lists the type of complaints received in District Seven. Compared to 1995, this district received 20% fewer complaints in this reporting period. Specifically, there were fewer CI, DI, IN and PR complaints received in 1996.

Time of Incident - District Seven

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 7 Cases
Jan. - Dec. 1996	6	7	18	1	32
Jan. - Dec. 1995	10	11	17	2	40

The table above outlines the time of incident for the complaints received in District Seven.⁸¹ Most complaints (56%) from this district arose from swing shift incidents which occurred between 4:01 p.m. and 12 midnight. The daytime hours comprised 22% of the complaint incidents while the graveyard hours comprised 18% of the complaint incidents.

Citizen-Initiated Allegations - District Seven

Period Received	DH	ES	FA	IP	MDF	RC	UA	UC	UF	US	Dist. 7 CI Alleg.	Total CI Alleg.	%
Jan. - Dec. 1996	0	0	4	10	1	13	1	6	6	5	46	492	9%
Jan. - Dec. 1995	0	0	1	5	3	5	3	1	23	3	44	453	10%

In the preceding table, the statistics detailing the composition of the CI allegations from District Seven are provided. The 46 CI allegations from District Seven comprised nine percent (9%) of the total CI

⁸¹See footnote 74.

allegations received during this reporting period. Most CI allegations received from District Seven were Rude Conduct, which accounted for 28% of the allegations.

Department-Initiated Allegations - District Seven

Period Received	DH	ES	FA	IP	MDF	RC	UA	UC	UF	US	Dist. 7 DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	0	0	0	0	0	0	0	0	0	0	0	105	0%
Jan. - Dec. 1995	0	0	2	2	1	0	0	2	0	0	7	116	6%

No DI complaints were filed in this district, therefore no DI allegations arose. Thus, compared to 1995, the DI allegations decreased 100% for District Seven in this reporting period.

Citizen- and Department-Initiated Allegations - District Seven

Period Received	DH	ES	FA	IP	MDF	RC	UA	UC	UF	US	Dist. 7 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	0	0	4	10	1	13	1	6	6	5	46	597	8%
Jan. - Dec. 1995	0	0	3	7	4	5	3	3	23	3	51	569	9%

District Seven generated 46 CI and DI allegations between January 1 and December 31, 1996 as compared to 51 allegations filed in 1995, which is a nine percent (9%) decrease of CI and DI allegations. Seventeen fewer Unnecessary Force allegations were filed during this reporting period as compared to the same time period in 1995.

H. DISTRICT 8: ALICE WOODY

Cases Filed - District Eight

Period Received	CI	DI	IN	PO	PR	Dist. 8 Cases	Total Cases	%
Jan. - Dec. 1996	16	3	11	2	4	36	545	7%
Jan. - Dec. 1995	17	1	10	1	9	38	456	8%

Thirty-six (36) complaints were received from District Eight between January and December 1996, as listed in the table above. These 36 complaints accounted for seven percent (7%) of the total complaints received in 1996. Most complaints received from this district were CI and IN, which accounted for 45% and 31%, respectively, of the complaints for this reporting period. Compared to 1995, this district experienced a five percent (5%) decrease in complaints. During this reporting period, there were more DI, IN, and PO complaints, and less CI and PR complaints received in District Eight.

Time of Incident - District Eight

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 8 Cases
Jan. - Dec. 1996	5	12	18	1	36
Jan. - Dec. 1995	8	14	16	0	38

The swing shift, from 4:01 p.m. to 12 midnight, contributed 50% of the complaint incident times received in District Eight.⁸² The daytime hours, from 8:01 a.m. to 4:00 p.m., accounted for 33% of the complaint incidents. The graveyard hours, from 12:01 a.m. to 8:00 a.m., comprised 14% of the complaint incidents, as the previous table displays.

Citizen-Initiated Allegations - District Eight

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 8 CI Allegs.	Total CI Allegs.	%
Jan. - Dec. 1996	0	0	1	10	0	9	1	1	6	1	29	492	6%
Jan. - Dec. 1995	3	0	2	5	1	10	6	0	16	5	48	453	11%

The figures presented in the above table, indicate that twenty-nine (29) CI allegations were derived from 16 CI complaints filed in District Eight. The 29 allegations were six percent (6%) of the total CI allegations received during the year of 1996. Most of the CI allegations were Improper Procedure, which accounted for 34% of this district's allegations. Rude Conduct allegations comprised 31% of the allegations from District Eight.

Department-Initiated Allegations - District Eight

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 8 DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	0	0	1	3	0	0	0	0	1	0	5	105	5%
Jan. - Dec. 1995	0	0	0	0	0	0	0	1	0	0	1	116	1%

District Eight had three DI cases which generated five Department-Initiated allegations in this reporting period. The DI allegations were three Improper Procedures, a Failure to Take Action, and an Unnecessary Force, which together comprised of five percent (5%) of the total DI allegations for this district.

Citizen- and Department-Initiated Allegations - District Eight

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 8 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	0	0	2	13	0	9	1	1	7	1	34	597	6%
Jan. - Dec. 1995	3	0	2	5	1	10	6	1	16	5	49	569	9%

District Eight produced 34 CI and DI allegations between January 1 and December 31, 1996 as compared to 49 allegations filed during the year of 1995. Nine (9) fewer Unnecessary Force allegations were received, which is a 56% decrease of CI and DI allegations filed during this reporting period compared to 1995. Also, fewer Discrimination/Harassment, Missing/Damaged Property, Rude Conduct, Unlawful Arrest, and Unlawful Search allegations were filed during 1996.

⁸²See footnote 74.

I. DISTRICT 9: JOHN DIQUISTO**Cases Filed - District Nine**

Period Received	CI	DI	IN	PO	PR	Dist. 9 Cases	Total Cases	%
Jan. - Dec. 1996	13	2	3	0	9	27	545	5%
Jan. - Dec. 1995	9	3	8	0	8	28	456	6%

District Nine had 27 complaints during the period of January 1 to December 31, 1996 which comprised five percent (5%) of the total complaints. As shown above, most of the complaints were CI (48%), followed by 33% Procedural complaints. Compared to 1995, there was one less complaint filed in this district, which is a four percent (4%) decrease of complaints. Specifically, there were more CI and PR complaints, and fewer DI and IN complaints received during this reporting period for this district.

Time of Incident - District Nine

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 9 Cases
Jan. - Dec. 1996	3	7	16	1	27
Jan. - Dec. 1995	7	9	10	2	28

Most of the complaints (59%) arose from incidents occurring during the swing shift hours, from 4:01 p.m. to 12:00 midnight, as indicated in the above table.⁸³ The day shift accounted for 26% of the complaint incidents. The graveyard shift accounted for 11% of the complaint incidents.

Citizen-Initiated Allegations - District Nine

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 9 CI Allegs.	Total CI Allegs.	%
Jan. - Dec. 1996	0	0	1	9	1	7	1	0	7	3	29	492	6%
Jan. - Dec. 1995	0	0	0	6	1	6	3	4	3	2	25	453	6%

From the 13 CI complaints received from District Nine, 29 CI allegations were generated. The 29 CI allegations comprised six percent (6%) of the total CI allegations received in this reporting period. The above table indicates the composition of District Nine allegations. The most common allegation for this district was Improper Procedure, which accounted for 31% of the CI allegations. Rude Conduct and Unnecessary Force allegations each accounted for 24% of the CI allegations in this district.

Department-Initiated Allegations - District Nine

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 9 DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	0	0	0	0	1	0	0	1	0	0	2	105	2%
Jan. - Dec. 1995	0	0	0	0	0	0	0	8	0	0	8	116	7%

⁸³See footnote 74.

The two Department-Initiated allegations from District Nine contributed 2% of the total DI allegations received in this reporting period. The two allegations were Unofficerlike Conduct and Missing/Damaged Property.

Citizen- and Department-Initiated Allegations - District Nine

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 9 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	0	0	1	9	2	7	1	1	7	3	31	597	5%
Jan. - Dec. 1995	0	0	0	6	1	6	3	12	3	2	33	569	6%

District Nine generated 31 CI and DI allegations between January and December 1996 as compared to 33 allegations received in the year of 1995, which is a six percent (6%) decrease of CI and DI allegations. There were four more Unnecessary Force allegations filed in this reporting period.

J. DISTRICT 10: PAT DANDO

Cases Filed - District Ten

Period Received	CI	DI	IN	PO	PR	Dist. 10 Cases	Total Cases	%
Jan. - Dec. 1996	20	3	9	1	3	36	545	7%
Jan. - Dec. 1995	11	2	6	1	6	26	456	6%

District Ten received 36 complaints in 1996, as displayed on the above table, accounting for 7% all complaints. The CI complaints comprised 56% of the complaints received in this district. Compared to 1995, there were nine more complaints received, which is an 82% increase in complaints during this reporting period. In this district, there were more CI, DI, IN, and PR complaints and the same number of PO complaints filed during the year of 1996.

Time of Incident - District Ten

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 10 Cases
Jan. - Dec. 1996	7	11	17	1	36
Jan. - Dec. 1995	12	2	11	1	26

The above statistics tabulate the time of the incident for District Ten complaints.⁸⁴ Approximately 47% of the incidents from this District occurred during the swing shift hours, from 4:01 p.m. to 12:00 midnight. The day shift, from 8:01 a.m. to 4:00 p.m., comprised 31% of the complaint incidents. The graveyard shift, from 12:01 a.m. to 8:00 a.m., accounted for 19% of the complaint incidents.

⁸⁴See footnote 74.

Citizen-Initiated Allegations - District Ten

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 10 CI Allegs.	Total CI Allegs.	%
Jan. - Dec. 1996	4	0	0	7	8	5	2	2	11	5	44	492	9%
Jan. - Dec. 1995	0	0	0	6	8	8	2	0	8	6	38	453	8%

The table above presents the corresponding figures of CI allegations for District Ten. Forty-four (44) CI allegations were generated from the 20 CI complaints received. The CI allegations from this district were nine percent (9%) of the total CI allegations received during 1996. Unnecessary Force was the most frequent allegation accounting for 25% of the CI allegations from District Ten.

Department-Initiated Allegations - District Ten

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 10 DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	0	0	0	0	1	0	0	2	0	0	3	105	3%
Jan. - Dec. 1995	0	0	0	0	1	0	0	1	0	0	2	116	2%

Three DI allegations were generated from the three (3) DI complaints in District Ten. These three (3) allegations comprised three percent (3%) of all the DI allegations received in this reporting period. Two allegations were Unofficerlike Conduct and one allegation was Missing/Damaged Property.

Citizen- and Department-Initiated Allegations - District Ten

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Dist. 10 CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	4	0	0	7	9	5	2	4	11	5	47	597	8%
Jan. - Dec. 1995	0	0	0	6	9	8	2	1	8	6	40	569	7%

District Ten generated 47 CI and DI allegations between January 1 and December 31, 1996 as compared to 40 allegations filed in 1995, which is an 18% increase in CI and DI allegations. Three more Unnecessary Force allegations were filed during this reporting period. Also, more Discrimination/Harassment, Improper Procedure, and Unofficerlike Conduct allegations were filed during 1996 as compared to 1995.

K. UNKNOWN/OUTSIDE CITY LIMIT (UNK/OCL)**Cases Filed - Unknown/Outside City Limit**

Period Received	CI	DI	IN	PO	PR	Unk/OCL Cases	Total Cases	%
Jan. - Dec. 1996	4	8	0	0	2	14	545	3%
Jan. - Dec. 1995	2	9	1	1	0	13	456	3%

The abbreviation used for the Unknown/Outside City Limit category was Unk/OCL, which was used when the location of the incident was not specified or the incident occurred outside of San José. This category generated 14 complaints which accounted for three percent (3%) of the total complaints

received during 1996. The DI complaints generated the majority of the cases (57%) from this section. Compared to 1995, one additional complaint was filed from this category. Specifically, there were more CI and PR complaints and fewer DI, IN, and PO complaints received during this reporting period.

Time of Incident - Unknown/Outside City Limit

Period Received	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Unk/OCL Cases
Jan. - Dec. 1996	3	5	3	3	14
Jan. - Dec. 1995	2	4	1	6	13

Thirty-six percent (36%) of the incidents occurred during the day shift hours.⁸⁵ The above statistics list the time of the complaint incident. The swing shift hours and graveyard hours each accounted for 21% of the complaints in the UNK/OCL category.

Citizen-Initiated Allegations - Unknown/Outside City Limit

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Unk/OCL CI Allegs.	Total CI Allegs.	%
Jan. - Dec. 1996	0	0	0	1	0	0	0	3	0	0	4	492	1%
Jan. - Dec. 1995	0	0	0	0	2	0	0	0	4	0	6	453	1%

The four (4) CI complaints in this category generated four CI allegations. These allegations contributed only one percent (1%) of the total CI allegations received in this reporting period. The UNK/OCL category received the least number of CI complaints and CI allegations during 1996.

Department-Initiated Allegations - Unknown/Outside City Limit

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Unk/OCL DI Allegs.	Total DI Allegs.	%
Jan. - Dec. 1996	0	0	0	1	0	0	0	7	0	0	8	105	8%
Jan. - Dec. 1995	0	0	0	2	0	2	1	8	2	0	15	116	13%

There were eight (8) DI allegations derived from the eight (8) DI cases from this section. The allegations comprised eight percent (8%) of the total DI allegations received in this reporting period. The DI allegations were all in the Unofficerlike Conduct category, which accounted for 88% of this section.

Citizen- and Department-Initiated Allegations - Unknown/Outside City Limit

Period Received	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Unk/OCL CI & DI Allegs.	Total CI & DI Allegs.	%
Jan. - Dec. 1996	0	0	0	2	0	0	0	10	0	0	12	597	2%
Jan. - Dec. 1995	0	0	0	2	2	2	1	8	6	0	21	569	4%

⁸⁵See footnote 74.

This UNK/OCL section generated 12 CI and DI allegations between January 1 and December 31, 1996 as compared to 21 allegations filed in 1995, which accounted for 43% decrease of CI and DI allegations. There were six (6) Unnecessary Force allegations filed in 1995, which is an 100% decrease in UF allegations for 1996. Also, fewer Missing/Damaged Property, Rude Conduct, Unlawful Arrest, and Unnecessary Force allegations were filed in this section compared to 1995.

XIII. CONCLUSION

GOALS MET IN 1996

There were three major goals set for the 1996 calendar year by the IPA. The first was to prioritize Unnecessary Force cases so that the investigations are completed sooner. In order to accomplish this, it was necessary to separate the serious, Class I, from the less serious, Class II, use of force complaints. The PSCU and the IPA established new timelines. Commencing January 1997, Class I use of force cases will be investigated within 180 days and all other complaints within 365 days. The Chief of Police has assigned additional personnel to the PSCU in an effort to achieve the stated goals.

The second goal was to automate the transfer of information from the PSCU to the IPA. A consultant was hired to create a system to consolidate the documents generated in a complaint investigation and automate the dissemination of information between the PSCU and the IPA. Through the use of fiber optics, both offices will be networked and accessing information will be immediate. An NT system housed at the PSCU will be used as the server to allow the connection with the IPA. This NT server will provide the networking capabilities required and also ensure that the security and confidentiality of the system will not be compromised.

The third goal set was the creation of a semiannual IPA newsletter which has been accomplished and is currently provided to over 260 community organizations. The newsletter is a synopsis of the contents of the IPA public reports. This means of communication facilitates a wider more economical way of informing the public. In addition, starting with the 1996 Year End report, all IPA reports will be accessible through the Internet as soon as they become public.

GOALS FOR 1997

As a result of the change in the City Charter, one of the short term goals for 1997 will be to transition the IPA personnel into employees of the City of San José. There are no known changes in the method of operation of the Office of the Independent Police Auditor (IPA) that will be affected by the charter change. It is anticipated that the IPA will benefit from the established infrastructure of the City of San José by becoming a permanent San José City department.

With the advent of the computer linkage which will be in place for the PSCU and the IPA, another goal for this year is to revise, create and analyze some of the current forms, policies and procedures which the new database system will make obsolete. In addition, a review and audit regarding the implementation of the prior recommendations⁸⁶ will be made.

The 1997 year will be the benchmark for the establishment of the IPA as a permanent city department, for the incorporation of modern technology and for improving the overall processes of the IPA which will assist in fulfilling its mission of auditing the citizen complaint process.

⁸⁶See Appendix N (Independent Police Auditor's Recommendations).

TABLE OF APPENDICES

APPENDIX A	City of San José Charter Amendment
APPENDIX B	Election Results of Measure E by Council District
APPENDIX C	Boland Admonishment
APPENDIX D	Classification of Complaints
APPENDIX E	Definition of Findings
APPENDIX F	All Complaints Received in 1996
APPENDIX G	Three Year Comparison of all Case Classifications
APPENDIX H	Misconduct Allegations
APPENDIX I	Citizen- and Department-Initiated Sustained Cases
APPENDIX J	The Office of the Independent Police Auditor Voluntary Questionnaire
APPENDIX K	Classification of Complaints by Council District
APPENDIX L	Citizen- and Department-Initiated Allegations by Council District
APPENDIX M	Time of Incident by Council District
APPENDIX N	Independent Police Auditor's Recommendations

APPENDIX A

City of San José Charter Amendment

SECTION 809. Office of the Independent Police Auditor

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The Office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the Office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The Independent Police Auditor shall have the following powers and duties:

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

Added at election November 5, 1996

APPENDIX A

City of San José Charter Amendment

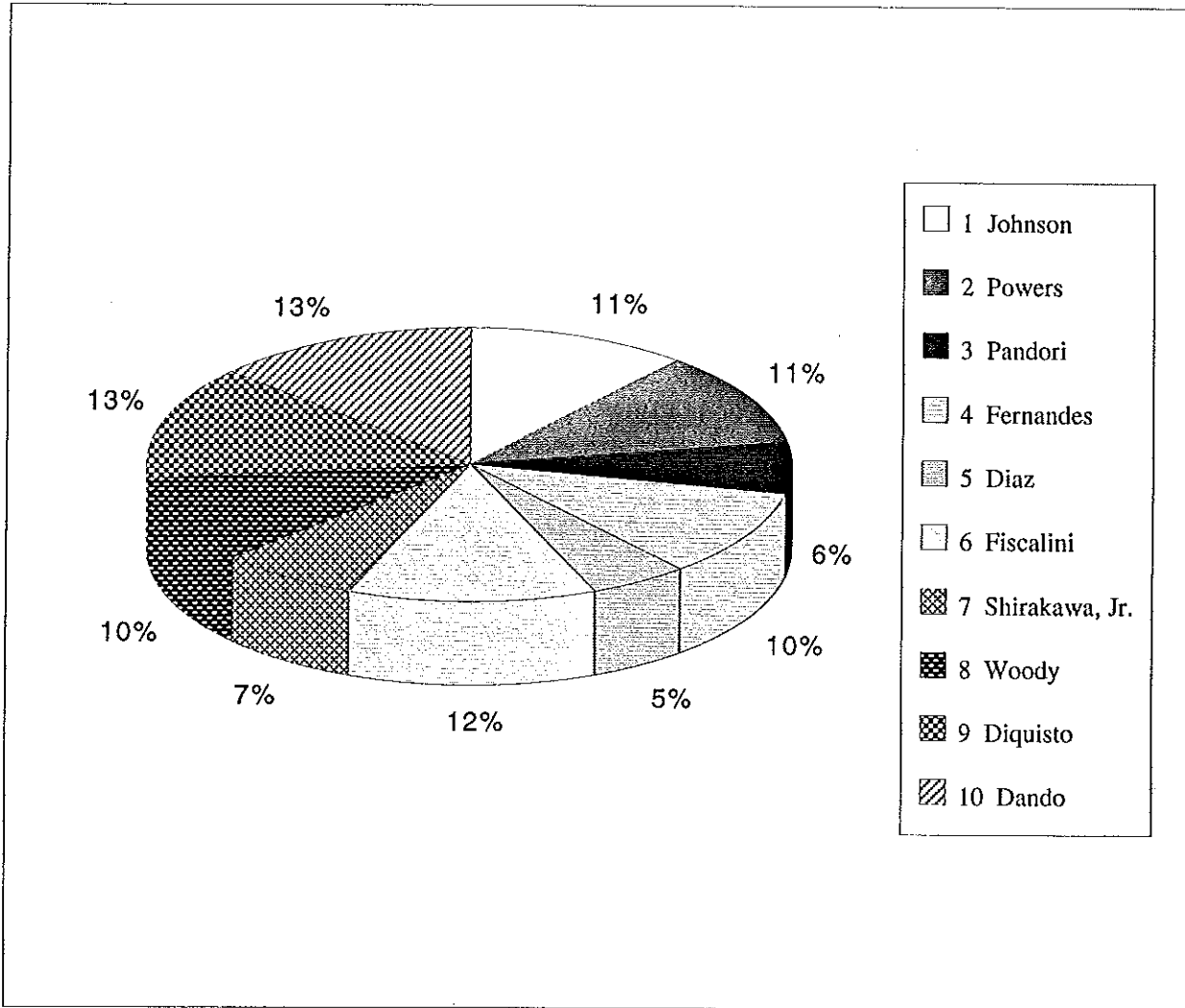
SECTION 809.1. Independent Police Auditor; Power Of Appointment.

- (a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996

APPENDIX B
Election Results of Measure E by Council District

Source: San José City Clerk's Office



Districts	Yes	No	Total Votes	%
1 Johnson	11,342	6,754	18,096	11%
2 Powers	11,156	6,978	18,134	11%
3 Pandori	6,655	2,817	9,472	6%
4 Fernandes	10,722	5,821	16,543	10%
5 Diaz	6,047	2,597	8,644	5%
6 Fiscalini	12,107	7,020	19,127	12%
7 Shirakawa, Jr.	7,134	3,253	10,387	7%
8 Woody	10,825	5,708	16,533	10%
9 Diquisto	12,792	8,572	21,364	13%
10 Dando	12,743	8,607	21,350	13%
Total	101,523	58,127	159,650	100%
% of Votes	64%	36%		

* Percentages are rounded off to the nearest whole number.

APPENDIX D

Classification of Complaints

1. **Citizen-Initiated (CI) Complaints** initiated by a civilian alleging misconduct on the part of a member of the San José Police Department; these Formal complaints allege a serious violation of Department policy or a violation of law by an officer.
2. **Department-Initiated (DI) Complaints** allege a serious violation of Department policy or a violation of law by an officer; these Formal complaints are initiated by the Office of the Chief.
3. **Informal (IN) Complaints** involve allegations of minor transgressions on the part of a subject officer¹ which may be handled informally by bringing the matter to the attention of the officer's chain of command at the complainant's request.² This is typically the Rude Conduct complaint. However, if the complainant feels that such conduct was in his or her opinion egregious that a Formal (CI or DI) 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.
4. **Procedural (PR) Complaints** are defined in two separate portions:
 - (a) 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 and 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."
 - (b) The second portion of the definition includes: "The allegation is a 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 complainant." 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 or her home and conducted 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."
5. **Policy (PO) Complaints** pertain to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid. These complaints do not focus on the conduct of the officer but on the policy or law with which the complainant disagrees.

¹ Subject officer refers to the officer of whom the complaint is about.

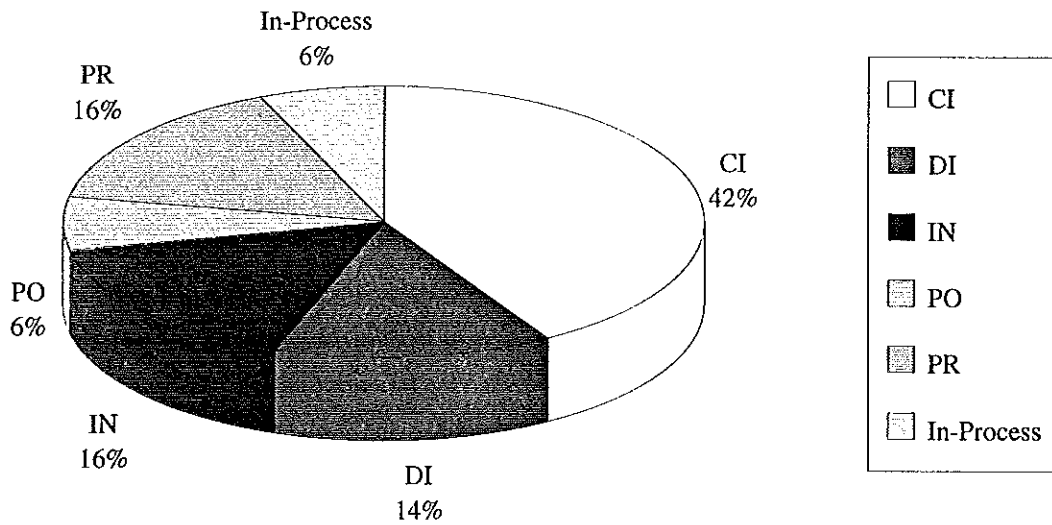
² San José Police Department, *Internal Affairs Unit Guideline*, page 3.

APPENDIX E

Definition 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.

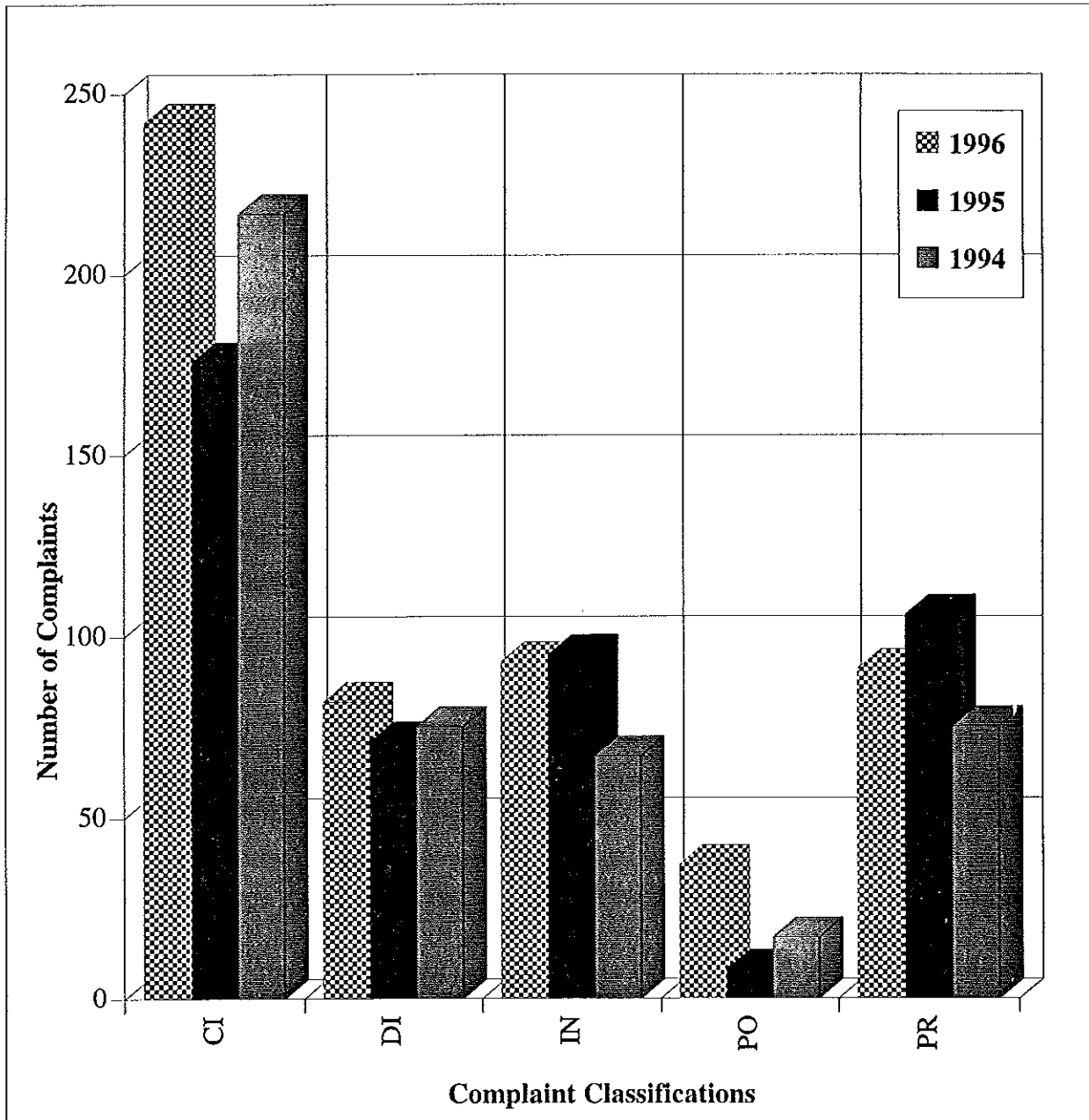
APPENDIX F
All Complaints Received
 January 1 - December 31, 1996



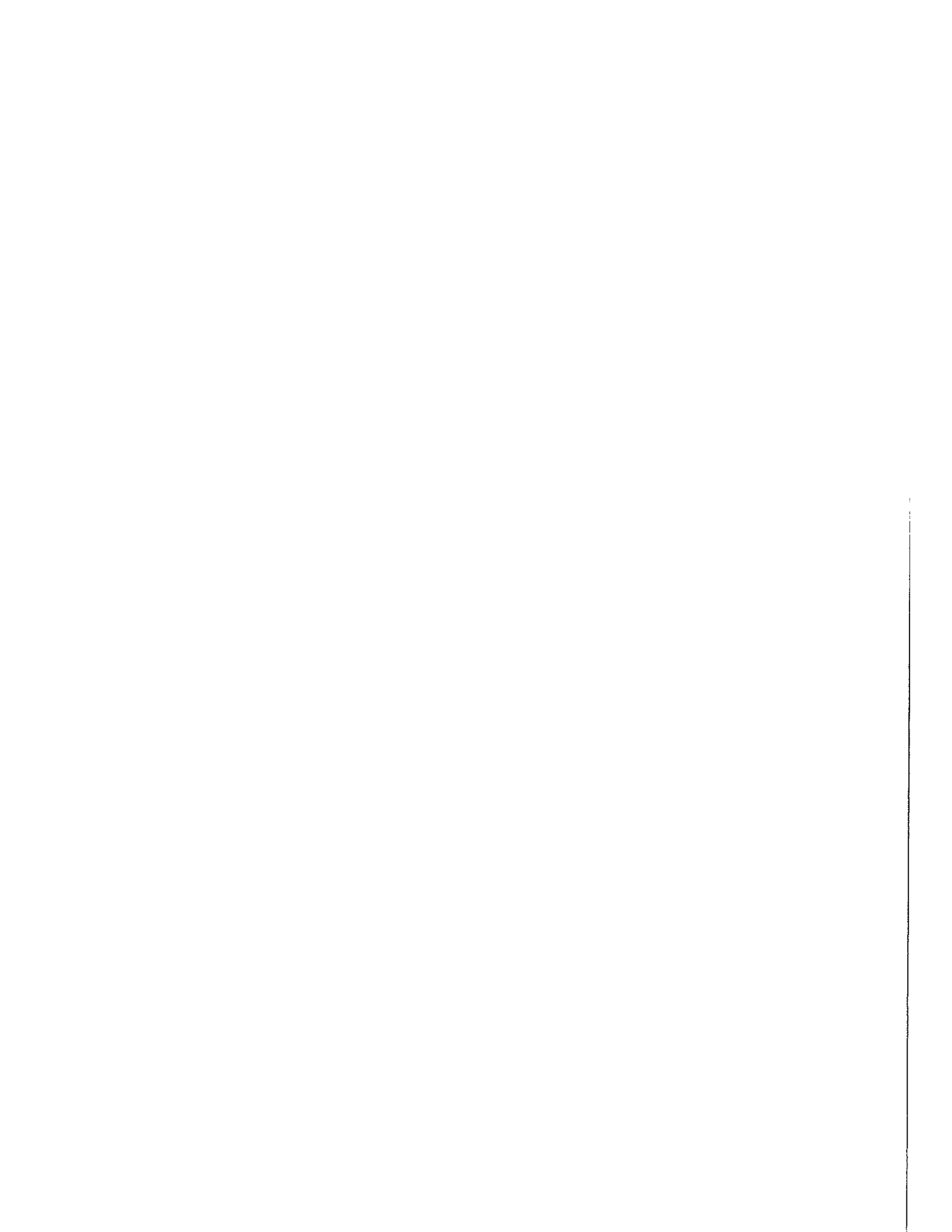
* Percentages are rounded off to the nearest whole number.

Complaint Classifications	Period Received Jan. - Dec. 1996
Citizen-Initiated (CI)	242
Department-Initiated (DI)	82
Informal (IN)	93
Policy (PO)	37
Procedural (PR)	91
In-Process	36
Total	581

APPENDIX G
**Three Year Comparison of all Case Classifications
 1994-1996**



Complaint Classifications	Jan. - Dec. 1996	Jan. - Dec. 1995	Jan. - Dec. 1994
Citizen-Initiated (CI)	242	176	217
Department-Initiated (DI)	82	71	75
Informal (IN)	93	95	67
Policy (PO)	37	8	17
Procedural (PR)	91	106	75
Total	545	456	451



APPENDIX H

Misconduct Allegations

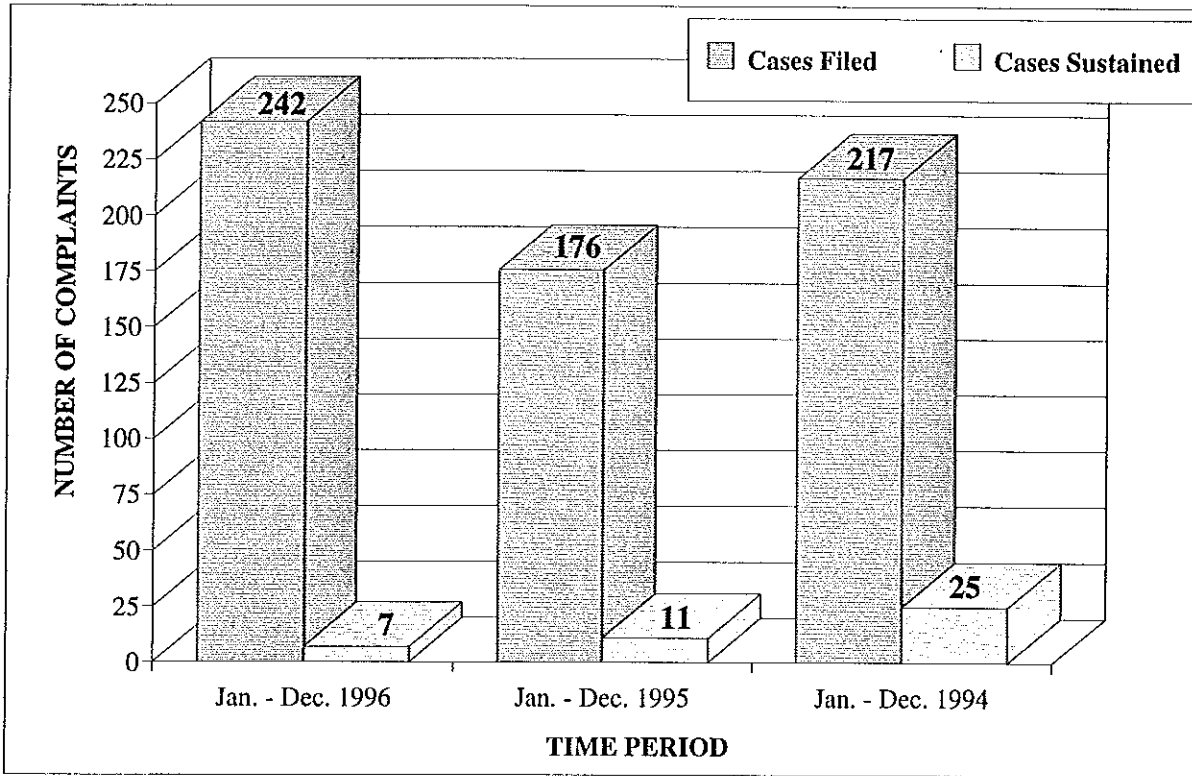
Citizen- or Department-Initiated misconduct complaints will involve one or more of the following general allegations:

1. Unlawful Arrest
2. Unlawful Search
3. Unnecessary Force
4. Rude Conduct (abusive, threatening, profanity, poor attitude, etc., while on duty.)
5. Discrimination/Harassment (sexual, racial, etc.)
6. Excessive Police Service (harassment, providing confidential information, etc.)
7. Improper Procedure (violation of San José City policy or SJPD Duty Manual.)
8. Delay In 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

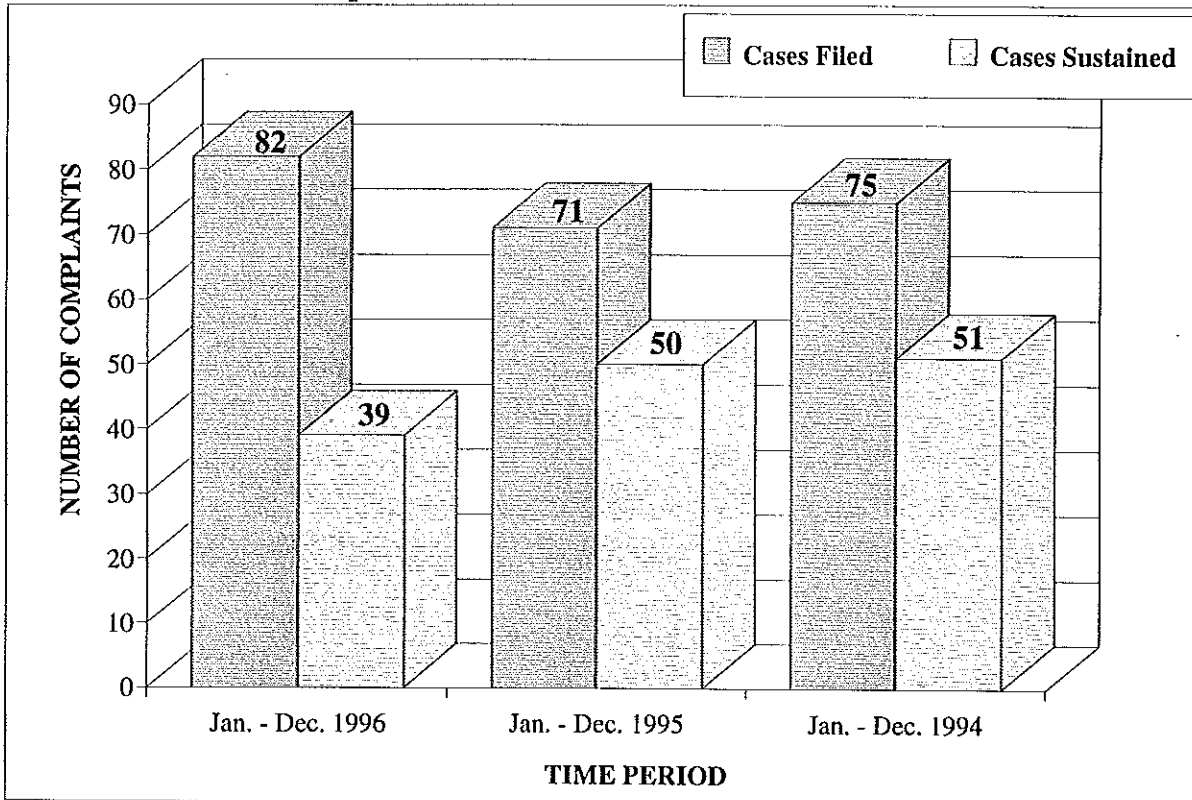


APPENDIX I

Citizen-Initiated Sustained Cases



Department-Initiated Sustained Cases



Office of the Independent Police Auditor

City of San José

This Voluntary Questionnaire has been provided by the Office of the Independent Police Auditor. This information will have no effect on the investigation or outcome of your complaint and will not become part of your complaint file. This information will only be used by the Auditor to monitor trends in an effort to better serve you and our community. This form is designed to keep your identity and the requested information confidential. The completed form will be sent to the Office of the Independent Police Auditor. Please take a few minutes to fill it out now.

STATISTICAL VOLUNTARY QUESTIONNAIRE

1. How were you referred to this office? (please choose one)
 City Official () Friend/Relative () Media () Organization () Police () Self ()
 Other (Specify) _____ Decline ()

2. What is your current or most recent occupation? _____ Decline ()

3. What is the highest level of education you completed? (please choose one)
 High school (9th) (10th) (11th) (12th)
 College (1) (2) (3) (4+) Graduate Degree () Decline ()

4. What is the ethnic background with which you primarily identify? (please choose one)
 African American/Black () Asian () European American/White () Filipino ()
 Hispanic/Latino () Native American () Vietnamese ()
 Other (Specify) _____ Decline ()

5. What is your primary spoken language? (please choose one)
 English () Spanish () Vietnamese () Other (specify) _____ Decline ()

6. What is your gender? (please choose one)
 Male () Female () Decline ()

7. What is your age range? (please choose one)
 Under 18 () 18 - 30 () 31 - 59 () 60+ () Decline ()

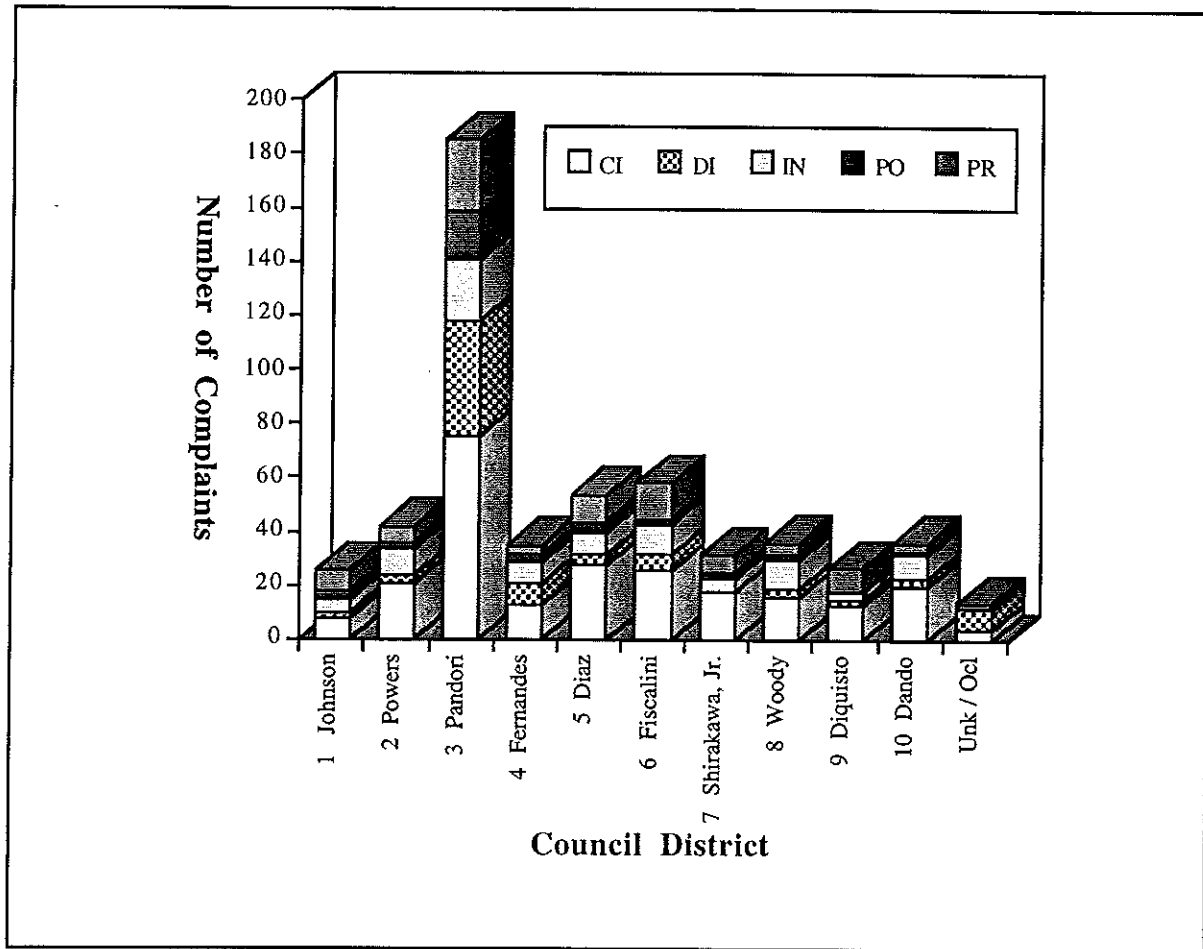
Thank you for completing this questionnaire. Please hand this form to the interviewer. This information will be kept strictly **CONFIDENTIAL** and will be used for **STATISTICAL** purposes only.

 For Office Use Only

DATE: _____ INTERVIEWER: _____

Intake: Office of the Independent Police Auditor () Professional Standards & Conduct Unit ()

APPENDIX K
Classification of Complaints by Council District



Districts	Type of Complaints					Total Complaints	%
	CI	DI	IN	PO	PR		
1 Johnson	8	2	5	3	8	26	5%
2 Powers	21	3	10	2	6	42	8%
3 Pandori	75	43	23	18	26	185	34%
4 Fernandes	13	8	8	3	3	35	6%
5 Diaz	28	4	8	4	10	54	10%
6 Fiscalini	26	6	11	2	13	58	11%
7 Shirakawa, Jr.	18	0	5	2	7	32	6%
8 Woody	16	3	11	2	4	36	7%
9 Diquisto	13	2	3	0	9	27	5%
10 Dando	20	3	9	1	3	36	7%
Unk / Ocl ¹	4	8	0	0	2	14	3%
TOTAL CASES	242	82	93	37	91	545	100% ²
%	44%	15%	17%	7%	17%	100%	

¹Unknown/Outside City Limit

²The data was rounded off to the nearest percentage.

APPENDIX L
Citizen- and Department-Initiated Allegations Received

January 1 - December 31, 1996

Districts	Type of Allegations										TOTAL ALLEGS.	%
	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US		
1 JOHNSON	0	0	0	4	4	5	0	0	2	4	19	3%
2 POWERS	2	0	1	11	4	5	1	2	9	1	36	6%
3 PANDORI	7	0	6	61	14	39	16	14	39	10	206	35%
4 FERNANDES	1	0	3	11	1	9	2	6	14	0	47	8%
5 DIAZ	1	0	0	17	6	12	8	3	11	11	69	12%
6 FISCALINI	1	0	2	15	4	7	1	4	12	4	50	8%
7 SHIRAKAWA, JR.	0	0	4	10	1	13	1	6	6	5	46	8%
8 WOODY	0	0	2	13	0	9	1	1	7	1	34	6%
9 DIQUISTO	0	0	1	9	2	7	1	1	7	3	31	5%
10 DANDO	4	0	0	7	9	5	2	4	11	5	47	8%
Unk/OCL ¹	0	0	0	2	0	0	0	10	0	0	12	2%
TOTAL ALLEGS.	16	0	19	160	45	111	33	51	118	44	597	100%²
%	3%	0%	3%	27%	8%	19%	6%	9%	20%	7%		

January 1 - December 31, 1995

Districts	Type of Allegations										TOTAL ALLEGS.	%
	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US		
1 JOHNSON	0	1	0	6	3	6	2	3	8	1	30	5%
2 POWERS	2	0	3	12	2	8	4	1	12	6	50	9%
3 PANDORI	10	0	8	41	11	22	9	28	40	7	176	31%
4 FERNANDES	0	0	1	5	2	2	1	0	6	1	18	3%
5 DIAZ	1	2	6	13	4	11	3	2	9	7	58	10%
6 FISCALINI	0	0	1	11	4	6	3	2	11	5	43	8%
7 SHIRAKAWA, JR.	0	0	3	7	4	5	3	3	23	3	51	9%
8 WOODY	3	0	2	5	1	10	6	1	16	5	49	9%
9 DIQUISTO	0	0	0	6	1	6	3	12	3	2	33	6%
10 DANDO	0	0	0	6	9	8	2	1	8	6	40	7%
Unk/OCL ³	0	0	0	2	2	2	1	8	6	0	21	4%
TOTAL ALLEGS.	16	3	24	114	43	86	37	61	142	43	569	100%⁴
%	3%	1%	4%	20%	8%	15%	7%	11%	25%	8%	100%	

Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

¹Unknown/Outside City Limit.

²The data was rounded off to the nearest percentage.

³Unknown/Outside City Limit.

⁴The data was rounded off to the nearest percentage.

APPENDIX M
Time of Incident by Council District

January 1 - December 31, 1996

Districts	Graveyard	Day	Swing	Various Times	Total Cases	%
	12:01 a.m. ... 8:00 a.m.	8:01 a.m. ... 4:00 p.m.	4:01 p.m. 12:00 midnight			
1 Johnson	3	9	13	1	26	5%
2 Powers	8	9	24	1	42	8%
3 Pandori	49	55	49	32	185	34%
4 Fernandes	5	10	17	3	35	6%
5 Diaz	11	18	24	1	54	10%
6 Fiscalini	18	10	28	2	58	11%
7 Shirakawa, Jr.	6	7	18	1	32	6%
8 Woody	5	12	18	1	36	7%
9 Diquisto	3	7	16	1	27	5%
10 Dando	7	11	17	1	36	7%
Unk / Ocl ¹	3	5	3	3	14	3%
Total Cases	118	153	227	47	545	100%²
%	22%	28%	42%	9%	100%	

January 1 - December 31, 1995

Districts	Graveyard	Day	Swing	Various Times	Total Cases	%
	12:01 a.m. ... 8:00 a.m.	8:01 a.m. ... 4:00 p.m.	4:01 p.m. 12:00 midnight			
1 Johnson	7	7	16	1	31	7%
2 Powers	8	12	12	1	33	7%
3 Pandori	30	44	55	12	141	31%
4 Fernandes	4	7	11	2	24	5%
5 Diaz	10	15	15	1	41	9%
6 Fiscalini	14	14	13	0	41	9%
7 Shirakawa, Jr.	10	11	17	2	40	9%
8 Woody	8	14	16	0	38	8%
9 Diquisto	7	9	10	2	28	6%
10 Dando	12	2	11	1	26	6%
Unk / Ocl ³	2	4	1	6	13	3%
Total Cases	112	139	177	28	456	100%⁴
%	25%	30%	39%	6%	100%	

¹Unknown/Outside City Limit.

²The data was rounded off to the nearest percentage.

³Unknown/Outside City Limit.

⁴The data was rounded off to the nearest percentage.

APPENDIX N
Independent Police Auditor's Recommendations

ISSUES RAISED IN:	ISSUE:	DISPOSITION	RESOLUTION PERIOD:
1993 1st Quarter Report	Create a new system for the classification of complaints	Adopted	1st, 2nd Quarter Reports and 1994 Year End Report
	Standardize the definition of Procedural and Informal Complaints	Adopted	2nd Quarter Report and 1994 Year End Report
	Apply Intervention Counseling to all complaints	Adopted	2nd Quarter Report and 1994 Year End Report
	Establish procedures to address potential bias within the Internal Affairs Unit	Adopted	2nd Quarter Report and 1994 Year End Report
	Enact policy to ensure objectivity of the intake process	Adopted	2nd Quarter Report and 1994 Year End Report
1994 3rd Quarter Report	Establish and comply with a timetable regarding the length of time required for complaint classification and investigation	Adopted	1994 Year End Report
	Implement citizen "Onlooker Policy"	Adopted	1995 Midyear Report
	Standardize investigation writing format	Adopted	1994 Year End Report
	Provide report writing training for "Drunk in Public" cases	Adopted	1994 Year End Report
	Provide chemical testing for "Drunk in Public" cases	Not Adopted	1994 Year End Report
	Send minor complaints to BFO to expedite investigations	Adopted	1994 Year End Report
1994 Year End Report	Establish neutrality in the selection of Formal or Informal complaint process	Adopted	1994 Year End Report
	Interview complainants and witnesses within three months of complaint initiation	Adopted	1994 Year End Report
	Contact complainants at regular intervals through updates and closing letters	Adopted	1994 Year End Report
	Provide a sample of all SJPD Reports to the Police Auditor	Adopted	1994 Year End Report
	Use of mandatory consent forms for consent searches	Not Adopted	1995 Year End Report
	Enact policy for collecting physical evidence in use of force cases and immediate investigation by supervisor	Adopted	1995 Year End Report

APPENDIX N
Independent Police Auditor's Recommendations

ISSUES RAISED IN:	ISSUE:	DISPOSITION	ISSUES CONCLUDED IN:
1994 Year End Report	Write complainant's statement in addition to recording and provide copy to complainant	Adopted	1994 Year End Report
	Handle Informal Complaints through counseling by Field Supervisor and contact with complainant (where desired)	Adopted	1994 Year End Report
	Revise letters sent to complainants to include information about IPA's role	Adopted	1994 Year End Report
1995 Midyear Report	Maintain a central log of contacts from potential complainants	Adopted	1995 Year End Report
	Obtain additional office space for PSCU	Pending	
	Police Department should refer complainants to either PSCU or IPA	Adopted	1995 Year End Report
	Implement policy to standardize format for officer's interview	Adopted	1995 Year End Report
	Review Off-Duty Employment Practices	Pending	
1996 Midyear Report	Connect IPA to City of San José's internet network	Pending	
	Conduct intake investigation of complaints lacking a signed Boland Admonishment	Adopted	1996 Mid Year Report
	Retain name of officer where Boland Admonishment is not signed (but need not place in personnel file)	Pending	
	Complaint classification should more appropriately reflect the nature of complaint	Adopted	1996 Midyear Report
	Assist in the implementation and design of a new computer system	Adopted	1996 Midyear Report
1996 Year End Report	Investigate use of force cases where medical care is required within 120 days	Adopted	1996 Year End Report
	Implement process for responding to citizen's request for officer identification	Pending	

APPENDIX N
Independent Police Auditor's Recommendations

ISSUES RAISED IN:	ISSUE:	DISPOSITION	ISSUES CONCLUDED IN:
1996 Year End Report	Establish Class I and Class II of use of force categories	Adopted	1996 Year End Report
	Complete Class I Use of Force investigations within 180 days	Adopted	1996 Year End Report
	Complete all investigations of citizen complaints within 365 days	Adopted	1996 Year End Report
	Establish IPA's authority to audit relevant DI cases	Pending	

