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Office of the Independent Police Auditor



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Independent Police Auditor

EXECUTIVE SUMMARY

CHAPTER 1 INTRODUCTION

Contents of this report:

- New issue: Blood Samples Taken by Force.
- Updates on Prior Issues and Recommendations.
- Three one-year blocks of statistics comparatively analyzed from January through December for the years 1995 through 1997.
- A statistical background of subject officers and complainants.
- An analysis of complaints and allegations by San José City Council Districts.
- Audit analysis and examples.

CHAPTER 2 YEAR IN REVIEW

A. GENERAL STATISTICS

September 13, 1997, marked the fourth anniversary for the Office of the Independent Police Auditor. In 1997, there was a total of 443 complaints filed. Of those complaints, 133 were filed directly at the IPA by members of the public who either personally came to the IPA office, telephoned, faxed, wrote or emailed their complaints. While the number of complaints received decreased by 37% from 1996, allegations of Use of Force increased by 17%. In addition to the intake of complaints, 451 completed investigations were audited in 1997. There were 22 complaints sustained, and 2 officers in four Formal cases resigned while under investigation.

B. COMMUNITY OUTREACH

The IPA hosted a meeting of the Bay Area Police Oversight Network (BAPON) which was attended by members working in the field of police oversight from Santa Cruz, Novato, San Francisco, Richmond, Berkeley, members of the media, the Santa Clara County Human Relations Commission, and the public at large. The IPA also co-sponsored a three day conference for the National Association of Civilian Oversight of Law Enforcement (NACOLE) held in Oakland. Representatives from 12 states attended and information about their respective cities was exchanged.

The IPA wrote an article for the “Outlook” section of the *Washington Post* about the San Jose Auditor model. The article was published along with an Op-Ed piece from the *Washington Post* editorial board. The *San José Mercury News* Spanish language newspaper, *Nuevo Mundo* published a featured article about the IPA.

An interview with John McMannis of CNN was taped and was broadcast on different dates. Other media outreach included taping several segments at the TCI Community Channel, a radio program at San José State University, and a call-in talk radio program from Pittsburgh, Illinois.

The IPA made presentations for a Women’s Conference held at San José State University, the San José Human Rights Commission, the Santa Clara County Human Relations Commission, the Santa Clara County Grand Jury, the Santa Cruz Civilian Review Board in Santa Cruz, and at several classes held at San José City College and San José State University.

C. IPA STAFF AND OFFICE UPDATES

The IPA experienced a high turnover in staff in 1997 primarily because the positions offered low wages and no benefits. The IPA worked with the Mayor’s Office to classify the positions and adjust the budget as necessary. As of July 1, 1997, the staff’s salary was brought up to par with other civil service positions, including benefits.

In addition to this Year End Report, a six month statistical summary was prepared in July 1997. Two IPA Newsletters were also published and distributed. The IPA compiled a reference manual which was distributed to all PSCU investigators containing all the procedural changes to the civilian complaint process that have resulted from the IPA’s recommendations, inter-agency agreements, and meetings throughout the years between the IPA, the PSCU and the Chief of Police.

The IPA received many inquiries and requests for information about the auditor model of civilian review. Visits to the IPA office included the Institute Director from the Police Executive Research Forum, the Assistant Police Chief and the City Manager from South Tucson, Arizona, and the City Manager and two Council Members from Albuquerque, New Mexico. Several months later, the City Manager and the newly appointed Independent Police Auditor for the city of Tucson, Arizona, spent a day receiving training at the IPA. Throughout the year, the IPA received phone calls followed by requests for additional information from various cities in California including Grass Valley, Petaluma, Santa Monica, Fairfield, and the LAPD Inspector General. Other requests came from Pennsylvania State University, Boise, Idaho, and Northwest, Washington D.C.

D. OTHER PROJECTS

In 1997, the IPA and the PSCU revised their operations in order to comply with two legislative bills that impacted the complaint process. One bill requires that complainants sign an admonishment advising them that if they file a complaint, they know is false they can be criminally prosecuted.

As of January 1, 1998, state law will mandate that all investigations of citizen complaints be completed within one year. Changes and improvements will be made at the PSCU, in order to meet this requirement.

Through out the year, the IPA has reviewed information about mediation programs in other cities. Mediation is a process whereby a civilian and an officer agree to come together to talk about the conflict that gave rise to a complaint. The IPA met with members from the SJPd, the San José Police Officers' Association and the Chief of Police. The SJPd is moving forward in it's review and study of mediation.

CHAPTER 3 NEW ISSUE: BLOOD SAMPLES TAKEN BY FORCE

The issue involves complaints alleging that blood samples were taken against the person's will at a place not suited or appropriate for the safe and sanitary taking of blood. Complainants alleged that blood was drawn by a technician at the request of a police officer while the complainants were handcuffed, physically restrained or pinned to the ground outside the SJPd parking lot. Several of the people that came to the IPA or the PSCU to file a complaint had visible injuries to the area where the blood was drawn. This precipitated a closer review of existing SJPd policy and guidelines.

When a person is arrested for a suspected felony, San José police officers transport the arrestee to the Preprocessing Center located adjacent to the San José Police Department. In this center, the arrestee will generally be booked, fingerprinted, interviewed, and placed in a locked cell to await transfer to the county jail. This center has over ten individual holding cells which are monitored by police staff. If the arrestee is not combative, his/her blood will be drawn in one of these rooms. If the arrestee is violent or combative, the arresting officer is barred from bringing the suspect into the center. Reasons given to the IPA were that it is difficult to move the arrestee to and from the center, and because the arrestee can create a disturbance. Therefore, the blood sample from individuals deemed violent or combative is extracted in the parking lot of the Preprocessing Center, or the individual is taken directly to the county jail where the blood is drawn in what appears to be a loading ramp and/or a parking lot for authorized personnel. It is undisputed that, if necessary, an individual, while handcuffed with their hands behind their back, will be forced over the hood of a patrol car or held down by officers on the ground where a technician will extract the blood.

The courts have held that it is lawful to physically restrain an arrestee for the purpose of drawing a blood sample provided it poses virtually no risk, trauma or pain, and is performed in a reasonable manner by qualified medical personnel in a medically accepted environment. The police parking lot would not be deemed an appropriate medical environment. The SJPD and county jail parking lots are poorly lighted, the ground is dirty, and equipment such as arm boards which reduce the risk of infection or injury to the subject's veins or tissue are not available. Risk of injury to the technician or officers is also increased whenever a subject is wrestled to the ground and restrained for the extraction of blood.

RECOMMENDATION

When taking blood specimens as evidence relevant to the crime at hand, the San José Police Department should do so in a medically accepted environment, according to accepted medical practices and without excessive force.

CHAPTER 4 UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

A. CIVILIAN REQUESTS FOR OFFICER IDENTIFICATION

In the IPA's 1996 Year End Report, the IPA reported the problem that arose when civilians requested identification from police officers. Some complainants alleged that the officer did not identify himself/herself adequately when requested to do so. Others complained that the officer took retaliatory measures after being requested to give his/her name or badge number. The IPA recommended that the SJPD provide officers with business cards to be used for self identification. Business cards or other written form should be used.

UPDATE: Even though some solutions have been discussed, as of December 31, 1997, no new policy addressing this issue has been implemented by the SJPD.

B. NEW COMPUTER SYSTEM

In order 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.

UPDATE: Due to technical difficulties, the link-up was not completed as scheduled. However, the new database is now operational and ready for testing. Training on the new system will begin in February 1998.

C. INTERNET ACCESS

In the 1996 Midyear Report, the IPA requested to be added to the City of San José's internet connection.

UPDATE: In May 1997, the IPA's connection to the internet was completed. This connection has enabled the IPA to create it's own web site (<http://www.ci.san-jose.ca.us/ipa/home.html>).

D. ADDITIONAL SPACE AT PSCU

A recommendation was made in 1995 to have the PSCU secure additional office space. The space was to serve as an interview room for receiving complaints or for interviewing witnesses and police officers.

UPDATE: Additional office space has been annexed and is currently being used as an interview room.

E. TIMELINES TO COMPLETE COMPLAINT INVESTIGATIONS

During the last four years, different goals, policies and procedures have been established for the timely completion of investigations of complaints. However, there are other reasons besides the investigative process that add to the length of time a case remains open. A study of 41 complaints having a sustained finding was conducted in order to track the path and analyze the length of time these complaints remain at departments outside of PSCU.

The forty-one cases which were the subject of this study ranged from as little as 5 days to as much as 890 days from the initial intake to the closure of the case. In some cases, the file remained twice as long in other departments than at the PSCU.

One reason for this delay is that while the PSCU has set goals and operates under timelines, other departments do not. A complaint may remain with an individual for an extended period of time before it is processed. There are no set timelines for a complaint to be returned to the PSCU once it is sent to the Chain of Command, the Chief's Office, the Office of Employee Relations, or the City Attorney's Office.

Effective January 1, 1998, a law known as the Cardoza Bill (AB 1436), requires that all complaint investigations be completed within one year; otherwise, no discipline can be imposed on the subject officer. Any requests for additional investigation from the IPA must also be completed within this one year limitation. In order to meet the one year statute of limitations, the following is recommended:

1. The timeline to complete the investigation of a complaint, which is not covered by a Cardoza Bill exception, should be reduced from one year to no more than ten months. This ten month period should include the Chain of Command review in order to allow the IPA sufficient time to request additional investigation, if needed, within the required one year time frame.
2. Investigation requested by the IPA should be completed as soon as possible in order to stay within the one year time limit.
3. Time limits should be set for every bureau and department involved in the complaint process.
4. A reliable system should be instituted to adequately track complaints once they leave the PSCU.

F. ENTERTAINMENT ZONE POLICING PLAN

1. BACKGROUND:

In the IPA's 1995 Year End Report, the IPA recommended that the SJPD should review and revise the policies and procedures for off-duty security services performed by the San José police officers. To address these concerns, the City created the Entertainment Zone Policing Plan (EZPP).

Owners and managers of the downtown nightclubs formed a committee called the Entertainment Zone Committee (EZ Committee). Because the EZPP was considered by the EZ Committee to be a by-product of the IPA's recommendation, several meetings have been held with the IPA to address on-going concerns regarding the implementation, policies, and procedures of the EZPP. Many of the issues raised by the EZ Committee pertain to administrative matters (such as the deployment of officers, the program's fee structure and its associated liability issues) and consequently, are outside the purview of the IPA. Nevertheless, these administrative issues are very important to the members of the EZ Committee and should be addressed by the City Administration as soon as possible. Other issues related to officer training, community relations and officer performance were also raised.

2. METHODOLOGY:

The IPA conducted site visits of all nightclubs in the Entertainment Zone on two occasions between the hours of 9:00 p.m. and 3:00 a.m. on a Friday and Saturday night. The IPA staff observed services provided by the EZPP officers from the start of their patrol through the closing of the clubs, and to the final disbursement of patrons.

3. CONCLUSION:

The EZPP has been in existence for only six months. This is not enough time to evaluate the program as a whole. However, the EZPP appears to be fundamentally sound and has a great potential for success. The SJPD has been and should continue to be, responsive to the suggestions from the stakeholders.

CHAPTER 5 YEAR END STATISTICS

Type of Complaints	IPA Intake	PSCU Intake	Total
Formal: Civilian-Initiated (CI)	61	113	174
Formal: Department-Initiated (DI)	0	75	75
Informal (IN)	11	40	51
Policy (PO)	10	13	23
Procedural (PR)	32	56	88
In-Process	19	13	32
Total Cases	133	310	443

A total of **443** complaints were received from January 1 through December 31, 1997. The IPA received 36% of the total complaints filed during this reporting period.

CHAPTER 6 COMPLAINTS & ALLEGATIONS BY COUNCIL DISTRICT

Council Districts	Formal		IN	PO	PR	Total Complaints	%
	CI	DI					
1 JOHNSON	8	1	2	2	10	23	6%
2 POWERS	6	3	2	3	4	18	4%
3 PANDORI	63	36	15	7	25	146	36%
4 FERNANDES	5	1	2	1	6	15	4%
5 DIAZ	20	4	6	3	12	45	11%
6 FISCALINI	19	4	8	2	5	38	9%
7 SHIRAKAWA, JR.	16	5	6	3	7	37	9%
8 WOODY	12	1	0	0	4	17	4%
9 DIQUISTO	10	2	5	1	10	28	7%
10 DANDO	11	2	3	1	3	20	5%
Unknown/Outside City Limits	4	16	2	0	2	24	6%
Total Cases Received	174	75	51	23	88	411	100%
%	42%	18%	12%	6%	21%	100%	
Cases Closed	98	49	51	23	88	309	
Formal: CI = Civilian-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural							

Classified complaints account for 411 of the 443 complaints received between January 1 through December 31, 1997. The remaining 32 are awaiting classification as of December 31, 1997. Of those 411 cases, 309 complaints were closed between January 1 through December 31, 1997.

CHAPTER 7 BACKGROUND OF COMPLAINANTS BY COUNCIL DISTRICT

The Office of the Independent Police Auditor utilizes a Voluntary Questionnaire 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.

Complainant characteristics included ethnicity, gender, age group, education, and occupation. Two hundred forty-eight or 65% of the complaints were filed by males, females filed 131 or 35%. The age group filing the most complaints was the 31 - 59 years. Forty-three percent of the complainants reported having a college or graduated degree. Occupations were varied. Hispanics filed the most complaints, 115 or 30%, followed by European-Americans with 77 or 20%.

CHAPTER 8 DISCIPLINE IMPOSED

Of the 309 closed cases in 1997, only 147 cases were Formal Complaints. The Formal classification complaint is the only type that can be sustained, and for which the officer involved can receive discipline. The Formal complaints can be initiated either by a civilian (Civilian-Initiated (CI) complaints) or by the Chief of Police (Department-Initiated (DI) complaints). Of the 147 Formal complaints completed, a finding was reached in 73 cases. Twenty-two complaints were sustained. The sustained rate for all the Council Districts in 1997 was 30%. The other 74 cases either involved non-sworn officers of the SJPD or the investigations were closed with a No Finding. There were four Formal cases that closed before the investigation was completed because the two officers left the San José Police Department (SJPD). Thus, no discipline was imposed.

CHAPTER 9 INTERVENTION COUNSELING

The Intervention Counseling (IC) Program is used as an “early warning system” to track police officers with complaint histories for the purpose of providing guidance. This informal counseling session involves a review of the complaints filed against a subject officer, whether sustained or not, in a positive attempt to assist him/her. No formal record is made of the substance of the IC session.

Time Period of Intervention Counseling	Total Number of Intervention Counseling Sessions	Number of Subsequent Complaints from IC Date to December 31, 1997					
		0	1	2	3	4	5+
Jan. - Dec. 1997	20	14	3	2	0	1	0
Jan. - Dec. 1996	16	3	3	5	1	2	2
Jan. - Dec. 1995	15	5	3	3	2	1	1

Twenty IC sessions occurred in 1997. Seventy percent (70%) of the subject officers received no subsequent complaint following the IC session. Fifteen percent (15%) of the subject officers received one subsequent complaint following the IC session. Ten percent (10%) of the subject officers received two complaints following the IC session.

CHAPTER 10 STATISTICAL BACKGROUND OF SUBJECT OFFICERS

An additional statistical area tracked by the IPA includes the background of the subject officers who are listed in Formal, Informal, and Procedural complaints. Specific areas include the subject officer’s unit, gender, and years of experience with the San José Police Department.

Officers with two to four years of experience received the highest number of complaints and the highest number of Unnecessary Force allegations. These officers accounted for 19% of all officers in the

SJPD, and were responsible for 34% of all the complaints received. Officers with more than 16 years of experience followed with a total of 85 complaints. However, the allegations most often filed against them was for Improper Procedure. They comprise 33% of all officers in the SJPD and account for 21% of all complaints.

The Patrol division followed by Field Training and Narcotics Enforcement Units of the Bureau of Field Operations received the most complaints. The ratio of males and females receiving complaints was in proportion to their composition in the SJPD.

CHAPTER 11 & 12 ANALYSIS & SUMMARIES OF AUDITED COMPLAINTS

This section contains analysis of the different fields used in auditing the investigations of the four complaint classifications. This Executive Summary includes only the results of the audits of Formal complaints since they allege the most serious violations of the law or of Department policies, procedures, rules or regulations by an officer. There were 161 Formal cases audited from January 1 through December 31, 1997.

Was review requested by the complainant?

Yes	66	41%
No	95	59%

A total of 66 complainants or 41% requested the IPA to review their case. Some of these complainants requested review while the investigation was being conducted by the PSCU, others requested review after the PSCU had completed their investigation of the case.

Did the IPA request further action from PSCU?

Yes	21	13%
No	140	87%

The IPA requested further action from the PSCU in 21 or 13% of the Formal cases it reviewed. Requests varied from re-opening an investigation to providing the IPA with additional information or documentation.

Did the Auditor attend officer interviews conducted by the PSCU after being notified?

Notification requested	104	65%
Notice received	27	17%
Interviews attended	18	70%
Interviews not attended	8	30%

From a total of 161 Formal cases, the IPA requested to be notified of police officer interviews in 104 cases. Of those, the IPA was notified of only 27 interviews. The Auditor attended 18 interviews, and one interview was canceled. The PSCU failed to provide notice for 77 interviews. New requirements for the PSCU regarding notification of officer interviews to the Auditor have been made.

What is the overall quality of the investigation?

Very Thorough	13	8%
Thorough	95	60%
Adequate	33	21%
Inadequate	11	7%
N/A	7	4%

The overall quality of the investigations as reported, reflect the conclusions of the IPA. The IPA lists those cases where the investigator has taken every reasonable step to discover relevant witnesses or evidence as very thorough. Thorough investigations are those where the investigator has taken all the steps likely to discover important evidence. Adequate investigations are those where the investigator took only the most obvious steps to uncover important information. Inadequate investigation are those where not even the obvious steps were taken to uncover vital information.

Did the IPA agree with the finding of the investigation?

Yes	147	91%
No	14	9%

The IPA disagreed with the finding of the investigation in 14 of the 161 formal cases even after further action was requested from the PSCU.

Did the incident give rise to criminal action against the complainant?

Yes	85	53%
No	76	47%

Roughly half of the complainants who filed complaints against a police officer were arrested for a crime although criminal charges were not always filed against them. Forty-seven percent of the complainants were not accused of violating any laws.

Was the case sent to the Chain of Command for Finding and recommendations by the PSCU?

Yes	25	16%
No	117	73%
N/A	17	11%

Upon completion of the investigation, the PSCU Lieutenant and investigator determine whether the case merits sending it to the subject officer's Chain of Command for findings and recommendation of discipline. Only complaints believed to be sustainable by the PSCU are sent to the Chain of Command. All complaints alleging unnecessary force require a review by the Assistant Chief before they can be closed. For a breakdown of the audit results of the three other classifications of complaints, please refer to the main body of this report.

In order to better inform the community of how the IPA functions, Chapter 11 highlights a few cases which were selected in order to illustrate the auditing process. These are actual cases investigated by the PSCU and reviewed by the IPA. The cases were selected not because they are most

representative of the actions taken by the IPA and the PSCU, but because they illustrate the different options and courses of action the IPA can pursue. The locations and names of individuals involved have been intentionally left out in order to preserve their privacy.

CHAPTER 13 CONCLUSION

The IPA and the PSCU continue to work in a productive and professional manner with ongoing improvements at both offices. The major emphasis for 1998 will be community outreach as a joint project by the PSCU and the IPA. The idea of taking the citizen complaint process to the neighborhoods was received with great enthusiasm by the PSCU.

CHAPTER 1

INTRODUCTION

A. BACKGROUND

In 1992, there was a strong movement in the City of San José to establish civilian review of complaints filed against San José police officers. The strength of this movement occurred in the aftermath of the Rodney King incident. The city leaders conducted a nationwide search and evaluated different police oversight models. The San José model incorporated various components from existing programs found in Seattle, Albuquerque and Kansas City. On September 13, 1993, the Office of the Independent Police Auditor¹ (hereafter referred to as “IPA”) was established by the Mayor and the City Council through a city ordinance. The IPA’s objective is to audit the investigations conducted by the San José Police Department (hereafter referred to as “SJPD”) of complaints alleging misconduct by members of the SJPD, and to make recommendations with regard to Police Department policies and procedures.

B. CHARTER CHANGE

The leadership of the City of San José demonstrated its commitment to the long term existence of independent review of complaints relating to police misconduct and to the auditor model of police oversight by proposing to the voters an amendment to the City Charter.² Thus, on November 5, 1996, the citizens of San José voted to have the city charter amended and to give charter status to the IPA, which provides the same protection and autonomy as the City Auditor. The Independent Police Auditor is 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 a vote in a municipal election; therefore, the elimination of or major changes in the duties and responsibilities of the IPA 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 people may file a complaint; (2) it reviews the investigations of complaints conducted by the SJPD; and (3) it promotes public awareness of a person’s right to file a complaint. The Independent Police Auditor routinely meets with various groups and organizations to increase public awareness of the people’s right to file a complaint.

¹ See Appendix A (City of San José Departments).

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

D. REPORTING REQUIREMENTS

The IPA reports are prepared on an annual basis.³ The Year End Report covers the period from January through December and contains a comprehensive statistical analysis of the entire year. This is the ninth report produced by the IPA pursuant to the requirements of the San José Municipal Code Section 2.06.020c. This section states that the IPA report shall contain, but not be limited to the following:

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

E. CONTENTS OF THE 1997 YEAR END REPORT

The following information is included in this report:

- New issue: Blood Samples Taken by Force.
- Updates on Prior Issues and Recommendations.⁴
- Three one-year blocks of statistics comparatively analyzed from January through December for the years 1995 through 1997.
- A statistical background of subject officers and complainants.
- An analysis of complaints and allegations by San José City Council Districts.
- Audit analysis and examples.

³ In accordance to the change adopted by the City Council on February 18, 1997.

⁴ See Appendix C (IPA's Recommendations).

CHAPTER 2

YEAR IN REVIEW

September 13, 1997, marked the fourth anniversary of the Office of the Independent Police Auditor, which was created as an independent and impartial agency, for the purpose of receiving complaints and auditing the investigations of civilian complaints filed against members of the San José Police Department.

In 1997, there was a total of 443 complaints filed. Of those complaints, 133 were filed at the IPA by members of the public who either personally came to the IPA office, telephoned, faxed, wrote or emailed their complaints. While the number of complaints received decreased by 37% from 1996, allegations of Use of Force increased by 17%. In addition to the intake of complaints, 451 completed investigations were audited in 1997. A statistical study of the audits is included in the Audit Analysis section of this report.

The IPA attended 18 subject or witness officer interviews. The interview process conducted by the SJPd's Professional Standards & Conduct Unit (hereafter referred to as the "PSCU") was observed and critiqued by the IPA. In addition, substantive questions were provided to the investigator to ask the subject or witness officers. There were 22 complaints sustained, and 2 officers in four Formal cases resigned while under investigation.

CONFERENCES ATTENDED BY THE IPA

While civilian review of police practices has been in existence for over 30 years, relatively few sources of information and/or training exist today. Therefore, conferences and seminars are the only organized forums in which to exchange ideas and information to further one's knowledge in this field. The following is a list of events in which the IPA participated.

- The IPA hosted a meeting of the Bay Area Police Oversight Network (BAPON) which was attended by members working in the field of police oversight from Santa Cruz, Novato, San Francisco, Richmond, Berkeley, members of the media, the Santa Clara County Human Relations Commission, and the public at large. Members of the IPA also attended other BAPON meetings held throughout the year in San Francisco, Richmond, and Novato.
- The IPA co-sponsored a three day conference for the National Association of Civilian Oversight of Law Enforcement (NACOLE) held in Oakland. Representatives from 12 states attended and information about their respective cities was exchanged.

- IPA members attended a three day seminar presented by the Labor Relations Information Systems on “Internal Affairs and the Use of Force.” Legal updates, different models of civilian review and other useful information was presented.

IPA OFFICE AND STAFF UPDATES

The new database created for the IPA and the PSCU is operational and testing is underway. There were technical difficulties encountered which have been resolved. Once this software is fully operational, exchange of information between the IPA and the PSCU will be faster and up to date.

The IPA experienced a high turnover of staff⁵ in 1997 primarily because the positions offered low wages and no benefits. The IPA worked with the Mayor’s Office to classify the positions and adjust the budget as necessary. As of July 1, 1997, the staff’s salary was brought up to par with other civil service positions, including benefits. Two staff members completed the Citizen Police Academy offered through the SJPd.

In addition to this Year End Report, a six month statistical summary was prepared in July 1997. Two IPA Newsletters were also published and distributed. The IPA compiled an in-depth reference manual entitled “Investigation Procedural Supplement” which was distributed to all PSCU investigators. This manual contains all the procedural changes to the civilian complaint process that have resulted from the IPA’s recommendations, inter-agency agreements, and meetings throughout the years between the IPA, the PSCU and the Chief of Police. This document will be updated periodically.

MEDIA CONTACTS

The IPA was contacted by the staff from the “Outlook” section of the *Washington Post* to write an article about the IPA. An article was published along with an Op-Ed piece from the *Washington Post* editorial board. There was also a featured article about the IPA in the *San José Mercury News*’ Spanish language newspaper, *Nuevo Mundo*.

An interview with John McMannis of CNN was taped and was broadcast on different dates. Other media outreach included taping several interviews at the TCI Community Channel. The IPA participated in a call-in radio program at San José State University called Naked Radio. The IPA also participated via telephone in a talk radio program originating in Pittsburgh, Pennsylvania, where the public was invited to call in and ask about the IPA office in San José.

⁵ See Appendix D (IPA’s Office - Main Divisions).

OUTREACH TO COMMUNITY ORGANIZATIONS

The IPA was a speaker at a Women's Conference held at San José State University. A presentation was made at the San José Human Rights Commission meeting held at the Billy de Frank Center. Other presentations were made at the Santa Clara County Board of Supervisors' Chambers for the Human Relations Commission and to the Santa Clara County Grand Jury. An overview of the functions of the IPA was presented to the Santa Cruz Civilian Review Board in Santa Cruz. The IPA also attended functions sponsored by the National Association for the Advancement of Colored People (NAACP) and the Filipino Youth Coalition. The IPA was a guest speaker at several classes held at San José City College and San José State University.

INQUIRIES ABOUT THE IPA OFFICE

The IPA was visited by the Institute Director from the Police Executive Research Forum, a Senior Management Institute for Police. The Assistant Police Chief and the City Manager from South Tucson, Arizona, made separate trips to San José to meet with the IPA. Several months later, the Tucson City Manager and the newly appointed Independent Police Auditor spent a day receiving training at the IPA. The City Manager and two Council Members from Albuquerque, New Mexico, came to San José to meet with the IPA and assess the police auditor model.

Throughout the year, the IPA received phone calls followed by requests for additional information from several cities. Copies of the IPA's reports and other information were sent to various cities in California including Grass Valley, Petaluma, Santa Monica, Fairfield, and the LAPD Inspector General. Other requests came from Pennsylvania State University, Boise, Idaho, and Northwest Washington, D.C.

LEGISLATIVE CHANGES AFFECTING CIVILIAN COMPLAINTS

On January 1, 1997, the Boland Bill⁶ went into effect. This bill requires that complainants sign an admonishment advising them that if they file a false complaint, they can be criminally prosecuted. Several adjustments were made in the way complaints are processed in order to comply with this law.

As of January 1, 1998, state law will mandate that all investigations of citizen complaints be completed within one year. Completing all investigations within one year has been a goal for PSCU; however, that goal has not been met. Changes and improvements will be made at the PSCU, in order to meet this requirement.

⁶ See Appendix E (Boland Admonishment).

In addition, the IPA in conjunction with other police oversight agencies routinely monitors legislative bills that negatively impact the complaint process.

MEDIATION: PROJECT IN PROGRESS

Through out the year, the IPA has reviewed information about mediation programs in other cities. Mediation is a process whereby a civilian and an officer agree to come together to talk about the conflict that gave rise to a complaint. Mediation is very appropriate for allegations involving discourtesy. The IPA met with the PSCU Commander and reviewed the mediation program used by the Portland Police Department in Oregon. In addition, input from the President of the San José Police Officers' Association⁷ (hereafter referred to as "SJPOA") was sought, and it appears that the membership of the SJPOA is receptive to this type of a program. The Chief of Police was also consulted, wherein he stated that the concept of mediation "has promise", and that the SJPD is moving forward in it's review and study of mediation.

⁷ The SJPOA is a collective bargaining representative for the sworn members of the SJPD.

CHAPTER 3

NEW ISSUE

A. BLOOD SAMPLE TAKEN BY FORCE

1. BACKGROUND

During the process of conducting the complaints, the IPA tracks issues are of a very serious nature. One such blood samples were taken against the



audits of the investigation of civilian which appear with some frequency or issue involves complaints alleging that person's will at a place not suited or



appropriate for the safe and sanitary taking of blood. Complainants alleged that blood was drawn by a technician at the request of a police officer while the complainants were handcuffed, physically restrained or pinned to the ground outside the SJPD parking lot. The extraction of blood samples by contracted medical technicians are routinely requested by San José police officers for people arrested for felonies. Several of the people that came to the IPA or the PSCU to file a complaint had visible injuries to the area where the blood was drawn. This precipitated a closer review of existing SJPD policy and guidelines.

2. METHODOLOGY

A search of the IPA database for the last three years produced 12 complaints containing information that a blood sample was drawn forcibly. This search was not exhaustive or all inclusive because only a brief synopsis of the complainant's statement in each case is automated. The automated synopsis facilitates the identification of complaints where a particular issue is mentioned. However, it is highly possible that many other complaints exist, but are not referenced in this report. The automated search will not capture information in the body of the investigation.

Research of the SJPD's Duty Manual was conducted for existing policy or guidelines describing when and how blood should be drawn from an uncooperative person. In addition, case law such as Schmerber

v. California, 384 U.S. 757, and Rochin v. California, 342 U.S. 165, and California Vehicle Code Section 23158 were also analyzed. Sections of the J.P. Lippincott Manual of Nursing Practice, 4th edition, were reviewed. An inspection of the SJPd's Preprocessing Center and the loading ramp of the Santa Clara County Jail was conducted. Information from SJPd personnel was obtained. The Santa Clara County District Attorney's Office was contacted for input on this issue. Lastly, research gathered by an investigative reporter for *El Observador* was reviewed.

3. ANALYSIS

The forcible taking of a blood sample per se is seldom investigated by the PSCU as an allegation of unnecessary force because the compulsory seizure of a person's blood as evidence is not illegal, provided that the taking of the sample is done in a reasonable and medically approved manner. Therefore, this process is usually viewed as standard police procedure.

The SJPd Duty Manual section L2165.1⁸ provides general guidelines for the officers to follow. This section clearly states that forced blood specimens will not be taken from people arrested for misdemeanors. It further states that "a chemical test will be administered when the incident involves a felony violation." The manner in which a chemical test, more specifically a blood sample, is to be extracted, is not clearly specified.

⁸ L 2165.1
(REVISED 2/18/96)

TAKING OF SPECIMEN AGAINST SUSPECT'S WILL: Officers will adhere to the following appropriate procedures whenever a suspect refuses to consent to a chemical test of the suspect's blood, urine or breath.

ALL MISDEMEANORS (INCLUDING MISDEMEANOR DRUNK DRIVING): Tests will not be administered without the consent of the suspect unless such suspect is unconscious.

FELONY CASES: A chemical test will be administered when the incident involves a felony violation. When administering such a test, officers will remain aware that the courts will examine the method used to obtain the specimen and decide if such a method "shocks the conscience" of the suspect from whom the specimen was obtained. The following elements will be examined:

- Physical Injury. When the method used produces an injury that requires medical treatment, the courts are likely to view such a method as unwarranted.
- Nature of Resistance. When the nature of the suspect's resistance is verbal, accompanied by a lack of physical cooperation short of combative, and the officer administering the test merely positions the person's body or limbs so as to administer the test, such conduct by the officer will likely be viewed as warranted.
- Reasonableness: The courts will assess the circumstances of the incident as compared to the method used to administer the test. Circumstances which will be considered include, but are not limited to, the following: the nature of the crime; the necessity for obtaining the specimen; and whether the circumstances and facts present at the time the test was administered would be sufficient to lead an ordinary and prudent man to believe the method used as reasonable.

When a test is administered, the officer initiating the test will prepare a "Supplementary Report" (Form 200-3) reporting the circumstances and facts which indicate the reasonableness of the method used, the necessity, the resistive conduct of the suspect, and any witnesses present, especially the laboratory technician.

The courts have described the conduct that will be examined in determining whether the methods used would “shock the conscience” of the courts and be ruled inadmissible. This can include conduct that resulted in injuries, the nature of the suspect’s resistance, the reasonableness of the method used, and the existence of proper documentation. The SJPD Duty Manual does not identify the locations where this process should take place or describe what would constitute a medically acceptable environment for the drawing of blood.

When a person is arrested for a suspected felony, San José police officers transport the suspect to the Preprocessing Center located adjacent to the San José Police Department. In this center, the suspect generally will be booked, fingerprinted, interviewed, and placed in a locked cell to await transfer to the county jail. This center has over ten individual holding cells which are monitored by police staff. If the suspect is not combative the blood will be drawn in one of these rooms. If the suspect is violent or combative, then the arresting officer is barred from bringing the suspect into the center. Reasons given to the IPA were that it is difficult to move the suspect to and from the center, and because the suspect could create a disturbance. Therefore, the blood sample from individuals deemed violent or combative is extracted in the parking lot of the Preprocessing Center or the individual is taken directly to the county jail where the blood is drawn in what appears to be a loading ramp and/or a parking lot for authorized personnel. It is undisputed that, if necessary, an individual, while handcuffed with their hands behind their back, will be forced over the hood of a patrol car or held down by officers on the ground where a technician will extract the blood.

California Vehicle Code Section 23158 (d)⁹ states that the extraction of blood must be done in a reasonable manner, in a hospital, medical laboratory, or medical clinic environment. In all the court cases researched, the facts indicated that the blood had been drawn in a hospital setting by a nurse or doctor. There were no cases found where the blood specimen was extracted in a parking lot or similar location.

The police parking lot would not be deemed an appropriate medical environment. The SJPD and county jail parking lots are poorly lit, the ground is dirty, and equipment such as arm boards which

⁹ California Vehicle Code Section 23158 (d) Notwithstanding any other provision of law, no licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, owning or leasing the premises on which tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, medical laboratory, or medical clinic environment, according to accepted medical practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer the test.

reduce the risk of infection or injury to the subject's veins or tissue are not available. Risk of injury to the technician or officers is also increased whenever a subject is wrestled to the ground and restrained for the extraction of blood.

While the courts have held that it is lawful to physically restrain a suspect for the purpose of drawing a blood sample, there are police agencies that will not forcibly draw blood samples from uncooperative suspects because of the high likelihood of injuries. The Santa Clara County District Attorney Office's position is that "the decision on when and how to draw blood of a criminal suspect is a decision for each investigative law enforcement agency to make." The leading case Schmerber v. California, 384 U.S. 757, at p. 771 (1966), held that taking a blood sample for the purpose of determining the blood alcohol level was reasonable provided it posed virtually no risk, trauma or pain, and was performed in a reasonable manner by a physician in a hospital. In People v. Kraft, 3 Cal. App. 3d 890, the court held that using force in the taking of a blood sample is acceptable, except where the force used is excessive. The excessive force alters the whole process making it medically unacceptable.

4. RECOMMENDATION

When taking blood specimens as evidence relevant to the crime at hand, the San José Police Department should do so in a medically accepted environment, according to accepted medical practices and without excessive force.

CHAPTER 4

UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

A. CIVILIAN REQUESTS FOR OFFICER IDENTIFICATION

BACKGROUND: In the IPA's 1996 Year End Report, the IPA reported the problem that arose when civilians requested identification from police officers. Some complainants alleged that the officer did not identify himself/herself adequately when requested to do so. Others complained that the officer took retaliatory measures after being requested to give his/her name or badge number. The retaliatory conduct alleged ranged from threats of arrest to unnecessary use of force. The SJPD Duty Manual directs officers to identify themselves in a professional manner, but does not require officers to do so in writing.

The IPA's recommendation was to have the SJPD issue business cards to each officer so that they could use it to identify themselves, and thereby minimize conflict with civilians. The IPA also recommended that the existing process in 1996 for the creation of the business cards, the distribution to the officers, and the dissemination to the public be revised.

UPDATE: In 1997, there were 17 complaints involving officer identification issues, which is four more than the average for the previous three years. These are complaints that may have been avoided if a written standardized process was in place.

Members of the SJPD have suggested that a separate card be created for the purpose of identification. Upon request for identification by a civilian, the officer would fill in the identifying information on the card and give it to the individual who requested it. The IPA previously recommended that business cards be used for identification; however, officers prefer to use their business cards for a more positive purpose.

RECOMMENDATION: It should be mandatory that officers provide their name and badge number in writing to a civilian upon request.

B. NEW COMPUTER SYSTEM

BACKGROUND: 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, police personnel, and city computer data managers, a system was devised and will begin testing in February 1998.

UPDATE: Due to technical difficulties, the link-up was not completed as scheduled. However, the new database is now operational and ready for testing. Training on the new system will begin in February 1998.

C. INTERNET ACCESS

BACKGROUND: In the 1996 Midyear Report, the IPA requested to be added to the City of San José's internet connection.

UPDATE: In May 1997, the IPA's connection to the internet was completed. This connection has enabled the IPA to create it's own web site (<http://www.ci.san-jose.ca.us/ipa/home.html>). The web site includes the 1996 Year End Report and the 1997 Midyear Newsletter. The IPA will be adding the 1997 Year End Report to the site, as well as conforming the site to meet the Americans with Disabilities Act guidelines. The IPA is also creating a process whereby a citizen can file a complaint through the internet. Currently, complainants may use email to contact the IPA and initiate a complaint.

D. ADDITIONAL SPACE AT PSCU

BACKGROUND: A recommendation was made in 1995 to have the PSCU secure additional office space. The space was to serve as an interview room for receiving complaints or for interviewing witnesses and police officers.

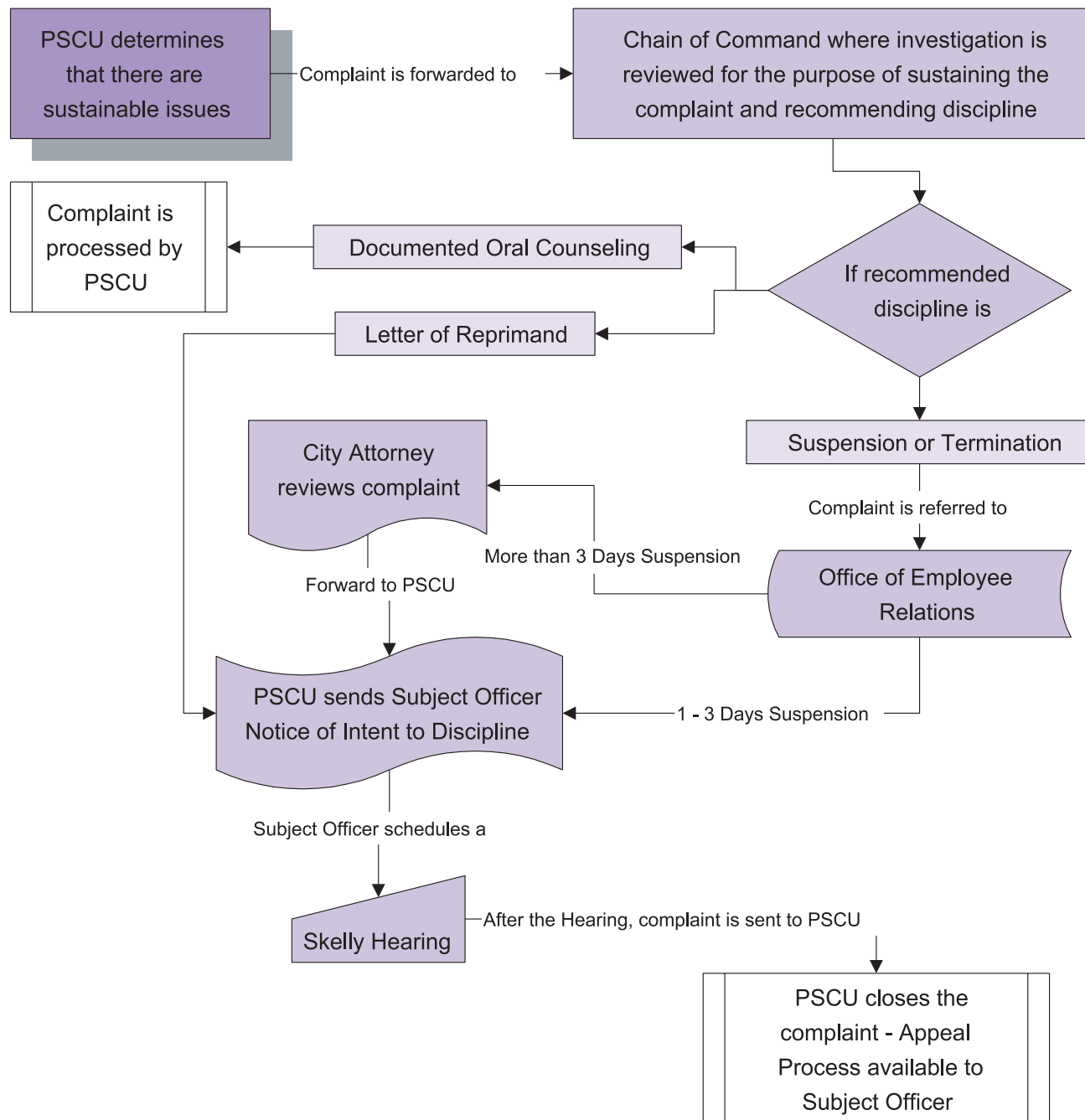
UPDATE: Additional office space has been annexed and is currently being used as an interview room.

E. TIMELINES

During the last four years, different goals have been established for the completion of investigations of complaints. Since the inception of the IPA, the time taken to complete an investigation has been tracked and statistically analyzed. Many changes in receiving, classifying, documenting, and investigating complaints have taken place at the PSCU. There has been a need to increase the number of staff at the PSCU in order to handle the increase in complaints filed and the extra work that the IPA generates. Unfortunately, the goal to complete 100% of all investigations within one year has never been met. While improvements have been made, it is difficult to measure their impact because the timeline in which to complete 100% of the investigations has been extended from 300 to 365 days. One year to complete an uncomplicated investigation is excessive and affects the credibility and integrity of the complaint process.

There are other reasons besides the investigative process that add to the length of an investigation. A study of 41 complaints having a sustained finding was conducted in order to track the path and analyze the length of time these complaints remain at the different departments. However, the information necessary to track a complaint from the time it is sent from the PSCU to another department, and when it is returned to the PSCU is not systematically documented.

In order to illustrate the many steps a complaint with a sustained finding takes after the completion of the investigation, the following flow chart was prepared.

Illustration #1: Sustainable Complaint Route

The forty-one cases which were the subject of this study ranged from as little as 5 days to as much as 890 days from the initial intake to the closure of the case. The following chart illustrates a select sample of ten cases reflecting the days a complaint remained at the different departments or units. Note that in some cases, the file remained longer in other departments than at the PSCU.

Illustration #2: Length of Investigation in Each Department

Case	PSCU	Other Bureau	Chief	Total length of investigation and Administrative Review
1	582	259	37	878 Days
2	591	57	68	716
3	310	118	105	533
4	230	154	64	448
5	56	41	342	439
6	94	177	163	434
7	176	259	173	608
8	228	136	181	545
9	43	301	139	483
10	125	74	152	351

One reason for this delay is that while the PSCU has set goals and operates under timelines, other departments do not. A complaint may stay on someone's desk for an extended period of time before it is processed. There are no set timelines for a complaint to be returned to the PSCU once it is sent to the Chain of Command, the Chief's Office, the Office of Employee Relations, or the City Attorney's Office.

The complainants and subject officers are affected by the uncertainty of the outcome of the complaint process, and both have expressed their dissatisfaction with what are viewed as unreasonable delays. Efforts to reduce the time a complaint remains open are ongoing at the PSCU; however, other departments must also set their own time limits in order to collectively make an impact on this problem.

Another compelling reason why complaints must be completed sooner is that effective January 1, 1998, a law known as the Cardoza Bill (AB 1436), requires that all complaint investigations be completed within one year; otherwise, no discipline can be imposed on the subject officer. Some exceptions are provided under the Cardoza Bill, such as complaints involving a criminal investigation, multi-jurisdictional investigations, multiple subject officers, incapacitation or time waiver by the subject officer. Furthermore, once an investigation is completed, it is sent to the IPA for review. Any requests for additional investigation from the IPA must be completed within this one year limitation.

RECOMMENDATIONS:

1. The timeline to complete the investigation of a complaint, which is not covered by a Cardoza Bill exception, should be reduced from one year to no more than ten months. This ten month period should include the Chain of Command review in order to allow the IPA sufficient time to request additional investigation, if needed, within the required one year time frame.
2. Investigation requested by the IPA of a closed case should be given priority and be completed within the one year time limit.
3. Time limits should be set for every bureau and department involved with the complaint process.
4. A reliable system should be instituted to adequately track complaints once they leave the PSCU.

F. ENTERTAINMENT ZONE POLICING PLAN***1. BACKGROUND:***

In the IPA's 1995 Year End Report, the IPA recommended that the SJPd should review and revise the policies and procedures for off-duty security services performed by the San José police officers. At issue were concerns regarding accountability, negative public perception and the need for better coordination of public safety resources.

To address these concerns, the City created the Entertainment Zone Policing Plan (EZPP). Under this plan, public safety services were to be provided to nightclubs located in the Downtown Entertainment Zone by uniformed, on-duty San José police officers working on an overtime basis effective July 1997. The cost of the program was to be shared by the participating nightclubs and the City, with each employer billed according to an established formula.

Shortly after the program was established, owners and managers of the downtown nightclubs formed a committee called the Entertainment Zone Committee (EZ Committee). Because the EZPP was considered by the EZ Committee to be a by-product of the IPA's recommendation, several meetings have been held with the IPA to address on-going concerns regarding the implementation, policies, and procedures of the EZPP. Many of the issues raised by the EZ Committee pertain to administrative matters (such as the deployment of officers, the program's fee structure and its associated liability issues) and consequently, are outside the purview of the IPA. However, issues related to officer training, community relations and officer performance issues have also been raised. Specifically, the club owners expressed concerns related to:

1. The training of police officers to ensure sufficient knowledge of the particular nuances associated with individual club operations. Club owners have expressed a desire to be involved in the training of the EZPP officers especially with respect to the anticipation and diffusion of minor incidents before they escalate and require enforcement action;

2. The need for an on-going communication between the SJPd and the EZ Committee to effectively resolve issues; and
3. Unfriendly attitudes by officers towards club owners or managers.

2. METHODOLOGY:

The IPA conducted site visits of all nightclubs in the Entertainment Zone on two occasions between the hours of 9:00 p.m. and 3:00 a.m. on a Friday and Saturday night. The IPA staff observed services provided by the EZPP officers from the start of their patrol through the closing of the clubs to the final disbursement of patrons. In addition, the IPA also attended a briefing which was given to all officers working the EZPP prior to the start of their shift.

3. FINDINGS:

- The SJPd is currently revising the training module to afford club owners the opportunity to be directly involved in the training of the EZPP officers as requested.
- On-going adjustments which have improved the quality of the services have occurred in response to feedback from the EZ Committee. It is important that the SJPd continue to meet with the EZ Committee and act on their suggestions for improvement to the EZPP.
- Police personnel have repeatedly requested names of individual officers who have displayed unfriendly attitudes. However, the club owners have been reluctant to provide this information. During the nights that the IPA staff observed the EZPP officers, it was reported that all officers with two exceptions were friendly when approached by the IPA staff. It should be noted that the IPA staff did not identify themselves nor were known to the officers. Other general observations noted were that several officers appeared stoic, avoided eye contact and did not volunteer a greeting. However, if greeted first, officers would respond in kind. As working EZPP assignments is a privilege for officers the SJPd should take aggressive action in removing officers who do not perform in a satisfactory manner. This will require the cooperation of the club owners or management to identify and weed out problem officers.

4. CONCLUSION:

The EZPP has been in existence for only six months. This is not enough time to evaluate the program as a whole. However, the EZPP appears to be fundamentally sound and has a great potential for success. The SJPd has been and should continue to be, responsive to the suggestions from the stakeholders.

The administrative issues, especially those involving the fee structure, should be referred to the City Administration for further review and resolution as part of the Administration's annual report on the performance of the EZPP.

CHAPTER 5

YEAR END STATISTICS

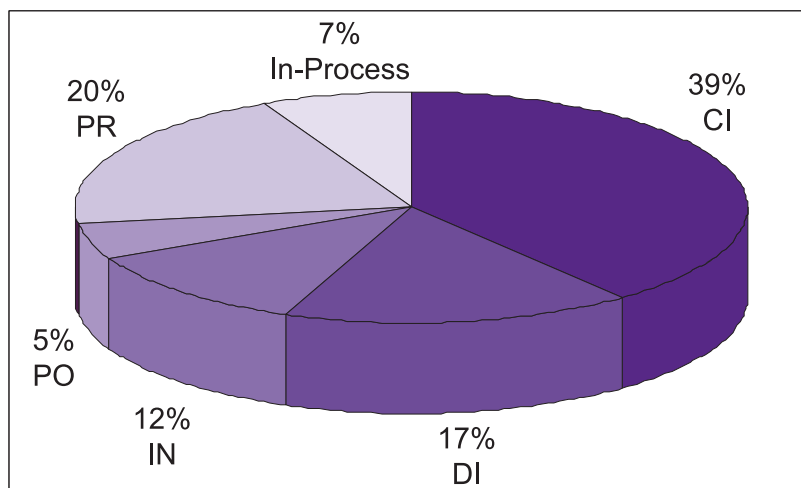
Illustration #3: *Complaints by Classification*

Type of Complaints	IPA Intake	PSCU Intake	Total
Formal: Civilian-Initiated (CI)	61	113	174
Formal: Department-Initiated (DI)	0	75	75
Informal (IN)	11	40	51
Policy (PO)	10	13	23
Procedural (PR)	32	56	88
In-Process	19	13	32
Total Cases	133	310	443

Illustration #4: *Percentage of Complaints Received by Classification*

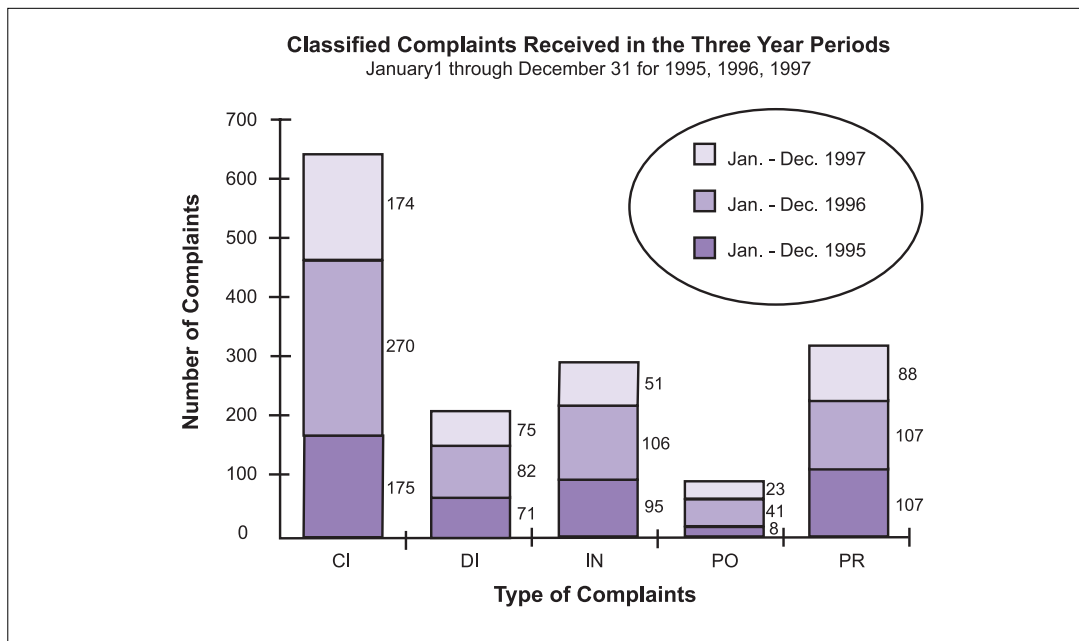
Complaints Received

January 1 through December 31, 1997



A total of **443** complaints were received from January 1 through December 31, 1997. Illustration No. 3 and No. 4 breakdown the complaints by classification based on data gathered by the IPA as of December 31, 1997. The IPA received 36% of the total complaints filed during this reporting period.¹⁰ Data was rounded off to the nearest percentage.

¹⁰ Since only the PSCU can initiate Formal DI cases, the Total Cases, excluding Formal DI cases, is 368. The percentage of the intake by the IPA is calculated by dividing 133 by 368, which equals 36%.

Illustration #5: Three Year Analysis of Complaints by Classification

1997 Complaints = 411	1996 Complaints = 606	1995 Complaints = 456
Formal: CI=Civilian-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural		

Illustration No. 5 depicts the change in the different types of classified complaints received in the three year periods of January 1 through December 31 for 1995, 1996, and 1997.

A. TIME TO CLASSIFY AND COMPLETE ALL INVESTIGATIONS

The Professional Standards and Conduct Unit (PSCU) is responsible for classifying all complaints. The classification period of a complaint is determined by the number of days it takes from the date the complaint is received to the date when the complaint is assigned to a PSCU investigator. The targeted goal for complaint classification is 30 days which was implemented in 1994.

The length of time to complete an investigation is calculated as the number of days it takes from the assigned date of the complaint until the investigation is completed. A case is considered closed when a finding is made or when no finding is possible for one of the following reasons:

- (1) Lack of signature on the Boland Admonishment,
- (2) officer resigned from the SJPd before the investigation was completed,
- (3) complainant was uncooperative,
- (4) complainant withdrew the complaint,
- (5) unable to contact complainant or witness, or
- (6) identity of the officer could not be determined.

The targeted goal for a PSCU investigator to complete an investigation is 365 days, except in cases where a Class I Unnecessary Force¹¹ allegation is involved. The goal for a Class I use of force cases is to complete the investigation within 180 days. Illustration No. 6 presents data for classified and completed complaints. The classified complaints are based on cases **received** between January 1 and December 31, 1997. The completed complaints are based on cases **closed** between January 1 and December 31, 1997.

Illustration #6: *Complaints Classified and Completed*

Time Period	Total Cases	Goal	Achieved Goal	%
Received between Jan. 1 - Dec. 31, 1997	411	Classify all complaints within 30 days	377	92%
Closed between Jan. 1 - Dec. 31, 1997	14	Complete UF Class I cases within 180 days	11	79%
Closed between Jan. 1 - Dec. 31, 1997	494	Complete all investigations within 365 days	426	86%

¹¹ In the 1996 Year End Report, the IPA implemented new goals for alleged use of force complaints. The use of force complaints are divided into two categories: Class I and Class II. Class I use of force cases 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 cases will include those complaints in which the complainant did not require medical care. These Class II cases and all other cases will be expected to close within 365 days.

CHAPTER 6 COMPLAINTS & ALLEGATIONS

BY COUNCIL DISTRICT

The following illustrations analyze complaints and allegations by Council District. The first column in the table lists the Council District¹² and its corresponding Council Member, and also indicates the location where the incidents leading to a complaint occurred. The types of classifications¹³ applied to these complaints were Formal, Informal (IN), Policy (PO), and Procedural (PR) classifications. The Formal classification is subdivided into Civilian-Initiated (CI) and Department-Initiated (DI) complaints, where a Civilian-Initiated complaint is initiated by a civilian versus the Department-Initiated complaint which is initiated by the Office of the Chief. An Informal complaint involves allegations of minor transgressions. At the complainant's request, an Informal complaint can be handled by bringing the matter to the attention of the subject officer's supervisor. A Policy complaint relates to an established policy, properly employed by the officer, which the complainant believes to be inappropriate or invalid. A Procedural complaint is a complaint without a factual basis to support the allegation of misconduct.

A. COMPLAINTS FILED IN 1997

Illustration #7: Complaints by Council District

Council Districts	Formal		IN	PO	PR	Total Complaints	%
	CI	DI					
1 JOHNSON	8	1	2	2	10	23	6%
2 POWERS	6	3	2	3	4	18	4%
3 PANDORI	63	36	15	7	25	146	36%
4 FERNANDES	5	1	2	1	6	15	4%
5 DIAZ	20	4	6	3	12	45	11%
6 FISCALINI	19	4	8	2	5	38	9%
7 SHIRAKAWA, JR.	16	5	6	3	7	37	9%
8 WOODY	12	1	0	0	4	17	4%
9 DIQUISTO	10	2	5	1	10	28	7%
10 DANDO	11	2	3	1	3	20	5%
Unknown/Outside City Limits	4	16	2	0	2	24	6%
Total Cases Received	174	75	51	23	88	411	100%
%	42%	18%	12%	6%	21%	100%	
Cases Closed	98	49	51	23	88	309	

Formal: CI = Civilian-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural

¹² See Appendix F (San José City Council District Map).

¹³ See Appendix G (Classification of Complaints).

Classified complaints account for 411 of the 443 complaints received between January 1 through December 31, 1997. The remaining 32 were awaiting classification as of December 31, 1997. Of those 411 cases, 309 complaints were closed between January 1 through December 31, 1997.

Illustration #8: *Three Year Analysis of Classified Complaints by Council District*

Council Districts	Time Period Cases Received		
	Jan. - Dec. 1997	Jan. - Dec. 1996	Jan. - Dec. 1995
1 JOHNSON	23	28	31
2 POWERS	18	50	33
3 PANDORI	146	206	143
4 FERNANDES	15	37	24
5 DIAZ	45	59	41
6 FISCALINI	38	67	39
7 SHIRAKAWA, JR.	37	35	41
8 WOODY	17	41	37
9 DIQUISTO	28	28	27
10 DANDO	20	39	27
Unknown/Outside City Limits	24	16	13
Total Cases Received	411	606	456

Illustration No. 8 shows a comparative three year analysis for 1995, 1996 and 1997 classified complaints. The total number of complaints for January through December of 1997 do not include the In-Process complaints. In-Process complaints are complaints that have been initiated, but not yet classified.

B. FORMAL ALLEGATIONS BY COUNCIL DISTRICT

Illustration #9: *Formal Allegations by Council District*

Council Districts	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
1 JOHNSON	0	0	2	2	1	2	1	1	1	1	11	2%
2 POWERS	0	1	0	3	1	2	1	2	5	1	16	3%
3 PANDORI	3	1	7	43	12	23	13	15	64	4	185	38%
4 FERNANDES	0	0	0	1	1	1	0	1	2	0	6	1%
5 DIAZ	2	0	0	5	3	5	7	1	25	2	50	10%
6 FISCALINI	2	1	2	12	3	8	8	2	17	6	61	12%
7 SHIRAKAWA, JR.	0	0	0	5	9	5	1	1	14	5	40	8%
8 WOODY	0	0	0	5	4	5	3	1	7	1	26	5%
9 DIQUISTO	0	1	0	7	0	7	2	5	9	1	32	7%
10 DANDO	0	0	0	2	1	1	6	3	10	1	24	5%
Unknown/Outside City Limits	0	0	1	11	2	10	0	12	1	2	39	8%
Total Allegations	7	4	12	96	37	69	42	44	155	24	490	100%
%	1%	1%	2%	20%	8%	14%	9%	9%	32%	5%	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

The 249 Formal complaints produced a total of 490 allegations; 19% were sustained, 5% were not sustained, 29% were exonerated, 12% were unfounded, and 35% had no finding. Each complaint may allege multiple instances of allegations. For example, in 1997, there were 102 complaints which alleged 155 counts of unnecessary force allegations. Thus, the number of allegations exceeded the number of complaints. Most of the Unnecessary Force allegations were either exonerated or have a no finding. Most of the Rude Conduct allegations had a No Finding.¹⁴ Most of the sustained cases arose from Improper Procedure and Unofficerlike Conduct allegations.

C. SUSTAINED CASES

Of the 309 closed cases, only 147 Formal cases were of the type where the officer involved could have been disciplined. A finding was reached in 73 cases, of which twenty-two complaints were sustained. The other 74 cases were omitted from Illustration No. 10 because the cases involved non-sworn officers of the SJPD or because the investigations resulted in a No Finding.

Illustration #10: Sustained Cases by Council District

Council Districts	Closed Formal Cases		Sustained Formal Cases	
	CI	DI	CI	DI
1 JOHNSON	2	0	0	0
2 POWERS	2	0	0	0
3 PANDORI	25	10	4	8
4 FERNANDES	1	0	0	0
5 DIAZ	6	2	1	1
6 FISCALINI	6	0	2	0
7 SHIRAKAWA, JR.	6	0	2	0
8 WOODY	1	1	0	1
9 DIQUISTO	2	0	0	0
10 DANDO	4	0	0	0
Unknown/Outside City Limits	1	3	0	3
Total Cases	56	16	9	13

Illustration No. 10 indicates that 9 out of 56 Formal CI closed cases were sustained, which resulted in a 16% sustained rate. By contrast, 13 out of 16 Formal DI closed cases were sustained, a 81% sustained

¹⁴ See Appendix H (Definition of Findings).

rate. The combined sustained rate for Formal CI and DI cases for all the Council Districts is 30%.¹⁵

The allegations and discipline of the sustained cases are as follow:

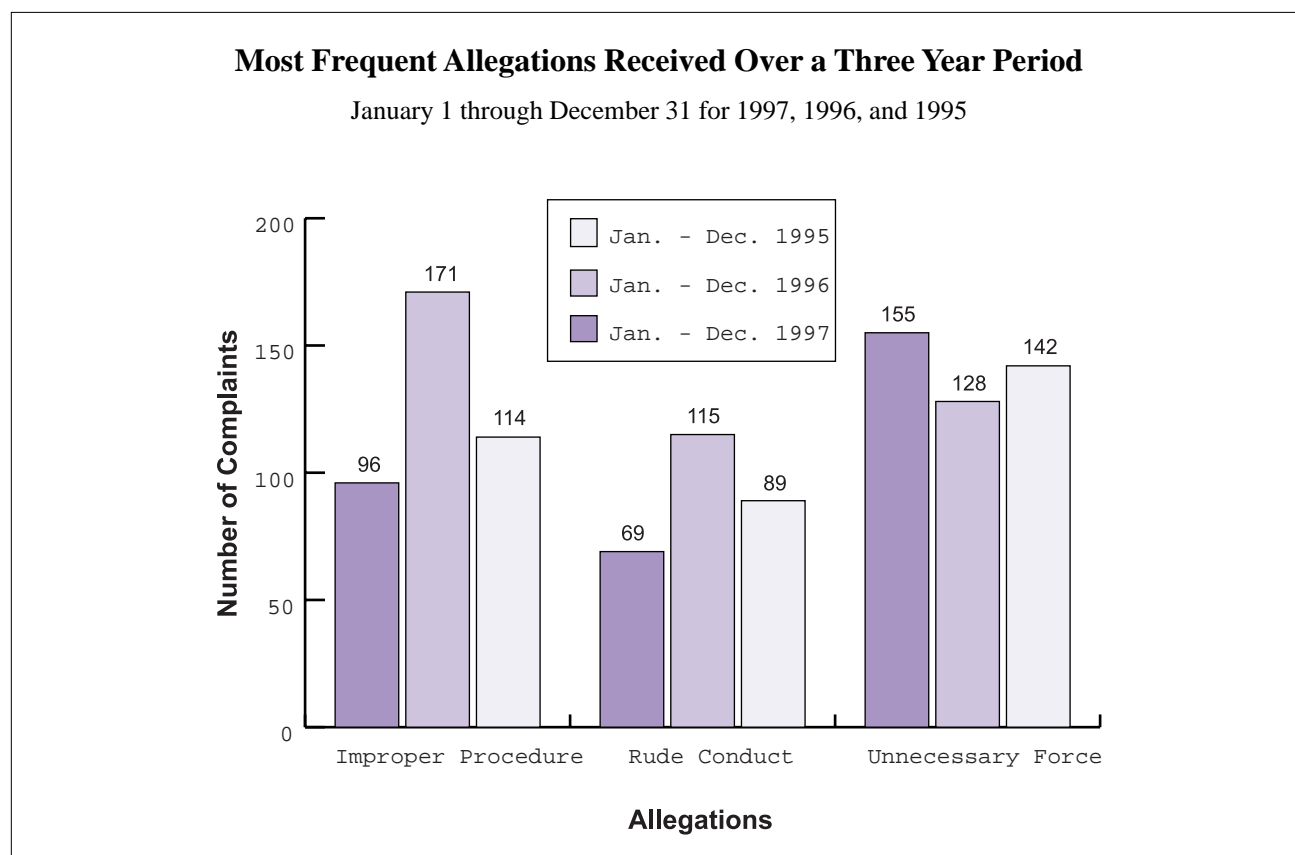
- District 3 had twelve complaints sustained. The allegations for these cases were Improper Procedure, Rude Conduct, Failure to Take Action, Unofficerlike Conduct, and Missing/Damaged Property. The disciplines recommended for these allegations were Letter of Reprimand (L.O.R.), Documented Oral Counseling (D.O.C.), a 10 hour suspension, and a 160 hour of suspension.
- District 5 had two complaints sustained. Both had allegations of Missing/Damaged Property and the disciplines were D.O.C. and L.O.R.
- District 6 had two complaints sustained. The allegations were Improper Procedure and Failure to Take Action. The recommended disciplines were D.O.C. and L.O.R.
- District 7 had two complaints sustained. Both allegations were of Missing/Damaged Property and the disciplines were D.O.C. and Training and Counseling.
- District 8 had one complaint sustained. The allegation was Improper Procedure and the discipline was L.O.R.
- Unknown or Outside City Limit Category had three complaints sustained. The allegations were Unofficerlike Conduct and Improper Procedure. The disciplines imposed were L.O.R., Counseling and Training, and 20 hour suspension.

The most frequently sustained allegations were Improper Procedure (IP) and Unofficerlike Conduct (UC), which were mostly disciplined with a Letter of Reprimand (L.O.R.) or a Documented Oral Counseling (D.O.C.). The Unnecessary Force allegations account for 32% of all 490 allegations received in 1997, yet none were sustained. In 1998, a closer examination will be conducted on the supervisors' compliance with their affirmative duty to investigate officers' use of force.

D. THE MOST FREQUENT ALLEGATIONS FILED

Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consistently yield the highest number of complaints. To compare these three types of allegations in the three year periods of 1997, 1996, 1995, please refer to the following illustration.

¹⁵ The 30% sustained rate was derived from the 22 total sustained cases divided by the 74 Formal closed cases. Informal, Policy and Procedural cases do not have findings. Also excluded are the No Finding investigations.

Illustration #11: The Three Most Frequent Allegations Received Over a Three Year Period

Comparing the 1997 allegations to 1996 and 1995, both the Improper Procedure allegations and the Rude Conduct allegations decreased, Unnecessary Force allegations increased 21% from 1996 and 9% from 1995.

E. ANALYSIS OF UNNECESSARY FORCE COMPLAINTS

There were 249 Formal complaints received from January 1 through December 31, 1997. Of the 249 Formal complaints, one-hundred and two (102) complaints were Unnecessary Force cases, which produced 155 allegations. Use of Force complaints are divided into two categories: Class I and Class II. Class I cases involve those complaints in which the complainants required medical attention for their injuries. Class II cases include those complaints in which the complainant did not require immediate medical care. Of the complaints filed, 44 Use of Force allegations were categorized as Class I cases. The remaining 111 Use of Force allegations were given a Class II classification.

Illustration #12: Type of Force Used, Body Area Afflicted by Use of Force, and Degree of Injury

Type of Alleged UF		Area Afflicted by Alleged UF		Degree of Injury	
Baton	26	Head	43	Major	18
Canines	1	Torso	21	Moderate	19
Car (officer)	13	Limbs	45	Minor	42
Car (complainant)	1	MBP	14	None	12
Chemical Agent	12	Unknown	9	Unknown	11
Gun (officer)	3	Total	132	Total	102
Feet	19				
Ground	16				
Hands	69				
Handcuffs (tight)	10				
Knee	5				
Other	12				
Unknown	5				
Total	192				

Each complaint may allege more than one type of force and body area afflicted by the alleged use of force. The subject officer's use of hands, such as pushing or slapping a complainant, accounted for 36% of the force alleged. The use of a baton for striking or injuring the complainant comprised 14%. This figure more than doubled from last year. The category "ground" includes allegations of being pushed to the ground or being hit/slammed against the ground. The category "Other", which includes the officer's use of a fence, truck, flashlight, garage door, wall, or table, accounted for 6% of the alleged force used.

The "Area Afflicted" by the alleged use of force is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown.¹⁶ The distribution included 33% UF cases which involved injuries to the head, 16% to the torso, 33% to the limbs, 11% to the MBP, and 7% to unknown parts of the body.

The "Degree of Injury" resulting from the alleged use of force ranged from minor to major,¹⁷ and included categories for "none" and "unknown" degrees of injury. The breakdown for these categories were 18% for major injuries, 19% moderate, 41% minor, 12% had no visible injury, and 11% were unknown degrees of injury.

¹⁶ The area of the force alleged is unknown because the case is an open investigation and the area where the force was applied is unclear at the present time.

¹⁷ The degree of the force alleged is unknown because the case is an open investigation and the degree of injury is unclear at the present time. Major injury required medical attention usually arising from the use of baton. Moderate injury generally resulted from the use of chemical agent, canine and tight handcuffs. Minor injury included the description of bruises and cuts from being pushed, grabbed and slapped.

CHAPTER 7 BACKGROUND OF COMPLAINANTS

BY COUNCIL DISTRICT

The Office of the Independent Police Auditor utilizes a Voluntary Questionnaire 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 in April 1995. There are seven questions in the survey. The complainants provided information such as their occupation, educational level, ethnicity, primary language, gender, age range, and what led the complainant to either the IPA or the PSCU. An effort is made to collect a questionnaire from every complainant. Thus, there may be more questionnaires than complaints received in a time period because each complaint may have more than one complainant. The statistical background of the complainants is presented by Council District, which indicates the location where the incident leading to the complaint occurred.

A. GENDER OF THE COMPLAINANTS

Illustration No. 13 identifies the gender of the complainants by Council Districts for the period of January 1 through December 31, 1997. Data was rounded off to the nearest percentage.

Illustration #13: *Gender of the Complainants by Council District*

Council Districts	Gender	
	Male	Female
1 JOHNSON	16	7
2 POWERS	14	6
3 PANDORI	89	32
4 FERNANDES	10	6
5 DIAZ	27	20
6 FISCALINI	24	12
7 SHIRAKAWA, JR.	17	22
8 WOODY	13	5
9 DIQUISTO	18	9
10 DANDO	13	7
Unknown/Outside City Limits	7	5
Total Complainants	248	131
%	65%	35%

B. ETHNICITY OF THE COMPLAINANTS

Illustration No. 14 displays the ethnicity of the complainants by Council Districts for the period of January 1 through December 31, 1997. Data was rounded off to the nearest percentage.

Illustration #14: *Ethnicity of Complainants by Council District*

Council Districts	Ethnicity								
	African American	Asian American	European American	Filipino American	Hispanic Latino	Native American	Vietnamese	Other	Decline
1 JOHNSON	2	2	8	0	0	0	1	3	7
2 POWERS	2	0	7	0	2	0	0	1	8
3 PANDORI	14	0	22	1	48	3	1	10	22
4 FERNANDES	1	0	3	3	4	0	0	1	4
5 DIAZ	7	0	5	1	16	1	1	5	11
6 FISCALINI	5	0	11	1	10	0	0	1	8
7 SHIRAKAWA, JR.	2	2	5	0	16	1	3	3	7
8 WOODY	5	0	0	0	10	0	0	2	1
9 DIQUISTO	1	1	10	0	6	1	0	2	6
10 DANDO	3	0	4	0	2	1	0	2	8
Unknown/Outside City Limits	1	0	2	0	1	2	0	2	4
Total Complainants	43	5	77	6	115	9	6	32	86
%	11%	1%	20%	2%	30%	2%	2%	8%	23%

C. AGE OF THE COMPLAINANTS

Illustration No. 15 lists the age of the complainants by Council Districts for the period of January 1 through December 31, 1997. Data was rounded off to the nearest percentage.

Illustration #15: *Age Of the Complainants by Council District*

Council Districts	Age				
	Under 18	18-30	31-59	60+	Decline
1 JOHNSON	0	4	12	0	7
2 POWERS	1	2	9	0	8
3 PANDORI	0	41	54	4	22
4 FERNANDES	0	5	7	0	4
5 DIAZ	1	19	16	0	11
6 FISCALINI	2	5	20	0	9
7 SHIRAKAWA, JR.	0	6	24	2	7
8 WOODY	2	6	8	1	1
9 DIQUISTO	0	6	15	0	6
10 DANDO	0	2	10	1	7
Unknown/Outside City Limits	0	6	2	0	4
Total Complainants	6	102	177	8	86
%	2%	27%	47%	2%	23%

D. EDUCATIONAL LEVEL OF THE COMPLAINANTS

Illustration No. 16 lists the education level of the complainants by Council Districts for the period of January 1 through December 31, 1997. Only six complainants indicated having an education level below high school. Data was rounded off to the nearest percentage.

Illustration #16: *Educational Level of Complainants by Council District*

Council Districts	Educational Level			
	High School or below	College	Graduate	Decline
1 JOHNSON	4	9	3	7
2 POWERS	2	8	1	9
3 PANDORI	34	47	12	28
4 FERNANDES	4	6	1	5
5 DIAZ	23	13	0	11
6 FISCALINI	8	13	5	10
7 SHIRAKAWA, JR.	15	16	0	8
8 WOODY	10	5	1	2
9 DIQUISTO	11	7	3	6
10 DANDO	6	4	3	7
Unknown/Outside City Limits	3	5	0	4
Total Complainants	120	133	29	97
%	32%	35%	8%	26%

E. OCCUPATION OF THE COMPLAINANTS

Illustration No. 17 lists the occupation of the complainants for the period of January 1 through December 31, 1997.

Illustration #17: *Occupation of Complainants*

Occupation					
Administration	18	Homemaker	15	Services	45
Artist	10	Laborer	52	Student	25
City or Govt. Employee	4	Professional	43	Technical	25
Decline	103	Retired	8	Unemployed	8
Disabled	4	Self-employed	19		

CHAPTER 8

DISCIPLINE IMPOSED

Discipline is only imposed on Formal complaints. The Formal complaints can be initiated either by a civilian (Civilian-Initiated (CI) complaints) or by the Chief of Police (Department-Initiated (DI) complaints). An officer receives discipline based on the entire complaint and not based on each separate allegation.¹⁸ For example, an officer may have had three allegations sustained, but will receive only one discipline (letter of reprimand, documented oral counseling, suspension, etc.). An officer may receive training and/or counseling, even though the allegation in a complaint is not sustained.¹⁹

From January 1 through December 31, 1998, two hundred and forty-nine Formal complaints were received. Of the 249 Formal complaints, 147 were closed. A finding was reached in 73 complaints. The other 74 complaints involved non-sworn officers of the SJPD or the investigations resulted in a No Finding, were omitted from Illustration No. 18. In the 73 complaints that resulted in a finding, a discipline was imposed on 27 complaints. The disciplines are listed by increasing level of severity.

Illustration #18: *Discipline Imposed for Formal Cases*

Type of Disciplines Imposed	Formal CI Disciplines	Formal DI Disciplines	Total	%
Training and/or Counseling	5	5	10	20%
Documented Oral Counseling (D.O.C.)	1	13	14	28%
Letter of Reprimand (L.O.R.)	0	11	11	22%
10-Hour Suspension	0	3	3	6%
20-Hour Suspension	0	1	1	2%
40-Hour Suspension	0	1	1	2%
160-Hour Suspension	0	1	1	2%
Pay reduction and 40-Hour Suspension	0	2	2	4%
Termination	0	1	1	2%
Officer Resigned	1	3	4	8%
Resigned Pending Termination	0	1	1	2%
Settlement Agreement	0	1	1	2%
Total Formal Cases or Disciplines	7	43	50	100%

¹⁸ See Appendix I (Misconduct Allegations) and Appendix H (Definition of Findings).

¹⁹ For example, officers who resign pending termination have a No Finding instead of a Sustained allegation. Also, some officers may receive Training and/or Counseling for a Not Sustained or Exonerated allegation.

Documented Oral Counseling accounted for 30% of the disciplines in Formal cases while Letter of Reprimand accounted for 26% of the disciplines in Formal cases. Training and/or Counseling was more frequent in the CI Formal cases than in the DI Formal cases.

A. OFFICERS SEPARATED FROM SJPD

There were four Formal cases that closed before the investigation was completed because the two officers left the San José Police Department (SJPD). Thus, no discipline was imposed. The allegations from those complaints were Unofficerlike Conduct (UC) and Improper Procedure (IP) .

CHAPTER 9 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 have the following:

1. Three or more investigations of Formal Civilian-Initiated or Formal Department-Initiated complaints within a 12-month period; or
2. Five or more investigations involving Informal, Procedural, Formal CI, Formal DI or a combination within a 12-month period.

During Intervention Counseling, the subject officers meet with the Deputy Chief of their bureau, the PSCU Commander and their immediate supervisor for informal counseling. This informal counseling session involves a review of the complaints against the subject officer²⁰, whether sustained or not, in a positive attempt to assist him/her. No formal record is made of the substance of the IC session.

The PSCU conducts a monthly review of its’ investigation files to ensure that subject officers meeting the IC criteria are identified in a timely manner. When officers 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 the completion of Intervention Counseling.

Illustration #19: Intervention Counseling (IC)

Time Period of Intervention Counseling	Total Number of Intervention Counseling Sessions	Number of Subsequent Complaints from IC Date to December 31, 1997					
		0 ²¹	1	2	3	4	5+
Jan. - Dec. 1997	20	14	3	2	0	1	0
Jan. - Dec. 1996	16	3	3	5	1	2	2
Jan. - Dec. 1995	15	5	3	3	2	1	1

²⁰ Subject officer refers to the sworn member of the SJPd against whom the complaint was made.

²¹ This value represents the number of subject officers that received no complaints since their Intervention Counseling (IC) date.

Illustration No. 19 lists the number of IC sessions between January 1 and December 31 for the years 1995 through 1997. The number of subject officers with subsequent complaints from their IC date should not be compared due to the differences in time between the 1997, 1996, and 1995 sessions. A longer time period from the IC date increases the possibility of having subsequent complaints.

Twenty IC sessions occurred in 1997. Seventy percent (70%) of the subject officers received no subsequent complaints following the IC session. Fifteen percent (15%) of the subject officers received one subsequent complaint following the IC session. Ten percent (10%) of the subject officers received two complaints following the IC session.

Sixteen IC sessions occurred during 1996. Nineteen percent (19%) of the subject officers have either received one complaint or none since they were counseled in 1996. However, thirty-one percent of the subject officers received two subsequent complaints since the 1996 IC date.

During 1995, fifteen IC sessions were conducted. Thirty-three percent (33%) of the subject officers have received no subsequent complaints and another 20% of the subject officers have received one to two complaints since their IC sessions through December 31, 1997.

In addition to Intervention Counseling, the SJPd 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.

CHAPTER 10

STATISTICAL BACKGROUND

OF SUBJECT OFFICERS

An additional statistical area tracked by the Office of the IPA includes the background of the subject officers who are listed in Formal, Informal, and Procedural complaints. Specific areas include the subject officer's unit, gender, and years of experience with the SJPD at the time the incident occurred.

A. UNIT OF THE SUBJECT OFFICER

Illustration No. 20 lists the units of the subject officers at the time of the incident in which a complaint was filed. The complaints were received between January 1 and December 31, 1997. Data was rounded off to the nearest percentage.

Illustration #20: Unit of the Subject Officer

Bureau of Field Operations (BFO)		%
Airport	4	1%
Community Services Division	1	0%
Crime Prevention	1	0%
Field Training	25	7%
K-9	5	1%
Merge	3	1%
Mounted	1	0%
Narcotics Enforcement Team	22	6%
Parks	1	0%
Patrol	250	68%
Pre-Processing Center	2	1%
Special Operations	2	1%
Street Crimes	10	3%
Traffic Enforcement	14	4%
Violent Crime Enforcement Team	19	5%
Youth Protection Team	1	0%
Youth Service Detail	4	1%
Total incidents from BFO	365	100%

Bureau of Technical Services (BTS)		%
Information Center	2	67%
Records and Identification	1	33%
Total incidents from BTS	3	100%

Bureau of Investigations (BOI)		%
Assaults	1	4%
Burglary/Fraud	3	12%
Court Liaison	1	4%
Drug Enforcement Administration	1	4%
Homicide/Crime Scene	1	4%
Juvenile Crimes	3	12%
Narcotics/Covert Investigation	6	23%
Robbery/Night General	2	8%
Sexual Assault/Child Exploitation	5	19%
Traffic Investigation Unit	2	8%
Violent Crimes Unit	1	4%
Total incidents from BOI	26	100%

Bureau of Administration (BOA)		%
Permits	1	25%
Police Activities League	1	25%
Training	2	50%
Total incidents from BOA	4	100%

Office of the Chief (COP)		%
Vice	3	100%
Total incidents from COP	3	100%

The investigators were unable to identify the officers or the officer's units in 80 complaints. These complaints accounted for 21% of all classified complaints received from January 1 through December 31, 1997.²² The investigator was unable to identify the officers involved for one of two reasons. Either the complainant did not sign the required Boland Admonishment form,²³ or the investigator was not provided with enough information to accurately identify the subject officer. There were 46 cases where the Boland Admonishment was not signed. This led to 54 unidentified subject officers. In 19 cases, the investigator did not have the necessary information to identify the subject officer. The officers in the remaining 15 cases could not be identified for other reasons such as the complaint was withdrawn, the investigation was terminated, etc.

B. GENDER OF THE SUBJECT OFFICER

Illustration No. 21 divides the complaints received between January 1 and December 31, 1997 by the gender of the subject officer. Data was rounded off to the nearest percentage.

Illustration #21: Gender of the Subject Officer

Gender	Number of Complaints	%	Number of Officers in the Police Department	%
Male	378	94%	1171	92%
Female	24	6%	106	8%
Total	402	100%	1277	100%

Of the 1277 total number of officers in the SJPd, 20% of the officers received a complaint.

C. YEARS OF EXPERIENCE OF THE SUBJECT OFFICER

Illustration No. 22 and Illustration No. 23 present the subject officers' years of experience in the SJPd as of December 31, 1997. These statistics are from the complaints received between January 1 and December 31, 1997. Data was rounded off to the nearest percentage.

²² There was a total of 411 classified cases received from January 1 through December 31, 1997. A policy complaint is a complaint against the policy not against a San José police officer. Policy complaints accounted for 23 cases.

²³ State law requires that the complainant sign this form in order to have the complaint investigated.

Illustration #22: Years of Experience of the Subject Officer

Years of Experience	Number of Complaints	%	Number of Officers in the Police Department	%
0-1+	34	8%	85	7%
2-4+	136	34%	241	19%
5-6+	35	9%	89	7%
7-10+	63	16%	201	16%
11-15+	49	12%	234	18%
16+	85	21%	427	33%
Total	402	100%	1277	100%

Officers with two to four years of experience received the highest number of complaints. These officers accounted for 19% of all officers in the SJPD, and were responsible for 34% of all the complaints received. Officers with more than 16 years of experience followed with 85 complaints. They comprise 33% of all officers in the SJPD and account for 21% of all complaints.

Illustration #23: Allegations by Officers' Years of Experience

Years of Experience	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
0-1+	0	0	0	0	2	4	4	1	15	0	26	7%
2-4+	3	3	2	18	4	13	20	5	45	9	122	35%
5-6+	0	0	0	2	7	2	4	2	12	1	30	9%
7-10+	0	0	0	11	6	6	4	2	19	2	50	14%
11-15+	1	0	0	11	1	6	4	8	11	0	42	12%
16+	1	0	5	24	4	13	1	12	19	3	82	23%
Total Allegations	5	3	7	66	24	44	37	30	121	15	352	100%
%	1%	1%	2%	19%	7%	13%	11%	9%	34%	4%	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

Officers with two to four years of experience received the most unnecessary force allegations while officers with more than 16 years of experience received the most Improper Procedure allegations. Overall, the officers with less than one year of experience have the least number of allegations filed against them.

CHAPTER 11

ANALYSIS OF THE AUDITED COMPLAINTS

A. AUDIT CRITERIA

In order to audit cases in a uniform and consistent manner, the IPA has developed audit forms which it uses when evaluating the quality of the investigations conducted by the SJPD. The different audit criteria are intended to highlight some of the most important aspects of the investigations. Below are some of the criteria used by the IPA along with the IPA's assessments and findings.

Was the investigation completed in a timely manner?

Yes	434	85%
No	74	15%

Cases which are classified as "Class I Use of Force" are to be completed within 180 days of the date the complaint was initiated. All other cases are to be completed within 365 days of the date the complaint was initiated. This table reflects the combined total.

Nature of police contact?

Call for service	173	38%
Self initiated	105	23%
Traffic related	124	28%
Other	49	11%

This section reflects the type of encounter between a civilian and an officer which resulted in the filing of a complaint. Contacts where the officer involved was dispatched to the scene are categorized as "call for service." On the other hand, if the officer initiates the contact without first being requested to do so, it becomes a "self initiated"

contact. The "traffic related" category is reserved for cases where the police contact originated from a traffic related incident. The nature of "other" contacts may be due to warrants and the like.

Most audit criteria are specific to the classification of the complaint. Below are the five case classifications and criteria used by the IPA along with the IPA's assessments.

B. FORMAL COMPLAINTS

Formal complaints are those that allege a serious violation of the law or of the SJPD's policies, procedures, rules or regulations by an officer. There were 161 Formal cases audited from January 1 through December 31, 1997.

Was review requested by the complainant?

Yes	66	41%
No	95	59%

A total of 66 complainants or 41% requested the IPA to review their case. Some of these complainants requested review while the investigation was being conducted by the PSCU, others requested review after the PSCU had completed their investigation of the case.

Did the IPA request further action from PSCU?

Yes	21	13%
No	140	87%

The IPA requested further action from the PSCU in 21 or 13% of the Formal cases it reviewed. Requests varied from re-opening an investigation to providing the IPA with additional information or documentation.

Did the Auditor attend officer interviews conducted by the PSCU after being notified?

Notification requested	104	65%
Notice received	27	17%
Interviews attended	18	70%
Interviews not attended	8	30%

Formal complaints are the only class of complaints which provide a formal process for the questioning of the SJPd officers relevant to the investigation of a complaint. The Auditor attends the officer interviews at her discretion. Factors such as seriousness of the allegations, status of the officer being interviewed as either a subject or witness officer, and time constraints, form part of her

decision. From a total of 161 Formal cases, the IPA requested to be notified of police officer interviews in 104 cases. Of those, the IPA was notified of only 27 interviews. The Auditor attended 18 interviews, and one interview was canceled. The PSCU failed to provide notice for 77 interviews. New requirements for the PSCU regarding notification of officer interviews to the Auditor have been made.

What is the overall quality of the investigation?

Very Thorough	13	8%
Thorough	95	60%
Adequate	33	21%
Inadequate	11	7%
N/A	7	4%

The overall quality of the investigations as reported, reflect the conclusions of the IPA. The IPA lists those cases where the investigator has taken every reasonable step to discover relevant witnesses or evidence as very thorough. Thorough investigations are those where the investigator has taken all the steps likely to discover important evidence. Adequate investigations are those where the investigator took only the most obvious steps to uncover important information. Inadequate investigation are those where not even the obvious steps were taken to uncover vital information.

This section does not apply to cases that could not be investigated due to factors beyond the control of the PSCU (i.e. the complainant did not wish to pursue the case, the officer resigned, the allegations did not involve a SJPD officer, etc.)

Did the IPA agree with the finding of the investigation?

Yes	147	91%
No	14	9%

The IPA disagreed with the finding of the investigation in 14 of the 161 formal cases even after further action was requested from the PSCU. This section reflects the number of times the IPA agreed or disagreed on whether a complaint should have been sustained or not.

Did the incident give rise to criminal action against the complainant?

Yes	85	53%
No	76	47%

Roughly half of the complainants who filed complaints against a police officer were arrested for a crime although criminal charges were not always filed against them. The 47% involves complainants who were not accused of violating any laws.

Was the case sent to the Chain of Command for Finding and recommendations by the PSCU?

Yes	25	16%
No	117	73%
N/A	17	11%

Upon completion of the investigation, the PSCU Lieutenant and investigator determine whether the case merits sending it to the subject officer's chain of command for findings and recommendation of discipline. Only complaints believed to be sustainable by the PSCU are sent to the Chain of Command. All complaints alleging unnecessary force require a review by the Assistant Chief before they can be closed.

C. PROCEDURAL COMPLAINTS

Procedural complaints are those that despite the allegation of misconduct, no factual basis supports the allegation. There were 97 Procedural complaints reviewed in 1997.

Was the complaint properly classified?

Yes	88	91%
No	9	9%

The IPA found that 9 of the Procedural cases should not have been classified as Procedural complaints. Instead, these cases should have been classified and investigated as Formal cases because there was a basis to support a misconduct allegation by the complainant.

Was the procedure properly applied?

Yes	87	90%
No	10	10%

The IPA found that in ten of the Procedural cases, the subject officer did not follow the proper procedure. Procedural cases may only be classified as such if the officer followed the correct procedure. Otherwise, the complaint should be investigated as a Formal complaint.

Did the IPA request further action from PSCU?

Yes	11	11%
No	86	89%

The IPA requested further action from the PSCU in 11 of the Procedural cases it reviewed. Requests varied from re-opening an investigation to providing the IPA with additional information or documentation.

What is the IPA's finding of the investigation?

Agree	87	89%
Disagree	10	11%

The IPA disagreed with the finding of the investigation in 10 of the 97 Procedural cases even after further action was requested from PSCU.

D. COMPLAINTS WITHOUT A SIGNED BOLAND ADMONISHMENT

The “No Boland” complaints are those where the complainant did not sign the required Boland Admonishment. State law requires that the complainant sign an admonishment which provides notice that if the complainant knows the allegations to be false they can be prosecuted. The PSCU conducts a preliminary and not a Formal investigation into these complaints. The IPA reviewed 79 “No Boland” cases.

Was the officer(s) involved in the complaint identified?

Yes	69	87%
No	10	13%

Even if the complainant does not return a signed Boland Admonishment, the PSCU attempts to identify the officer(s) involved. This is done in an effort to track patterns in the officer's conduct. When the officer can not be identified by the PSCU, the IPA also notes the efforts made by the PSCU investigator.

Was unnecessary force alleged in this complaint? Class I or class II?

Yes Class I	3	4%
Yes Class II	21	26%
No	55	70%

Complaints of unnecessary force where the complainant required medical attention are classified as Class I complaints and must be investigated within 180 days of the date the complaint was initiated. All other complaints must be investigated within 365 days. Three of the “No

Boland” cases audited in 1997 were classified as Class I. Two of them were opened and investigated by the PSCU as “Department-Initiated” complaints because of the serious nature of the allegations. The other Class I complaint also involved injuries to the complainant; however, the initial investigation revealed that the injuries were not caused by a SJPD officer.

Does this complaint involve another allegation, besides unnecessary force, that may warrant further review?

Yes	3	4%
No	76	96%

In cases where the allegations are particularly serious, the PSCU will investigate despite the fact that the complainant did not sign a Boland Admonishment. The IPA found that three cases were closed when they should have been investigated due to the seriousness of the allegations.

E. INFORMAL COMPLAINTS

Informal complaints are those that involve a minor transgression or where the complainant chose the informal process. These complaints are handled by bringing the matter to the attention of the officer’s Chain of Command and his or her immediate supervisor. These complaints are tracked and become part of the officer’s PSCU file. The IPA reviewed 79 Informal complaints in 1997.

Was the allegation a minor transgression?

Yes	48	61%
No	31	39%

In 31 cases, the IPA found that the transgression was not minor; however, the complainant chose the informal process or the allegations were not sufficiently serious enough to merit a Formal investigation.

Was the complainant informed that the complaint may be handled formally or informally?

Yes	72	91%
No	2	3%
Unknown	5	6%

While the PSCU makes the final determination as to the classification of complaints, the complainant’s preference is taken into consideration by the PSCU. The IPA, therefore, audits this area of the complaint process.

Was the Complainant aware that he/she could be contacted by the officer’s supervisor?

Yes	72	91%
No	4	5%
Unknown	3	4%

Part of the Informal complaint process is to have the subject officer’s supervisor talk to the complainant if the complainant wishes to be contacted. The PSCU has the responsibility to inform the complainant of this option. It is the supervisor’s responsibility to notify the PSCU that he/she has contacted the complainant.

Did the IPA request further action from PSCU?

Yes	6	8%
No	73	92%

The IPA requested further action from the PSCU in six of the Informal cases it reviewed, wherein the IPA requested additional information or documentation.

F. POLICY COMPLAINTS

Policy complaints pertain to an established policy, properly employed by a Department member, which the complainant understands, but believes is inappropriate or not valid. The IPA reviewed 35 Policy complaints.

Was the complaint properly classified?

Yes	35	100%
No	0	0%

Policy complaints refer to complaints where the complainant expresses a disagreement with a SJPd policy, not against the officer who was following the policy.

Does the complaint pertain to an established policy?

Yes	34	97%
No	1	3%

The IPA's audit form also includes the policy which is the subject of the complaint. In one case, the complainant asserted that the officers should not be allowed to smoke cigarettes at events where many minors attend. The complainant believed it created a bad impression on the minors. Presently, there is no policy against smoking at these events.

Was the policy properly employed by department member?

Yes	32	91%
No	0	0%
Unknown	3	9%

The IPA looks to the facts of the case to determine if the Department member complied with the policy of the Department.

CHAPTER 12

CASE AUDIT SUMMARIES

In order to better inform the community of how the IPA functions, the following cases have been selected in order to illustrate the auditing process. These are actual cases investigated by the PSCU and reviewed by the IPA. These cases have been selected not because they are most representative of the actions taken by the IPA and the PSCU, but because they illustrate the different options and courses of action the IPA can pursue. The locations and names of individuals involved have been intentionally left out in order to preserve their privacy.

Case #1 - IPA confers with PSCU

The complainant alleged that an officer had used unnecessary force against him/her. The complainant alleged that, without cause, the officer grabbed complainant by the neck and arm and then walked him/her out of the building. Complainant requested the informal investigative process. The PSCU, however, conducted a formal investigation. The IPA reviewed the case and conferred with PSCU regarding the type of investigation employed on the case. The IPA concurred with the PSCU's decision to conduct a formal investigation because, despite the complainants request for the informal process, the seriousness of the complaint warranted a formal, more in depth investigation.

Case #2 - IPA requests audio tape recording of PSCU - complainant interview

The complainant initiated the complaint at the PSCU alleging that an on-duty officer had been rude to friends and family while at his/her home. After the case was closed by the PSCU, complainant called the IPA because the PSCU did not conduct a formal investigation as allegedly requested by the complainant. The IPA reviewed the file and requested the audio taped interview from the PSCU, where the complainant was asked if he/she preferred a Formal or Informal investigation. Upon review of the tape, it was discovered that the complainant requested the Informal process. The IPA then contacted the complainant and let the complainant listen to the tape. The complainant then realized that he/she had, in fact, requested the Informal process.

Case #3 - IPA confers with the PSCU and requests investigation be re-opened

Complainant initiated his/her complaint at the IPA where he/she made multiple allegations. The PSCU closed his/her case because a family member of the complainant refused to cooperate with the PSCU's

investigation. The family member did not want to be interviewed by the PSCU or turn over documents to the PSCU. The IPA reviewed this case and found that some of the allegations could be investigated despite the lack of cooperation from complainant's family member. The IPA met with the PSCU lieutenant and it was agreed that allegations not related to the complainant's family member would be investigated. The investigator assigned to the case then informed the IPA that the complainant had not been fully cooperative with the investigation either. The IPA contacted the complainant and requested that he/she cooperate with the PSCU investigator. The PSCU then re-opened the investigation on the allegations not related to the family member.

Case #4 - IPA requests to re-open investigation and notes PSCU's refusal

Complainant alleges the police came to his/her home to conduct a search. One of the residents, a ten year old girl, asked to see a search warrant. An officer allegedly responded by referring to her as a "smart ass." The PSCU closed the case after investigating other allegations, but did not investigate the rude conduct allegation. The IPA reviewed the case and contacted the PSCU on the issue of rude conduct toward the ten year old girl. The IPA and the PSCU did not agree on the adequacy of the investigation. The PSCU maintained that the alleged comment did not amount to misconduct.

Case #5 - IPA attends officer interviews

Officers responded to a disturbance call at complainant's residence. The complainant alleged that one of the officers used unnecessary force against him/her by choking and punching him/her. As part of the investigation, the PSCU interviewed the subject officer, as well as witness officers. The IPA attended the interviews of the subject officer and the witness officers, and provided questions for the investigator to ask. The allegations against the officer were later found to be exonerated. By attending the officer's interview, the IPA was in a better position to evaluate the complaint and its investigation.

Case #6 - IPA interviews witness

Complainant alleged that his/her pet was killed by a police officer. The case was closed by the PSCU and the officer was found not to have engaged in misconduct. The complainant was not satisfied with the investigation because witnesses, which the complainant provided and felt were essential, were not interviewed. The IPA contacted one of the witnesses to inquire about his/her knowledge of the incident. The IPA concluded that the witness could not provide information that would change the finding of the complaint. The IPA did not request that the PSCU re-open the case.

Case #7 - IPA visits scene of alleged misconduct

Complainant alleged that he/she was arrested and taken to jail. He/She states that while still outside of the jail, the subject officer used unlawful force against him/her. Complainant alleges that the officer pushed him/her to the ground, causing lacerations, bruising and swelling. In order to better understand the circumstances surrounding the complaint, the IPA visited the scene of the alleged misconduct. The IPA noted the physical layout of the area, and thus, was better able to audit the investigation of the complaint.

CHAPTER 13

CONCLUSION

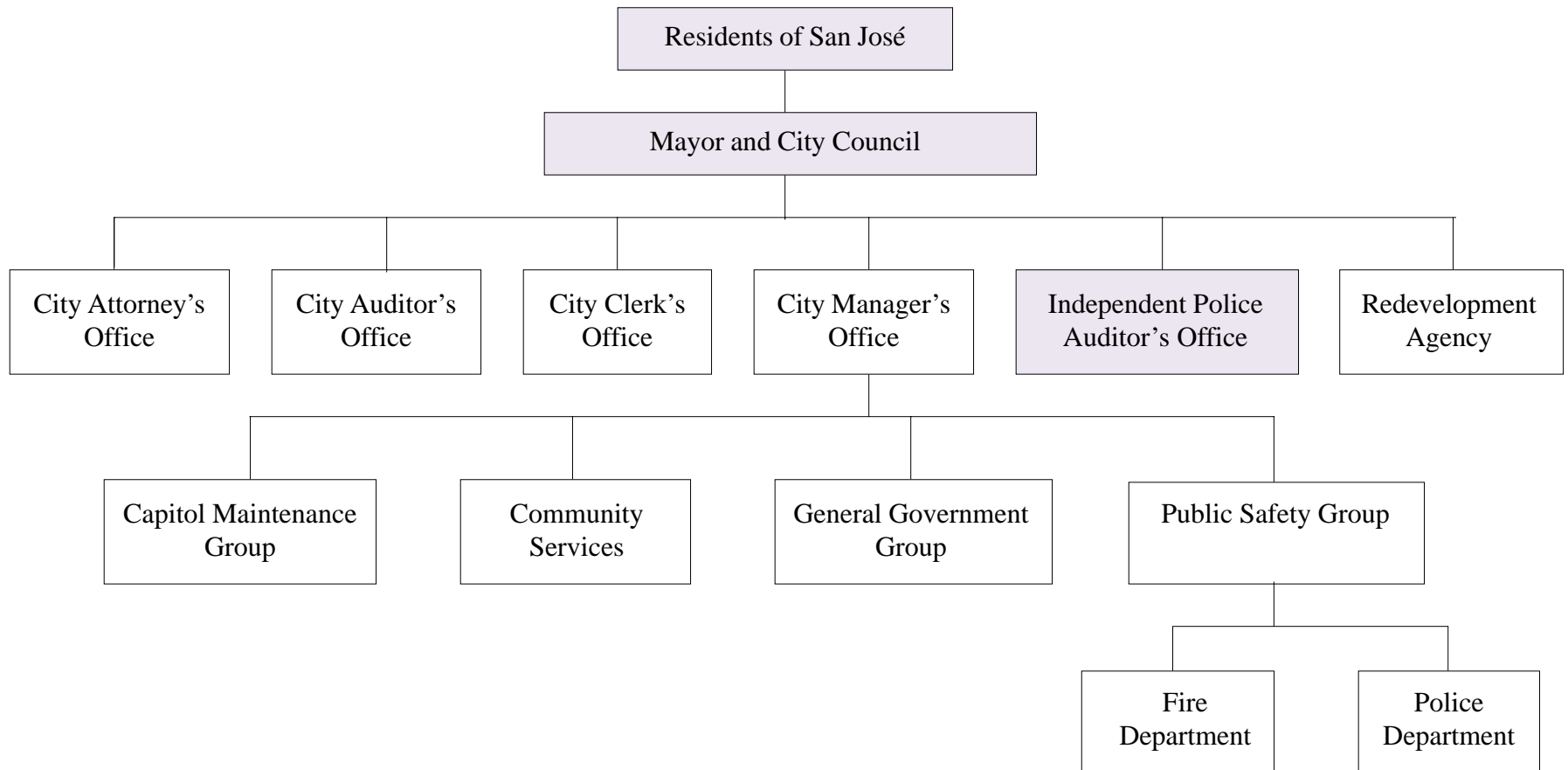
In 1997, the IPA continued to redefine its role and mission in providing oversight of the civilian complaint process. The infrastructure of this office was solidified this year as it became a permanent city department. The IPA and the PSCU continue to work in a productive and professional manner with ongoing improvements at both offices. The IPA has been instrumental in helping other cities with research, training, and implementing their own programs. Experts in the field have referred to the IPA as one of the most effective police oversight programs in the country because of its ability to impact the Police Department policies.

The major emphasis for 1998 will be community outreach as a joint project by the PSCU and the IPA. In the last four years, the IPA has made numerous community presentations in an effort to inform the public about the civilian complaint process. The IPA has separate and different functions from the PSCU; however, the auditing process requires a high degree of interaction with the PSCU. After the intake of a complaint at the IPA, the complainant will then be referred to the PSCU. The complainant will interact with the PSCU primarily during the investigation of their complaint. An assumption which has been difficult to eliminate is thinking that if a complaint is filed at the IPA, that the IPA will also conduct the investigation. Therefore, complainants need to understand and feel comfortable with the different roles the IPA and the PSCU have in processing their complaint. Building this comfort level and trust requires that the PSCU also reach out and be visible in the community.

In an effort to provide better service to the community and to make the filing of a complaint more accessible, starting in 1998, the IPA and the PSCU will visit different neighborhoods through out the city of San José. The IPA has made a request to all the city council members to provide information of their respective districts where these meetings can be scheduled. Many of the council members have responded and some meetings have already been scheduled. The idea of taking the citizen complaint process to the neighborhoods was received with great enthusiasm by the PSCU.

APPENDIX A

SAN JOSÉ CITY ORGANIZATION



July 1997

FY 1997-1998 ADOPTED BUDGET POSITIONS: 6,425.0

APPENDIX B

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

Source: San José City Charter, in effect May, 1965, as amended through November 5, 1996, Sections 809, 809.1, pages 33-34.

APPENDIX B

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 C

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 Quarter, 2nd Quarter, and 1994 Year End Report
	Standardize the definition of Procedural and Informal Complaints	Adopted	2nd Quarter and 1994 Year End Report
	Apply Intervention Counseling to all complaints	Adopted	2nd Quarter and 1994 Year End Report
	Establish procedures to address potential bias within the Internal Affairs Unit	Adopted	2nd Quarter and 1994 Year End Report
	Enact policy to ensure objectivity of the intake process	Adopted	2nd Quarter 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	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 C

Independent Police Auditor's Recommendations

ISSUES RAISED IN	ISSUE	DISPOSITION	RESOLUTION PERIOD
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 the 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 PCSU	Adopted	1997 Year End Report
	Police Department should refer complainants to either PCSU 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	Adopted	1997 Year End Report
1996 Midyear Report	Connect IPA to City of San José's internet network	Adopted	1997 Year End Report
	Conduct intake investigation of complaints lacking a signed Boland Admonishment	Adopted	1996 Midyear 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	Implement process for responding to citizen's request for officer identification	Pending	
	Establish Class I and Class II of use of force categories	Adopted	1996 Year End Report

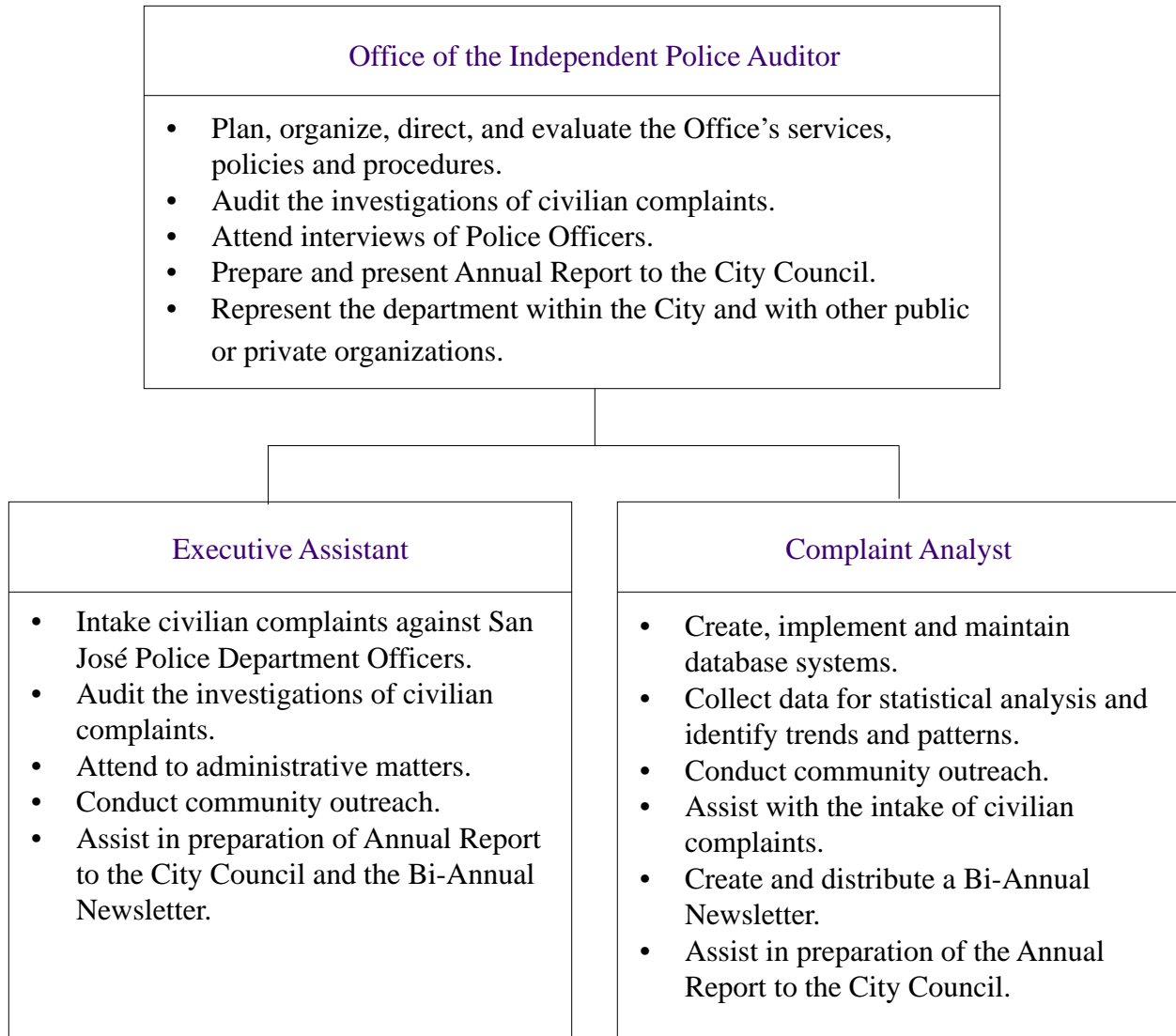
APPENDIX C

Independent Police Auditor's Recommendations

ISSUES RAISED IN	ISSUE	DISPOSITION	RESOLUTION PERIOD
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	Adopted	1997 Year End Report
1997 Year End Report	Establish a procedure for officers to identify themselves to civilians when requested to do so. The identification should be made in writing	Pending	
	When forcibly taking a blood specimen from an uncooperative suspect, do so in an accepted medical environment, according to accepted medical practices and without the use of excessive force	Pending	
	All complaints not covered under a Cardoza exception should be investigated by the PSCU and reviewed by the Chain of Command within 10 months, allowing the IPA enough time to request additional investigation, if needed	Pending	
	Time limits and reliable tracking system should be set for every bureau and department involved with the complaint process	Pending	

APPENDIX D

INDEPENDENT POLICE AUDITOR'S OFFICE MAIN DIVISIONS



APPENDIX E

SAN JOSÉ POLICE DEPARTMENT
PROFESSIONAL STANDARDS AND CONDUCT UNIT
BOLAND BILL ADMONISHMENT

Please read and sign this admonishment explaining the law in California (California Penal Code Section 148.6). Without this signed document we cannot investigate your complaint. Your cooperation in complying with this requirement is appreciated. Sign and return this form as soon as possible. If we do not receive your signed form within thirty **(30)** days, your complaint will be closed.

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDING RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I HAVE READ AND UNDERSTOOD THE ABOVE STATEMENT.

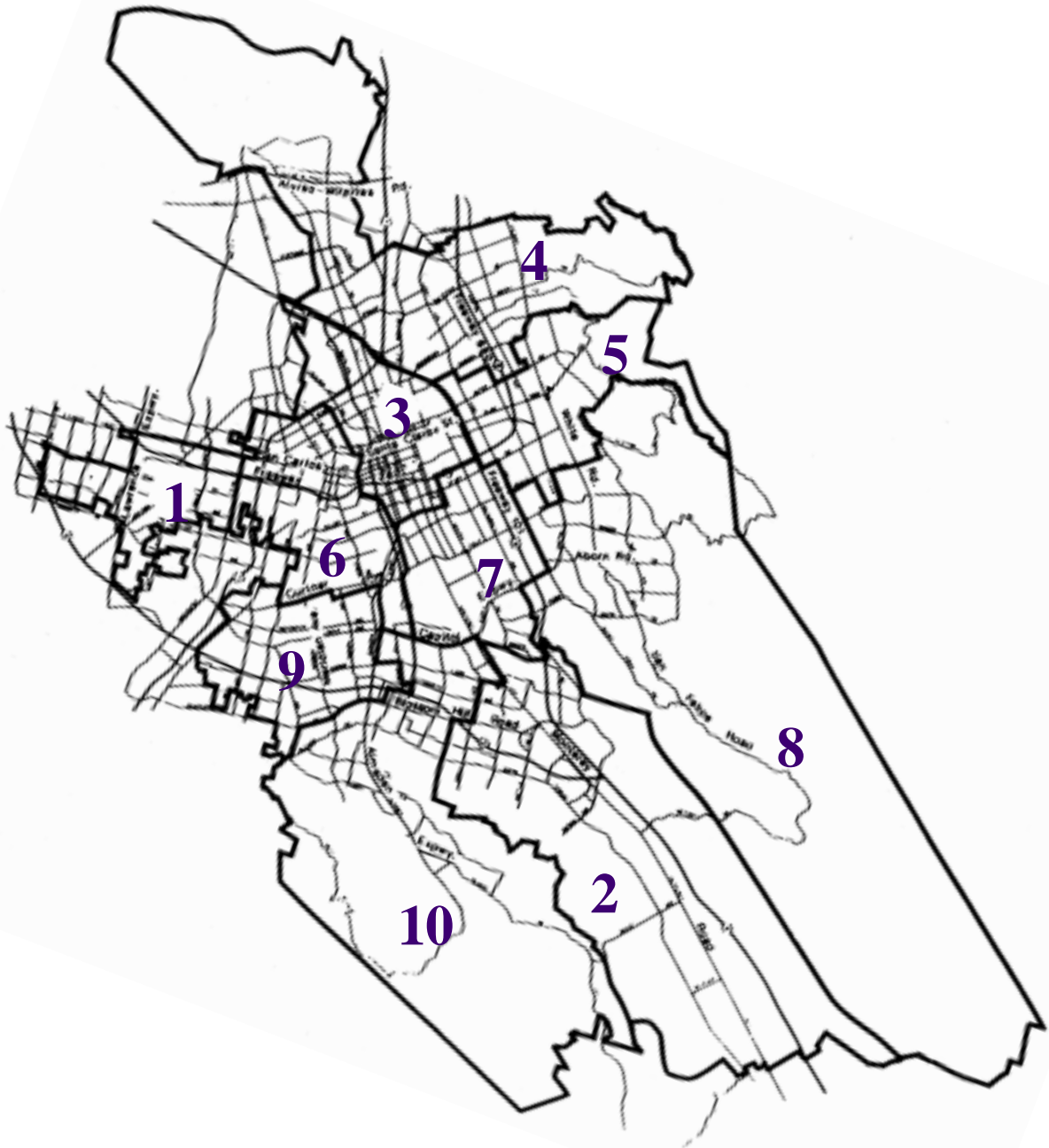
X _____ Signature of Complainant	X _____ Date
---	---------------------------

- -	
_____ Print Name Here	_____ PSCU Complaint No. (if known)

- -	
_____ Date Complaint Initiated at IPA	_____ SJPD Case Number or Cite # (if known)

APPENDIX F

San José City Council Districts



Map produced by the Department of City Planning, Building and Code Enforcement
Planning Services Division

APPENDIX G

Classification of Complaints

1. **Civilian-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 H

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 I

Misconduct Allegations

Formal Civilian-Initiated or Formal 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