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*Office of the  
Independent Police Auditor*



*Teresa Guerrero-Daley  
Independent Police Auditor*

# EXECUTIVE SUMMARY

The executive summary includes excerpts and highlights from the 1998 Year End Report. A brief synopsis from each chapter in a chronological order is provided. A list of all the recommendations made in this report is also included.

## CHAPTER ONE

Background on the formation of the IPA is discussed in this chapter. Also included is a description of the IPA's functions and some of the components unique to the IPA model of civilian oversight. The important components that make the IPA an effective model for police oversight are features such as independence from outside influences, the ability to impact the police department's policies and procedures and an ongoing follow through of the IPA's recommendations.

## CHAPTER TWO

Expanding the IPA's visibility and community outreach was the primary goal for 1998. In this chapter a list of neighborhood

presentations and feedback from people attending these community presentations is included. A list of presentations to community and professional organizations is also provided.

## CHAPTER THREE

A new issue is presented in this chapter, "Officer Involved Shootings" and how they impact the entire community and the IPA. Currently, the IPA does not review the investigations conducted by the Professional Standards and Conduct Unit (PSCU) of the San José Police Department unless a complaint is filed. This poses several problems because unlike other police actions, when someone is shot or killed the community as a whole is affected.

One of the primary duties of the IPA is the review of all citizen complaint investigations alleging unnecessary use of force. Officer involved shootings are the most serious type of force used by San José Police Officers. Whenever a police

shooting occurs, the public raise questions about the appropriateness and necessity to use deadly force. During this time, the IPA receives many inquiries from the media and others looking for some answers or reasons why this happened. There appears to be an inherent expectation from the community that these serious cases will receive an independent review by the IPA. However, this is not the case because not all officer involved shootings result in the filing of a citizen complaint. Without a citizen complaint, the IPA does not have the authority to audit officer involved shooting investigations. Several reasons why complaints are not immediately filed are explained in this chapter.

A review of the last six years show that San José Police Officers have been involved in thirty three incidents where an individual was wounded or killed. Of these 33 shootings, thirteen have resulted in the death of the suspect and in 20 others the suspects were wounded.

A study of various cities which have civilian oversight of their police department was conducted and revealed that major cities like San Francisco, Los Angeles and San Diego do not rely on the filing of a citizen complaint to examine and/or conduct a separate investigation following an officer involved shooting. A balance between the need for officer safety and the safety of citizens coming in contact with the police require an ongoing review of police policies and practices from a non law enforcement perspective. The IPA recommends the creation of a process by which the most serious cases, which affect the community at large, receive civilian oversight that is not dependent on a citizen filing a complaint.

## CHAPTER FOUR

This chapter is an update on prior issues and recommendations made by the IPA.

- ❖ The first update is a description of the new process implemented

by the San José Police Department when forcibly extracting blood samples from people arrested. The IPA visited the facility and observed the extraction of a blood sample and found the location and methods satisfactory.

- ❖ The second update involves the recommendation that police officers identify themselves in writing to the public. The Chief of Police implemented a new requirement that officers use an Incident Card in which officers will write their badge numbers and hand them to the citizen requesting it.
- ❖ The third update focused on a prior recommendation which required that supervisors conduct an on the scene investigation into the need to use force whenever an individual received injuries so serious that it required emergency medical care. A study was conducted to examine the supervisors follow through with

this requirement which is mandated in the police duty manual revealed that only 58% of the supervisors responded to the scene and less than 40% documented their efforts in a report. A new recommendation by the IPA to increase compliance with this directive is that a written investigative report be mandatory instead of optional for all supervisors.

- ❖ The last update covered the recommendation to reduce the length of time to complete the investigations of citizen complaints from one year to ten months. This reduction is necessary in order to comply with a new state law which requires the completion of complaints within one year. At least two months are needed to complete any added requests for further investigation from the IPA.

## **CHAPTERS FIVE THROUGH TEN**

These chapters contain a break down of the statistics for 1998. Overall the number of complaints filed in 1998 decreased from 446 in 1997, to 364 in 1998. However, there were 377 inquiries from the public that did not become complaints because they were immediately addressed. The emphasis here, is to expedite a resolution, to the satisfaction of the complainant, to minor incidents that previously would have turned into complaints.

## **CHAPTER ELEVEN**

The results of the audits of all four classifications of complaints are explained in this section. Areas such as the number of requests for further investigation, and number of cases the IPA disagreed with the PSCU finding, are covered in this section.

## **CHAPTER TWELVE**

Samples of the auditing process are illustrated in this chapter through cases which are selected

not because they are most representative of the actions taken by the IPA but because they illustrate the different options and courses of action the IPA takes.

## **CHAPTER THIRTEEN**

This chapter contains the conclusion which also talks about some of the general goals for 1999.

## **LIST OF IPA RECOMMENDATIONS**

1. The IPA should review the administrative investigations of all officer involved shootings where a person was wounded or killed whether or not a complaint is filed.
2. The SJPD should complete the database that will link the IPA to the PSCU as soon as possible. This project started in 1995 and has been plagued with problems. The hardware is in place at both the IPA and the PSCU however, glitches with the system continue to surface.
3. Written reports detailing the investigative efforts by the supervisors responding to a Class 1 Use of Force should be mandatory.
4. Class 1 Use of Force complaints are required to be completed within 180 days. Only 55% met the goal. An improvement in this area is needed.



# INTRODUCTION

# CHAPTER 1

## BACKGROUND

In the aftermath of the Rodney King incident, the American political climate shifted towards demanding that each city employ a proactive approach in regard to police misconduct. A common belief voiced by the public, which still exists today, was that no matter how thorough, impartial and objective police departments handled citizen complaints, they could not be trusted to exclusively police themselves. Citizens in effect, demanded that their city leaders establish some form of external review process for their police departments.

Five years ago, the city leaders of San José conducted a nation wide search in which several models of police oversight were evaluated. Many variations of such programs were found as a result of this search. In examining those programs, it was concluded that police oversight

programs could basically be divided into two groups, those that have civilians conduct the investigations, and those that have the police investigate complaints. The model of police oversight established in San José on September 13, 1993 incorporated various components from existing programs found in different cities throughout the country.

## FUNCTIONS OF THE OFFICE

The Office of the Independent Police Auditor (hereafter referred to as the "IPA") has three primary functions: (1) it serves as an alternate forum where people may file a complaint; (2) it reviews the investigations of complaints conducted by the San José Police Department (hereafter referred to as the "SJPD"); and (3) it promotes public awareness of a person's right to file a complaint. The IPA does

## MISSION

*The Independent Police Auditor's mission is to provide an independent review of the citizen complaint process, to promote public awareness, and increase greater police accountability to the public by the San José Police Department.*

not conduct the investigations but rather objectively reviews the investigations conducted by the San José Police Department's Professional Standards & Conduct Unit (hereafter referred to as "PSCU") for thoroughness, fairness, and to insure that the findings are supported by the evidence. This review may include requesting added investigation, and continues until the investigation is completed to the satisfaction of the IPA. The IPA operates under the police department's umbrella of confidentiality and therefore, is entitled to total disclosure of all police information concerning citizen complaints.

### **CHARACTERISTICS OF THE IPA**

The IPA, like all other civilian police oversight entities, does not have the case specific authority to over turn the Chief of Police's finding. However, if and when all

investigative steps are exhausted, the IPA still disagrees with the finding of an investigation, the IPA will meet with the Chief and the City Manager to discuss the specifics of the case. The IPA also reports to the Mayor and City Council, the frequency and/or patterns resulting from cases in which the IPA disagreed with the findings reached by the Chief of Police.

The IPA does not hold public hearings. One of the advantages of holding public hearings is that the complainant has an opportunity to take part in the process. However, a further review of the pros and cons of public hearings also reveals some disadvantages. First, unlike the officers, complainants are not represented by counsel. Second, police officers have access to the police reports concerning the incident that gave rise to the complaint, which they can review and use to

*The term **citizen complaint** is used in this report to describe a complaint that can be initiated against a member of the San José Police Department. It is not reflective of a person's U.S. Citizenship status.*

help them prepare for the hearing. The complainants do not have access to the police officer's reports. Third, unlike police officers, complainants usually do not have experience testifying in a public forum. Lastly, public hearings can create an environment that will alienate and/or polarize the officers and the public.

In San José, interviews of witnesses and subject officers are conducted by PSCU Investigators. The PSCU is located separate from the San José Police Department in a business like environment. The investigators are required to notify the IPA of the interviews in order to give the IPA an opportunity to attend the interview and provide questions. Every officer is compelled to attend these interviews and to answer all questions or be subjected to discipline including termination for insubordination.

An important function of the IPA is to serve as a central data collection for citizen complaint information and then to analyze the data for patterns and trends. For example, a particular officer was found to have a high number of complaints alleging that he/she was searching homes without a warrant or probable cause. Upon further analysis it was determined that the complainants were primarily Spanish speaking and that the subject officer who was not bilingual was claiming verbal consent to search as a defense. The IPA attended the next interview of this officer and requested that the officer repeat in Spanish exactly how he/she was obtaining consent. The officer conceded that he was not able to speak Spanish and that he/she was relying on hand and eye gestures to communicate. This was found to be an unacceptable practice and the Chief of Police quickly took action.



*Filing a complaint at the Professional Standards & Conduct Unit.*



Other characteristics specific to the IPA are that it was not designed to operate in an adversarial role, nor as an advocate for or against the complainants and/or police officers. It can be counter productive to establish a form of police oversight that is viewed by the recipients of the recommendations as adversarial.

In summary, the IPA's main purpose is to perform an audit of citizen complaints, and insure that they are conducted in an objective and impartial manner.

An analysis of the data extracted from civilian complaints form the basis of the recommendations made by the IPA in the annual public reports. These recommendations include the creation, modification or elimination of policies, procedures or department rules. Since it's inception, over ninety percent (90%) of the recommendations made by the

IPA have been adopted and implemented.

## ***EFFECTIVE POLICE OVERSIGHT***

Since the establishment of the IPA, efforts have been made to improve the effectiveness of the office and its duties. As a result, many internal changes have taken place in terms of its operations, processes, and direction. This evolution of the IPA has been influenced by the needs of the city's diverse communities.

Because the needs of each community are peculiar to their cities, there has never been a "one size fits all" model for police oversight. In the last five years, there has been much interest in the IPA model from cities across the country which have resulted in the creation of oversight agencies modeled in part by programs such as the IPA.

When determining the effectiveness of a police oversight program, one must consider the level of independence afforded to the agency from police and political pressures. We cannot ignore the reality that police departments may have significant influence over elected officials, and depending on the political climate, could influence the appointment or removal of the Executive Director and/or members of the reviewing body.

Bearing this in mind, the police auditor in San José, is appointed to four year terms and can not be removed from office without 10 of the 11 city council members voting for his/her removal. In further assessing the effectiveness of a police oversight program, the least reliable measure is the rate by which complaints are sustained. This is because each agency collects and reports statistics differently.

The best measure lies in evaluating their impact on a police department's policies and procedures. It is not enough to make recommendations because all oversight models make recommendations. The litmus test is whether these recommendations are adopted, implemented and their effect tracked, measured and evaluated to insure that the sought after results are being achieved.

For example, three years ago the IPA recommended that certain procedures be followed by command staff following notice of a use of force by an officer. This recommendation later became a new police duty manual section.<sup>1</sup> In 1998, the IPA examined compliance by the command staff in all those cases where serious force was used, by conducting a study of the supervisors actions and comparing

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<sup>1</sup> See Appendix C (Independent Police Auditor's Recommendations).

them against the required duties as stated in the duty manual section. This analysis served as the basis for evaluating the effectiveness of the recommendation (refer to Chapter 11 of this report).

morale; they can also destroy the public confidence and credibility the police need to fight crime.

Obtaining the type of information that helps a police department identify problem officers is valuable. This data is the basis for the Early Warning System (EWS) of the San José Police Department. The EWS tracks police officers with complaint histories for the purpose of identifying potential problems and providing guidance. The IPA believes that no one can better prevent and uncover police misconduct than the police themselves, but without outside pressure, departments may revert to their natural tendency to let their self-policing efforts slide. Not only do scandals embarrass a police department and destroy

# COMMUNITY OUTREACH

## CHAPTER 2

### **INCREASING COMMUNITY OUTREACH**

In addition to performing the day to day operations of the office of the IPA, the primary goal for 1998 was to increase community outreach and public relations. To this end, the IPA expended more time and resources to increase visibility and accessibility of this office to the public at large. The IPA continues to publish newsletters twice a year, which are distributed to approximately 400 organizations. In 1998, a presentation using Power Point was also created to use when speaking to community organizations. Members of the PSCU now join the IPA in making presentations to the neighborhood associations. Police officers assigned to the particular neighborhoods are also invited to come and meet the residents.

### **NEIGHBORHOOD PRESENTATIONS**

In 1998, the IPA sent requests to associations that were recommended by the city council members of their respective districts. These requests explained the IPA's interests in reaching their neighborhoods to help citizens become aware of the existence of the IPA. The IPA and the PSCU talked about how to file complaints and closed with a question and answer session. Below is a list of the associations that invited the IPA to their neighborhood meetings.

- ◆ McLaughlin Corridor Neighborhood Association
- ◆ Capitol Goss Association
- ◆ Nancy Lane Community United
- ◆ Poco Way Resident Committee
- ◆ The Eden Neighborhood Association
- ◆ Berryessa Citizens Advisory Council



*IPA and PSCU hold neighborhood meeting at the Poco Way Community Center*



*Poco Way Housing Development*

During presentations at the above locations, a self reporting survey was distributed among the residents in attendance and their responses compiled. The data is numerically not competent due to questions left unanswered or more than one response checked therefore, it is offered for informational purposes only. Below is a description of these results.

- ❖ Approximately 80% of the surveys indicated that they had not previously heard about the IPA office.
- ❖ About 40% reported feeling comfortable about filing a citizen complaint, 30% did not feel comfortable filing a complaint and 30% felt somewhat comfortable filing a complaint.
- ❖ 78% reported not having had a need to file a complaint, while 22% reported that they had had a need but did not for various reasons. The

reasons expressed were: fearing that officers would retaliate, feeling the complaint would not be taken seriously, not knowing how to file a complaint, were too busy, or did not want to get into problems with “the law.”

- ❖ When asked if they had had a need to call the police for service within the last three years, 60% responded no and 40% yes. Of those responding yes, a follow up question asked if they were satisfied with the response time; 80% responded yes and 20% said no.
- ❖ Residents were asked to indicate their major police concerns. The responses were close in the frequency indicated:
  - ◆ Police accountability
  - ◆ Traffic
  - ◆ Burglaries, Robberies
  - ◆ Juvenile Crimes
  - ◆ Gangs
  - ◆ More police patrol
  - ◆ Graffiti

## **COMMUNITY ORGANIZATIONS & PROFESSIONAL ORGANIZATIONS**

Various community and professional organizations were among the groups requesting presentations from the IPA. By making presentations, the IPA increased awareness and enhanced the overall visibility of the office. The following summarizes those groups where the IPA made presentations during 1998.

A presentation about the functions of the IPA was presented at the California League of Cities conference in Long Beach.

The IPA met with the President of the San José chapter of the National Advancement Association of Colored People (NAACP) to discuss issues relevant to the African-American community.

The IPA made a presentation at a meeting of the La Raza Round Table, an organization that addresses issues involving social, political, economic and educational concerns.

The Economic & Social Organization (ESO) conference was held at the National Hispanic University where the IPA delivered the keynote speech to approximately 500 people. The ESO provides assistance to welfare recipients who are making a transition into the work force.

The IPA made a presentation followed by a question and answer session to the Santa Clara County Civil Grand Jury to inform them about the functions of the IPA office. Throughout the year, members of the Grand Jury contacted the IPA on different issues.

The IPA made a presentation of the findings of the 1998 Year End Report to the Santa Clara County Human Relations Commission.

A presentation of the findings of the 1998 Year End Report was also presented to the San José Human Rights Commission.

The IPA met with key officers of the Local 270 Union to discuss community outreach.

The IPA was asked to be the keynote speaker for the Hispanic Association of City Employees (HACE) at their annual scholarship dinner.

Members of the Barrio Defense Committee met at the IPA office to discuss concerns and obtain additional information.

The Pueblo of San José Kiwanis invited the IPA to make a presentation to its membership.

## **GOVERNMENTAL AGENCIES**

The IPA was invited by the FBI National Training Institute to make a presentation to the Major City Chiefs Organization at their annual conference, which took place in Sun Valley, Idaho. Interest in the IPA program was expressed by several of the Chiefs in attendance and have since requested added information.

The IPA met with representatives from the Fremont Police Department to give them an overview of how the IPA office works. Written material and samples of forms were also provided.

## **EDUCATIONAL INSTITUTIONS**

The IPA participated as part of a panel of lawyers to make a presentation and a question and answer session with law students of the Santa Clara University Law School.

The San José Unified School District (SJUSD) invited the IPA to participate in a committee whose focus was the development of a program aimed at bringing members from the community, students, parents and staff of the SJUSD together for a “community conversation.” The purpose of the program was to create a forum where ideas on how to improve the quality of education was discussed.

The IPA was asked to talk to sophomore and senior students at Carlmont High School in Belmont, CA.

## **BROADCAST & PRINT MEDIA**

The IPA was invited to be a guest in, “Comunidad del Valle,” a weekly program produced by KNTV Channel 11 in San José concerning local issues in the Hispanic community. Throughout the year, different reporters

interviewed the IPA on various police related issues.

Reporters from the Metro interviewed the IPA on police issues during the year.

KSTS Channel 48 and Univision Channel 14, both Spanish television stations, also conducted personal interviews.

In addition, KTVU Channel 2, covered a story involving police issues and the IPA.

Several interviews were conducted by the Mercury News and also by Nuevo Mundo, the Mercury News’ Spanish publication. “El Observador,” a Spanish language newspaper also carried several IPA related stories.



## ***INQUIRIES FROM OTHER CITIES***

Inquiries of the IPA by other cities throughout the country have also increased in 1998. The purpose of these inquiries have ranged from general office information to more detailed questions regarding the history, budget, and specific procedures of the IPA. The following list indicates the origin of the inquiries.

- Alameda County Grand Jury
- Mr. Tom Clouse, Idaho Statesman
- Mr. Stephen Lennon, Vera
- Mr. Mark Evanoff, Union City, CA
- Mr. Ken Macias, Sacramento, CA
- Ms. Brien Fannel, City Attorney, Santa Rosa, CA
- Mr. Jack McInerney, Private Defender Program, Redwood City, CA
- Mr. Peter Finn, ABT Associates, Cambridge, Massachusetts
- Ms. Edith Perez, Board of Police Commissioners, Los Angeles, CA
- Mr. Guy Hine, Harrisburg, PA
- Chief, Steve Rothlein, Metro Dade Police Department, Miami, Florida
- Mr. Bob Klose, Santa Rose, CA
- Lt. Roger Rude, Sonoma Co.
- Mr. Dave Skidmore, Sr Internal Auditor, Salt Lake City Corporation
- Mr. Joel Tyner, Staatsburg, NY
- Ms. Karen Walker, Director of Human Resources, City of Santa Rosa
- Mr. William Windle, Private Investigator, Redwood City, CA.

# NEW ISSUE

# CHAPTER 3

## **REVIEW OF OFFICER INVOLVED SHOOTINGS**

### **BACKGROUND**

When the Office of the Independent Police Auditor was established, certain duties were clearly specified while others emerged with the passage of time. One of the primary duties involves the review of all citizen complaint investigations alleging unnecessary use of force. In order to insure that the investigation of this type of complaint remained a priority, the IPA's policies and procedures were drafted to specifically require that 100% of the use of force investigations be audited. Only 20% of all other type of complaints require audits.

Officer involved shootings are the most serious type of force used by San José Police Officers.

Whenever this type of incident occurs, there is consternation

and questions raised not just by the people immediately affected but also from our city and community leaders, the entire law enforcement community and from the public at large. Interest on how police work impacts the citizenry is heightened following these incidents. During this time, the IPA receives many inquiries from the media and others looking for some answers or reasons why this happened. There appears to be an inherent expectation from the community that these serious cases will receive an independent review by the IPA. However, this is not the case because not all officer involved shootings result in the filing of a citizen complaint. Without a citizen complaint, the IPA does not have the authority to audit officer involved shooting investigations.

### **INVESTIGATIVE PROCESS**

When a death or injury results from a police shooting, the

criminal investigation unit of the San José Police Department become the lead investigators along with a representative from the District Attorney's office. The focus of this investigation is to determine if the shooting was legally justified, or if the officer's actions violated the law. At the same time a representative from the PSCU monitors the investigation to determine if the officer's conduct violated department policy. The PSCU investigator does not question the officers during the time that the criminal investigation is ongoing. However, once the criminal investigation is completed, the PSCU will conduct their own investigation because a police officer may be found to be legally justified but may still be in violation of department policy. The PSCU will review the officer's actions to determine if the shooting was within policy, if the tactics surrounding the shooting were

consistent with current training, if changes or modifications in training are needed, or to affirm that the procedures used in the particular shooting were appropriate and consistent with the direction the police department is heading. The fact that a review of the officer's actions is conducted by the PSCU does not in and of itself indicate any wrongdoing on the part of the officer.

#### ***PROBLEM STATEMENT***

The IPA can intake a citizen complaint involving an officer involved shooting and then monitor the investigation and ultimately audit the completed investigation. However, when an officer involved shooting happens, more often than not, the injured party or family of the deceased files a civil action instead of a complaint. Attorneys will often counsel their clients not to talk to anyone until after adjudication of their case.

Sometime later, a complaint may be filed but by then years have gone by making it more difficult to conduct a thorough investigation. On at least two complaints filed, the shootings had occurred more than two years prior. Other than the police officers, most of the civilian witnesses were unavailable. With the passage of time memories wane and physical evidence vanishes.

### **STATISTICS**

A review of the last six years show that San José Police Officers have been involved in thirty-three incidents where an individual was wounded or killed. Of these 33 shootings, thirteen have resulted in the death of the suspect and in 20 others the suspect was wounded. In 1993, there were five suspects killed and one wounded. In 1994, there were four suspects killed and five wounded. In 1995, there were four wounded and zero

deaths. In 1996, there was one suspect killed and three wounded. In 1997, there were three suspects killed and five wounded. In 1998, there were zero deaths and two wounded. Of the 13 deaths only three complaints were filed and of the 20 wounded only two filed a citizen complaint. In the last three years there have been no citizen complaints filed even though there were 14 officer involved shootings resulting in four deaths and ten wounded.

### **CITIES WITH CIVILIAN OVERSIGHT OF POLICE SHOOTINGS**

A study of various cities which have civilian oversight of their police department was conducted to inquire whether they are involved in investigating or in reviewing the investigation and whether the filing of a complaint is a pre-requisite for looking into injuries or deaths resulting from police enforcement actions.

**San Francisco, CA:** In cases involving injury or death, the San Francisco Police Department Homicide Unit and the city's Management Control Division undertake an immediate investigation. The Chief of Police prepares a summary of each officer involved shooting for review by the Police Commission. This summary describes the incident, any disciplinary, training or other action taken by the Department in response, and any proposal for changes in Department policy. This summary is a public record. The Chief sends a copy of the completed Management Control Division investigation and the Chief's summary to the Director of the Office of Citizen Complaints (OCC). The Director of the Office of Citizen complaints reviews the investigation and the Chief's summary and recommends any further action including an independent investigation

when the Director concludes it is warranted. A summary of the OCC Director's recommendations is public record. The Police Commission reviews the Chief's summary and the Office of Citizen Complaints Director's recommendation and takes action as deemed appropriate. No report, that is made public, discloses the officer's identity or any other information deemed confidential by law. The filing of a complaint is not required.

**San Diego, CA:** When an officer involved shooting occurs, the following steps are taken. The homicide division of the San Diego Police Department, the Internal Affairs Unit and the District Attorney's Office all conduct separate investigations. The homicide and Internal Affairs investigations are forwarded to the Chief of Police. The District Attorney reviews all three investigations and prepares a report.

The District Attorney and Chief of Police send their final reports to the Citizens Review Board on Police Practices (CRBPP). The CRBPP can request added investigation from the Chief prior to making a decision on whether they agree or disagree with the finding. If the CRBPP disagrees with the Chief then both the Chief and the CRBPP present their case to the City Manager for final disposition. The filing of a complaint is not required.

**Los Angeles, CA:** Subsequent to a shooting involving a member of the LAPD, the Board of Police Commission is presented with two reports and recommendations. One of these reports comes from the Chief of Police who convenes a "Use of Force Review Board" which is charged with conducting an investigation into the tactics, justification and appropriateness of the shooting. The Chief can either accept or reject these findings in

preparing his report to the Police Commission. The Police Commission's staff prepares a second report. The staff will review the criminal investigation, the investigation by the Use of Force Review Board, the Chief of Police report to the Police Commission before preparing and submitting their findings and recommendations. The Police Commission makes the final determination on whether the shooting was justified. No citizen complaint is required.

**Santa Cruz, CA:** The Citizen Police Review Board (CPRB), which was established the same year as the IPA, currently has no authority to review police-involved shootings. However, on June 9, 1998, the CPRB submitted amendments to the CPRB Ordinance for approval to the Santa Cruz City Council regarding the reviewing of all police-involved shootings without the need for a citizen complaint.

**Tucson, Arizona:** The City of Tucson studied and adopted the San José IPA model for their police oversight program. The Tucson IPA's policies and procedures don't specifically address the IPA's jurisdiction concerning officer involved shootings. However, as a matter of practice, in Tucson, the police notify the Independent Police Auditor upon the occurrence of an officer involved shooting. The Auditor, at her discretion, can go to the scene and observe the investigation. The Auditor receives information regarding the incident during the investigation and audits the investigation after the case is closed. There is no requirement that a citizen complaint be filed.

**Albuquerque, NM:** The San José IPA model adopted some of its policies and procedures from the Albuquerque model. In Albuquerque, the Independent Counsel who is a contract

attorney to the city provides police oversight. He reviews all the investigations concerning officer involved shootings and makes recommendations pertaining to changes in police department policy, procedure and/or training to the city council.

**County of San Diego:** The Citizen's Law Enforcement Review Board (CLERB) receives and independently investigates deaths and citizen complaints of misconduct involving Deputy Sheriffs. The CLERB's findings are submitted to the Board of Supervisors. . There is no requirement that a citizen complaint be filed.

### **CONCLUSION**

An analysis of the information above revealed that major cities like San Francisco, Los Angeles and San Diego do not rely on the filing of a citizen complaint to examine and/or conduct a separate investigation following

an officer involved shooting. Currently, the IPA's involvement has consisted of notification and briefing by the PSCU Commander whenever a death or serious injury results from a police enforcement action. On one occasion the IPA was invited to observe the scene of an officer involved shooting and also had an opportunity to talk to the investigators conducting the investigation.

The PSCU monitors and reviews all the officer involved shooting investigations conducted by the SJPB Bureau of Investigations for administrative violations. Only those investigations where a complaint has been filed are forwarded to the IPA for review. There are several reasons why the IPA should review all officer involved shootings regardless of whether a complaint is filed. First, when citizens are wounded

or killed by police enforcement actions, it affects more than the individuals shot. The community at large is impacted. No other public servants are given the authority to, in a split second, take someone's life. Therefore, the residents of San José individually and collectively have a vested interest in having someone other than the police examine these shootings from a non-law enforcement perspective. The passage of Measure E<sup>2</sup> in 1996 by an overwhelming majority in each council district clearly indicated that the will of the people is to have oversight of police practices. There is no other more serious police practice than the application of deadly force. Therefore, civilian oversight by the IPA should not be dependent on the filing of a complaint because this type of enforcement action affects not just the parties involved, it affects the entire community.

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<sup>2</sup> See Appendix I



Secondly, communities that have civilian oversight of officer involved shootings report that residents feel more confident in the outcome of the police investigations when those cases are reviewed from a civilian perspective also. In order to maintain a balance between the need for officer safety and the safety of citizens coming in contact with the police, an ongoing review of police policies and procedures is needed. The lack of oversight of those cases where a complaint is not filed reflects negatively on both the IPA and the SJPD because it gives the appearance that the IPA is failing to provide oversight to the most serious use of force cases and/or that the SJPD is hiding or withholding information. The request to audit officer involved shootings for violations of policies and procedures should not be construed as an indictment of the San José Police Department. This request

is an effort to provide a process by which the most serious cases, which affect the community at large, receive civilian oversight.

### **RECOMMENDATION**

The IPA should review the administrative investigation of all officer involved shootings where a person was wounded or killed whether or not a complaint is filed.

# UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

## CHAPTER 4

### **BLOOD SAMPLES TAKEN BY FORCE**

**Background:** In the IPA's 1997 Year End Report, the IPA reported on the problem that arose when police attempted to take a blood sample from a suspect that was uncooperative or combative. The complaints alleged 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.

A closer review of SJPD policy and guidelines determined that suspects that were cooperative would be taken inside the processing center where blood would be drawn by a technician in a clean well lighted holding cell. Suspects that were not cooperating or were being combative on the other hand, were not allowed inside the preprocessing center. Combative suspects, while handcuffed with their hands behind their back,

would be forced over the hood of a patrol car by officers or on the ground where a technician would extract the blood. Other combative suspects were taken to the county jail and had their blood drawn at the jail parking lot.

The IPA concluded that the parking lot of the preprocessing center and the county jail were not a medically acceptable environment. The parking lots are poorly lit, 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 were not available. This practice also increased the risk of harm to the technician and the officers.

The IPA recommended that 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,



*WRAP Restraint System.*



*Restraint Chair used for overly combative suspects.*

according to accepted medical practices and without excessive force.

**Update:** Presently, the Police Department no longer takes blood samples from suspects at either of the aforementioned lots. The Police Department has instituted a new procedure and amended the duty manual section addressing the taking of blood samples from suspects.<sup>3</sup>

The current procedure is to put the combative, handcuffed suspect in a body restraint system called a WRAP, before bringing them into the preprocessing center. The WRAP consists of nylon/velcro straps and belts that wrap the person from the

waist to their feet and keeps the suspect from bending at the knee.

The suspect will then be brought into holding cell number two.

The lower straps of the WRAP will be loosened so that the suspect can bend at the knees slightly and enable him to sit at the table. One arm is then extended over the table and cuffed to the end of the table. The technician will then draw blood from the suspect. The holding cells are clean and well lit.

Alternatively, the officers may put the suspect in a specially designed chair equipped with restraints. Once the suspect is restrained in the chair, the officers may roll the suspect into holding cell number two to have

<sup>3</sup> BLOOD TESTS: APROPRIATE LOCATIONS FOR THE EXTRACTION OF BLOOD SAMPLES: Officers must ensure that not only will blood samples be taken in a medically approved manner, but under conditions which will not expose officers, suspects or other persons to contaminated blood (HIV, AIDS, etc.), or invite personal risk of infection or injury. Appropriate locations for the consensual extraction of blood samples would include police facilities, medical hospitals or clinics, county jail, and the Alcohol Investigations Bureau (A.I.B). Locations such as patrol cars, parking lots, or outdoor areas are not suitable locations for blood extractions.

The San José Pre-Processing center, Holding Cell #2, is specifically equipped for the taking of blood samples from physically resistive or combative persons. This specific cell is equipped with a stainless steel table designed for obtaining blood samples. Also readily available is a mobile restraint chair, which can be quickly set up in Holding Cell #2 for those situations where a blood sample needs to be obtained from an extremely resistive or combative person.

the suspect's blood drawn. Blood may also be drawn in the central area of the preprocessing center while the suspect is in the chair and the arm is restrained in an extended position.

The IPA commends the SJPD on their new procedures which address the concerns referred to in the 1997 Year End Report. Since the implementation of the new procedures, no complaints alleging the forcible extraction of blood have been filed. The IPA will continue to monitor and report on any further complaints regarding the drawing of blood samples in future reports.

## **CITIZEN REQUEST FOR OFFICER IDENTIFICATION**

**Background:** In the IPA's 1996 Year End Report, the IPA reported about the problem that arose when citizens 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 directed officers to identify themselves in a professional manner, but did 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 citizens. The IPA also recommended that the entire process of officer identification be revised.

**Update:** The SJPD has instructed it's officers to complete a newly



*Blood extraction of combative suspects now takes place while suspects are handcuffed to the table*

**SAN JOSE POLICE DEPARTMENT - INCIDENT CARD**  
Records Division, 201 W. Mission St., San José, CA 95110

CASE NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_  
 TYPE OF INCIDENT: \_\_\_\_\_  
 OFFICER/BADGE #: \_\_\_\_\_ REPORT TAKEN:  YES  NO  
 ADDITIONAL TEL. NO(S): \_\_\_\_\_

INSTRUCTIONS: Retain this report receipt! You will need this information for your contact with the San José Police Department, your Insurance report, and tax purposes. For three or more additional stolen items, please report by mail using the above case number. To supply additional information concerning suspects, witnesses or victims, phone the San José Police Department Non-Emergency Line (277-8900). Under the joint powers agreement between the City of San José and the County of Santa Clara, for the purposes of Investigation and victim assistance, Information from your report may be entered into the Records Index System (R.I.S.). A fee will be charged for a copy of this report.

INSTRUCCIONES: Guarde este recibo del reporte! Usted necesitará esta información para cuando se comunique con el Departamento de Policía de San José, para el reporte de su seguro, y para el reporte de sus impuestos. Para reportar tres o más adicionales artículos robados, favor de usar el correo y referirse al número del caso. Para dar más información con respecto a sospechosos, testigos, o víctimas, llame a la línea sin emergencia del Departamento de Policía de San José (277-8900). Bajo el acuerdo conjunto entre la Ciudad de San José y el Condado de Santa Clara, para propósitos de investigación y asistencia a las víctimas, información de su reporte puede ser incorporada al *Records Index System (R.I.S.)*. Se cobrará por una copia de este reporte.  
20Q-45A (7/98)

**CHIEF OF POLICE**

SJPD Incident Card

## NEW COMPUTER SYSTEM

**Background:** 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. A system was devised with the help of an outside consultant, police personnel, and city computer data managers.

**Update:** Due to technical difficulties, the link-up was not completed as scheduled. However, the new database is now operational and has been tested. Training on the new system has been ongoing and will continue even after the link-up is completed. Computer programmers have been working to address glitches on the new system that have prevented it from becoming fully operational. It is expected that the system will be fully operational within weeks of the writing of this report.

created "incident card" when they are asked to identify themselves and give it to the person making the request. The incident card requires the officers to fill in information relating to the incident including the officer's own badge number. The new incident card shows promise, and the IPA will monitor the success of this new method of officer identification.

## **ON SCENE INVESTIGATIONS FOLLOWING A USE OF FORCE**

**Background:** In the 1994 Year End Report, the IPA reported on the need for the preservation of physical evidence whenever force was used by a SJPD officer. The IPA noted that most of the investigations conducted by the PSCU were evaluated and resolved primarily on the basis of individual's testimony. The testimonial evidence would usually come from complainants, subject officers and/or witnesses. Cases were thus resolved solely on the bases of the individual's credibility. Often there was no unbiased witness to the incident who could provide information. The only available evidence consisted of the complainant's word against the subject officer's. Regardless of how the case was resolved however, there was always a cloud of doubt hanging

over the finding. The need for the collection of physical and testimonial evidence from the scene was apparent.

The IPA recommended that when anyone had to receive medical attention because of an officer's use of force, the supervisor at the scene should be responsible for the collection and preservation of evidence. The focus of the supervisor should be on the gathering of evidence that addresses the need for the use of force, rather than the crime at hand.

In 1995, the SJPD adopted the IPA's recommendation. The supervising officers are now required to conduct an investigation when force requiring medical attention has been used by an SJPD officer.

**Update:** The IPA conducted a special audit of cases investigated after the new procedure was set in place to determine

whether physical evidence is being collected adequately and how closely the new procedures are followed. A study of all the Unnecessary Force complaints audited during 1998 revealed that supervisors were required to respond to the scene and collect evidence 67 times. The IPA audit found that supervisors responded to only 39 incidents and wrote a separate report on only 26 occasions. For further results of the special audit, refer to the section titled Special Audit of Unnecessary Force Cases in Chapter 11 of this report.

**Recommendation:**

Class I Use of Force cases are the most serious type of complaints and warrant that a supervisor respond to the scene. Though the completion of a written report is not mandatory, a supervisor's report would be of great use in future investigations.

## **TIMELINES**

During the last five years, different goals have been established for the completion of the investigation of complaints. Since the inception of the IPA, the time taken to complete an investigation has been tracked and statistically analyzed. While the PSCU has made changes and improved on the time it takes them to investigate a complaint, other departments of the SJPd have not. Consequently, the PSCU may investigate a case in a timely fashion but when forwarded to another department for processing, the case is delayed. In 1998, 15% of the cases were not completed in a timely fashion.

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. Adding to

the need for a timely investigation is a recent change in California law which mandates that investigations be completed within one year of the filing of the complaint; otherwise, no discipline can be imposed on the subject officer.

In the 1997 Year End Report, the IPA recommended that timelines be established for every department involved in a citizen complaint. This includes the time spent at all other departments outside of the PSCU, and should be reduced from one year to no more than ten months. This would give the Police Department sufficient time to comply with any IPA requests for further investigation.

The IPA also recommended that time limits and a reliable tracking system be implemented for every bureau and department involved in the complaint process.

**Update:** The SJPD has responded to the recommendations by setting new standards for the timely completion of its investigations. The new goal is to complete all investigations within ten months of the date they were initiated.

The PSCU has also responded by developing a new computer based system which tracks the status of complaints. The computer tracking system lets the PSCU know where and how long a complaint has been at a particular department or unit. Furthermore, the commander of the PSCU now assumes responsibility for ensuring that a complaint will not be delayed while at a department outside the PSCU. The SJPD's responses are encouraging. The IPA will monitor the newly implemented procedures during 1999 to evaluate their effectiveness.





# YEAR END STATISTICS

## CHAPTER 5

The Office of the Independent Police Auditor (IPA) and the Professional Standards and Conduct Unit (PSCU), are forums which are available to the public, to make inquiries and to file complaints against members of the San José Police Department (SJPD).

### COMPLAINT CLASSIFICATIONS

There are four types of classifications: Formal, Informal, Policy and Procedural. Formal complaints may be citizen-initiated (CI) or department-initiated (DI), which are complaints initiated by the Chief of Police. An Informal complaint involves allegations of minor transgressions. An Informal complaint is 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

lacking a factual basis to support the allegation of misconduct. The complaints that have been initiated, but not yet classified are called In-Process.

### INQUIRY

Inquiry refers to any contact with a citizen<sup>4</sup> in reference to any issue of concern that is immediately resolved to the satisfaction of the citizen, which does not give rise to a complaint. Any concern that is not immediately resolved to their satisfaction, can become a complaint. For example, a complainant calls about a traffic citation he/she has received. The complainant questions the officer's authority to cite the traffic violation. It is explained by the PSCU investigator to the complainant that the officer has the discretion on whether or not to issue the citation for the violation and that the appropriate form to address the issue in question would be traffic court. The complainant then brings his/her issues to the judge.

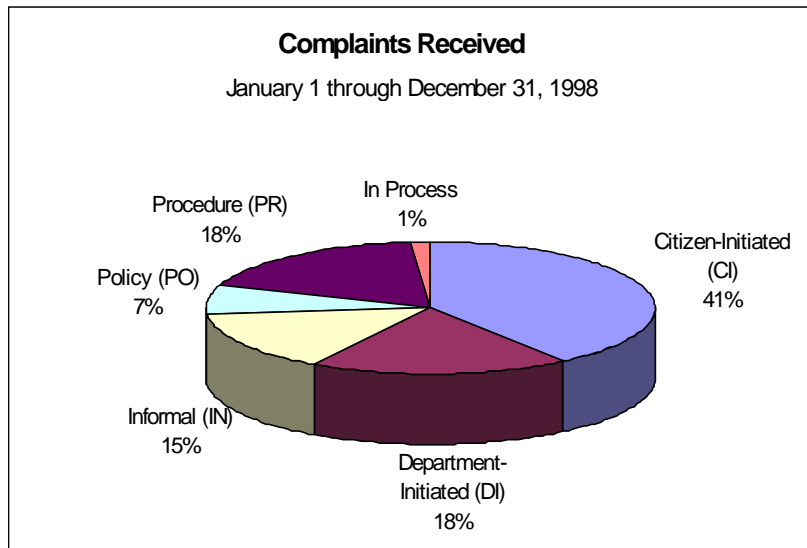
*From Chapter Five through Chapter Ten, the IPA reported the year end statistics of complaints in various ways that may be of interest to the public, the Mayor, and the City Council members. The IPA's analysis is only statistical and not interpretive. There are too many factors to conclusively deduce results from the data.*

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

**Illustration #1:** Complaints by Classification

Type of Complaints	IPA Intake	PSCU Intake	Total Cases
Formal: Citizen-Initiated (CI)	60	86	146
Formal: Department-Initiated (DI)	0	67	67
Informal (IN)	15	40	55
Policy (PO)	18	7	25
Procedure (PR)	25	41	66
In-Process	3	2	5
<b>Total Cases</b>	<b>121</b>	<b>243</b>	<b>364</b>

**Illustration #2:** Percentage of Complaints Received by Classification



**Illustration #3:** Three Year Analysis of IPA Intake

Intake Received	Time Period		
	1996	1997	1998
IPA Cases	154	127	121
PSCU Cases	453	319	243
Total Cases Received	607	446	364
Percentage of IPA Received	29%	34%	41%

*(Note: The percentage of the intake conducted by the IPA excludes the Formal DI cases.)*

There were a total of 741 contacts made with the public at either the PSCU or the IPA offices from January 1 through December 31, 1998. Of the 741 contacts, three hundred and seventy-seven (377) became inquiries: 122 of which were initiated at the IPA and 255 at the PSCU; three hundred and fifty-nine (359) complaints were classified; and five (5) are In-Process. Illustration No. 1 and No. 2 breakdown the complaints by classification based on data gathered by the IPA as of December 31, 1998.

Overall, the IPA received 41% of the total complaints filed during this reporting period.<sup>5</sup> Illustration No. 3 indicates the number of complaints received each year has decreased, but the percentage of intake received by the IPA as compared to the PSCU has increased. Please note that the percentage was calculated by excluding the number of Formal DI cases, which can only be initiated by the Chief of Police.

<sup>5</sup> Since only the PSCU can initiate Formal DI cases, the Total Cases, excluding Formal DI cases, is 297. The percentage of the intake by the IPA is calculated by dividing 121 by 297, which equals 41%. Data was rounded off to the nearest percentage.

**Illustration #4:** Three Year Analysis of Complaints by Classification

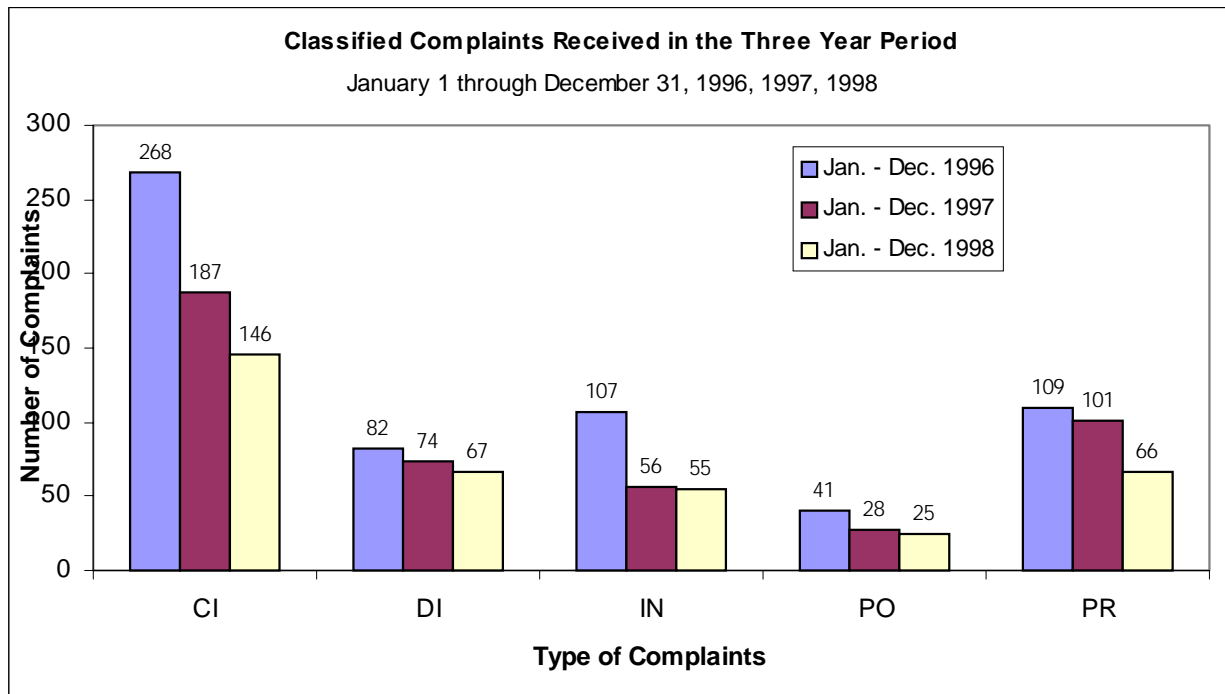


Illustration No. 4 depicts the change in the different types of classified complaints received in the three year periods of January 1 through December 31, 1996, 1997, and 1998. The chart shows a decline in all types of complaints from the previous two years.

<b>1996 Complaints = 607</b>	<b>1997 Complaints = 446</b>	<b>1998 Complaints = 359</b>
Formal: CI = Citizen-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural		

### **TIME TO CLASSIFY AND COMPLETE ALL INVESTIGATIONS**

The Professional Standards and Conduct Unit (PSCU) is responsible for classifying all complaints. The time to classify 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 goal is to have all complaints classied within 30 days.

- ◆ Lack of signature on the Boland Admonishment,<sup>6</sup>
- ◆ Officer resigned from the SJPd before the investigation was completed,
- ◆ Complainant was uncooperative,
- ◆ Complainant withdrew the complaint,
- ◆ Unable to contact complainant or witness, or
- ◆ The identity of the officer could not be determined.

**Time to classify**  
*Number of days from the Received Date to the Assigned Date.*

**Time to investigate**  
*Number of days from the Assigned Date to the Closed Date.*

The length of time to complete an investigation is calculated by 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:

### **INVESTIGATIVE GOALS**

The goal is for an investigator to complete an investigation within 365 days, except in cases where a Class I Unnecessary Force<sup>7</sup> allegation is involved. The goal for Class I use of force cases is to have the investigation completed within 180 days.

<sup>6</sup> State law requires that the complainant sign the Boland Admonishment form in order to have the complaint fully investigated.  
<sup>7</sup> 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 complains 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.

**Illustration #5:** Complaints Classified and Completed

Time Period	Total Cases	Goal	Achieved Goal	%
Received between Jan. 1 - Dec. 31, 1998	359	Classify all complaints within 30 days	336	94%
Closed between Jan. 1 - Dec. 31, 1998	38	Complete UF Class I cases within 180 days	21	55%
Closed between Jan. 1 - Dec. 31, 1998	454	Complete all investigations within 365 days	396	87%

Illustration No. 5 presents data for complete all investigations within classified and completed com- 365 days has improved by one plaints. The classified complaints percent. However, the goal to are based on cases **received** complete UF Class I cases within between January 1 and December 180 days significantly improved 31, 1998. The completed com- by 20%, while commendable, did plaints are based on cases not meet the required goal. **closed** between January 1 and December 31, 1998.

In comparison to last year, the goal to classify all complaints within 30 days was closer by four percent. Also, the goal to

***New Investigative Goal to take effect in 1999***

***Beginning January 1, 1999, the goal to complete all investigations will be reduced from 365 to 300 days. This goal was recommended in the 1997 Year End Report and adopted by the San José Police Department (SJPD).***



# COMPLAINTS & ALLEGATIONS BY COUNCIL DISTRICT

## CHAPTER 6

### COMPLAINTS FILED IN 1998

The following illustrations analyze Informal (IN), Policy (PO), and complaints and their allegations Procedural (PR) by Council District. The first column in the table lists the Council District<sup>8</sup> and its corresponding Council Member, and also indicates the location where the incident leading to a complaint occurred. The type of classification<sup>9</sup> applied to these complaints were Formal (CI or DI),

Classified complaints account for 359 of the 364 complaints received between January 1 through December 31, 1998. The remaining five (5) were awaiting classification as of December 31, 1998. Of those 359 cases, 321 complaints were closed in 1998.

**Illustration #6:** Complaints by Council District

Council Districts	CI	DI	IN	PO	PR	Total Cases	%
1 LEZOTTE	8	0	1	0	3	12	3%
2 POWERS	9	2	5	2	3	21	6%
3 CHAVEZ	54	20	25	9	20	128	36%
4 MATTHEWS	6	1	1	1	5	14	4%
5 DIAZ	18	2	5	0	6	31	9%
6 FISCALINI	13	3	1	2	7	26	7%
7 SHIRAKAWA, JR.	18	2	6	3	7	36	10%
8 WOODY	8	6	1	3	5	23	6%
9 DIQUISTO	6	2	6	3	2	19	5%
10 DANDO	3	0	3	1	8	15	4%
Unknown/Outside City Limits	3	29	1	1	0	34	10%
<b>Total Cases Received</b>	<b>146</b>	<b>67</b>	<b>55</b>	<b>25</b>	<b>66</b>	<b>359</b>	<b>100%</b>
<b>%</b>	<b>41%</b>	<b>19%</b>	<b>15%</b>	<b>7%</b>	<b>18%</b>	<b>100%</b>	
<b>Total Cases Closed</b>	<b>130</b>	<b>50</b>	<b>55</b>	<b>25</b>	<b>61</b>	<b>321</b>	

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

<sup>8</sup> See Appendix E (San José City Council District Map).

<sup>9</sup> See Appendix F (Classification of Complaints).



Illustration No. 7 shows a comparative three year analysis of 1996, 1997, and 1998 classified complaints by Council District. The total number of complaints from January 1 through December 31, 1998 do not include the In-Process complaints. In-Process complaints are complaints that have been initiated, but not yet classified.

## FORMAL ALLEGATIONS

The 213 Formal complaints produced a total of 395 allegations. Each complaint may allege multiple instances of misconducts. For example, in 1998, there were 88 complaints which alleged 156 counts of unnecessary force. Thus, the number of allegations exceeded the number of complaints.

**Illustration #7:** Three Year Analysis of Classified Complaints by Council District

Council Districts	Jan. - Dec. 1996	Jan. - Dec. 1997	Jan. - Dec. 1998
1 LEZOTTE	28	27	12
2 POWERS	50	24	21
3 CHAVEZ	208	156	128
4 MATTHEWS	37	15	14
5 DIAZ	59	46	31
6 FISCALINI	66	42	26
7 SHIRAKAWA, JR.	35	45	36
8 WOODY	41	17	23
9 DIQUISTO	28	30	19
10 DANDO	39	20	15
Unknown/Outside City Limits	16	24	34
<b>Total Cases Received</b>	<b>607</b>	<b>446</b>	<b>359</b>

When these 395 allegations were closed with a finding,<sup>10</sup> 13% were Sustained, 11% Not Sustained, 43% Exonerated, 13% Unfounded, and 20% No Finding. The allegations with the most Sustained Finding were Improper Procedure and Unofficerlike Conduct. Unnecessary Force and Unlawful Arrest allegations more frequently received an Exonerated Finding. Rude Conduct allegations had either a Not Sustained, Unfounded, or No Finding.

<sup>10</sup> See Appendix G (Definition of Findings).

**Illustration #8: Formal Allegations by Council District**

Council Districts	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
1 LEZOTTE	0	0	1	2	2	1	0	1	21	0	28	7%
2 POWERS	0	0	0	2	0	3	1	2	7	2	17	4%
3 CHAVEZ	0	0	2	24	14	25	10	9	48	1	133	34%
4 MATTHEWS	0	0	1	2	0	1	1	0	13	0	18	5%
5 DIAZ	0	0	0	5	1	9	4	2	20	3	44	11%
6 FISCALINI	0	0	1	4	0	7	5	2	10	1	30	8%
7 SHIRAKAWA, JR.	0	0	0	5	4	4	2	1	18	0	34	9%
8 WOODY	0	0	1	8	0	3	2	3	8	0	25	6%
9 DIQUISTO	0	0	0	3	0	0	4	1	9	0	17	4%
10 DANDO	0	0	1	1	0	0	0	1	1	0	4	1%
Unknown/Outside City Limits	4	0	0	17	1	3	0	19	1	0	45	11%
<b>Total Allegations</b>	<b>4</b>	<b>0</b>	<b>7</b>	<b>73</b>	<b>22</b>	<b>56</b>	<b>29</b>	<b>41</b>	<b>156</b>	<b>7</b>	<b>395</b>	<b>100%</b>
<b>%</b>	<b>1%</b>	<b>0%</b>	<b>2%</b>	<b>18%</b>	<b>6%</b>	<b>14%</b>	<b>7%</b>	<b>10%</b>	<b>39%</b>	<b>2%</b>	<b>100%</b>	

Allegation 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

**Illustration #9: Three Year Analysis of Formal Allegations**

Time Period	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.
Jan. - Dec. 1996	17	1	20	167	46	118	37	51	119	35	611
Jan. - Dec. 1997	7	4	11	105	42	78	45	41	165	27	525
Jan. - Dec. 1998	4	0	7	73	22	56	29	41	156	7	395

Illustration No. 9 presents three year data of formal allegations received from January 1 through December 31, 1996, 1997, and 1998. Even though total allega-

tions have decreased since 1996, Improper Procedure, Rude Conduct, and Unnecessary Force continue to yield the highest number of allegations.

## **THE MOST FREQUENT ALLEGATIONS FILED**

## **ANALYSIS OF UNNECESSARY FORCE COMPLAINTS**

Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consistently yield the highest number of complaints. To compare these allegations in the three year period of 1996, 1997, and 1998, please refer to Illustration No. 10.

There were 213 Formal complaints received from January 1 through December 31, 1998. Of the 213 Formal complaints, eighty-eight (88) complaints were Unnecessary Force cases, which produced 156 allegations. Use of Force complaints are divided into two categories: Class I and Class II. Class I cases involved those complaints in which the complainants require 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, thirty-seven (37) allegations were categorized as Class I Use of Force in 19 cases. The remaining 119 allegations were given a Class II Use of Force classification.

**Illustration #10:** The Three Most Frequent Allegations Received Over a Three Year Period

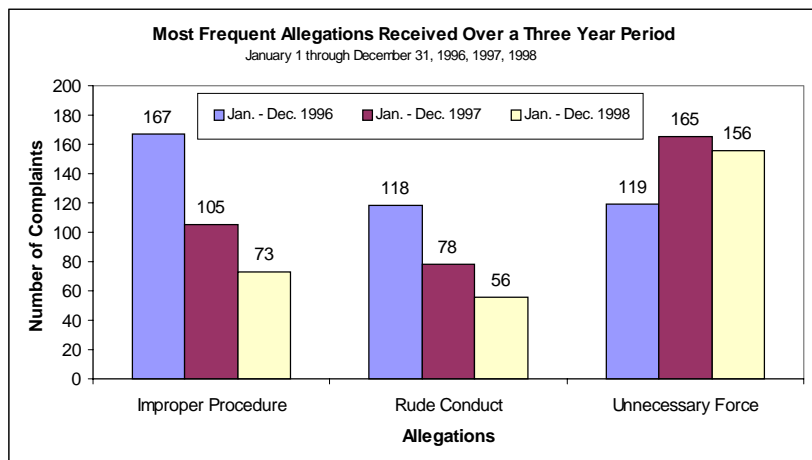


Illustration No. 10 shows how both the Improper Procedure and the Rude Conduct allegations decreased while the Unnecessary Force allegations increased since 1996.

In each complaint, the complainant may allege more than one type of force used by the subject officer(s). There were a total of 194 use of force types used in 1998, which resulted in a 10% decrease from 1997 and a 24% increase from 1996. The subject officer's use of hands, such as punching, pushing or grabbing a complainant, accounted for 34% of the force alleged. In comparison to 1996 and 1997, there was a decrease of two percent each year. The use of a baton for striking or injuring the complainant comprised 13%, this has increased in number since 1996. The alleged use of force from the subject officer's feet, such as leg sweeps or kicking the complainant, comprised 10% of the distribution in 1998. Tight handcuffs causing pain or injury to the wrists of the complainant accounted for 7% of the different types of force alleged by the complainant in 1998. The category "ground" includes allega-

tions of being pushed to the ground or being hit/slammed against the ground. The category "other," which includes the officer's use of an arm, wall, elbow, table, or glass window, accounted for 3% of the alleged force used in 1998.

**Illustration #11a: Type of Force Used**

Type of Force Used	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998	
	Number	%	Number	%	Number	%
Baton	16	10%	27	13%	25	13%
Canines	3	2%	0	0%	4	2%
Car (officer)	4	3%	14	6%	9	5%
Car (complainant)	0	0%	2	1%	2	1%
Chemical Agent	7	4%	12	6%	10	5%
Gun (officer)	2	1%	3	1%	5	3%
Gun (complainant)	0	0%	0	0%	3	2%
Feet	22	14%	25	12%	20	10%
Ground	6	4%	19	9%	16	8%
Hands	60	38%	78	36%	66	34%
Handcuffs (tight)	15	10%	12	6%	13	7%
Knee	9	6%	9	4%	12	6%
Object	4	3%	2	1%	2	1%
Other	7	4%	11	5%	6	3%
Unknown	1	1%	2	1%	1	1%
<b>Total</b>	<b>156</b>	<b>100%</b>	<b>216</b>	<b>100%</b>	<b>194</b>	<b>100%</b>

**Illustration #11b: Body Area Afflicted by Use of Force**

Body Area Afflicted by UF	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998	
	Number	%	Number	%	Number	%
Head	34	34%	41	30%	34	30%
Torso	15	15%	18	13%	14	12%
Limbs	24	24%	50	36%	35	31%
MBP	27	27%	21	15%	27	24%
Unknown	0	0%	7	5%	4	4%
<b>Total</b>	<b>100</b>	<b>100%</b>	<b>137</b>	<b>100%</b>	<b>114</b>	<b>100%</b>

distribution was 30% UF cases which involved injuries to the head, 12% to the torso, 31% to the limbs, 24% to MBP, and 4% to unknown parts of the body.

The “Degree of Injury” resulting from the alleged use of force ranged from minor to major,<sup>12</sup> and included categories for “None Visible” and “Unknown” degrees of injury. The breakdown for these categories were 17% for major injuries, 20% moderate, 45% minor, 11% had no visible injury, and 6% were of unknown degrees of injury for the period between January 1 through December 31, 1998.

**Illustration #11c: Degree of Injury**

Degree of Injury	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998	
	Number	%	Number	%	Number	%
Major	9	10%	19	18%	15	17%
Moderate	16	18%	24	22%	18	20%
Minor	36	41%	48	44%	40	45%
None visible	26	30%	9	8%	10	11%
Unknown	1	1%	8	7%	5	6%
<b>Total</b>	<b>88</b>	<b>100%</b>	<b>108</b>	<b>100%</b>	<b>88</b>	<b>100%</b>

Each complaint may allege more than one area of the body afflicted by the alleged use of force. The area afflicted is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown.<sup>11</sup> In 1998, the

<sup>11</sup> 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.

<sup>12</sup> 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.

# SUSTAINED RATE AND DISCIPLINE IMPOSED

## CHAPTER 7

### SUSTAINED RATE

In 1998, there were 321 closed cases. However, 141 of the cases were not of the type that could have had a Sustained finding. Of these 141 cases, 55 were Informal complaints which were resolved by the officer's supervisor. Twenty-five (25) Policy complaints were against the Department and not the individual officers. Sixty-one (61) Procedural complaints were found to be Within Procedure. The remaining 180 Formal cases were of the type where the officer involved could have been disciplined and possibly sustained. Of these 180 Formal complaints, a finding was reached in 121 cases, of which 30 complaints were sustained. The other 59 cases were omitted from Illustration No. 12 because, the cases involved non-sworn officers of the SJPD or because the investigations resulted in a No Finding.<sup>13</sup>

Illustration No.12 indicates that 8 out of 96 Formal CI closed cases were sustained, which resulted in 8% sustained rate. In contrast, 22 out of 25 Formal DI closed cases were sustained, a 88% sustained rate. The combined sustained rate for Formal CI and DI cases for all the Council Districts is 25%.<sup>14</sup>

**Illustration #12:** Sustained Cases by Council District

Council Districts	Formal Closed Cases		Formal Sustained Cases	
	CI	DI	CI	DI
1 LEZOTTE	3	0	1	0
2 POWERS	4	0	0	0
3 CHAVEZ	35	8	3	8
4 MATTHEWS	6	1	0	1
5 DIAZ	13	0	0	0
6 FISCALINI	7	1	0	1
7 SHIRAKAWA, JR.	11	1	0	1
8 WOODY	6	4	1	3
9 DIQUISTO	4	1	0	0
10 DANDO	1	0	0	0
Unknown/Outside City Limits	6	9	3	8
<b>Total Sustained Cases</b>	<b>96</b>	<b>25</b>	<b>8</b>	<b>22</b>

13 A case reached a No Finding for one of the following reasons: Lack of signature on the Boland Admonishment, officer resigned from the SJPD before the investigation was completed, complainant was uncooperative, complainant withdrew the complaint, unable to contact complainant or witness, or the identity of the officer could not be determined.

14 The 25% sustained rate was derived from the 30 total sustained cases divided by the 121 Formal closed cases. Informal, Policy, and Procedural cases do not have findings. Also excluded are the non-sworn officers and the No Finding investigations.

## **DISCIPLINE IMPOSED**

Discipline can only be imposed on Formal complaints. The Formal complaints can be initiated either by a citizen (Citizen-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.<sup>15</sup> For example, an officer may have had three allegations sustained, but will receive only one discipline (such

as 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.<sup>16</sup>

A finding was reached in 121 complaints. The other 59 complaints involved non-sworn officers of the SJPD or the investigations resulted in a No Finding. Therefore, they were omitted from Illustration No. 13. In the 121 complaints that resulted in a

**Illustration #13: Discipline Imposed for Formal Cases**

Type of Formal Disciplines Imposed	CI	DI	Total	%
Training and/or Counseling	5	7	12	26%
Documented Oral Counseling (D.O.C.)	2	18	20	43%
Letter of Reprimand (L.O.R.)	1	7	8	17%
10-Hour Suspension	0	2	2	4%
20-Hour Suspension	1	2	3	6%
40-Hour Suspension	0	1	1	2%
160-Hour Suspension	0	1	1	2%
<b>Total Formal Disciplines Imposed</b>	<b>9</b>	<b>38</b>	<b>47</b>	<b>100%</b>

<sup>15</sup> See Appendix D (Misconduct Allegations) and Appendix C (Definition of Findings).

<sup>16</sup> For example, officers who resign pending termination have a No Finding instead of Sustained allegation. Also, some officers may receive Training and/or Counseling for a Not Sustained or Exonerated allegation.

finding, a discipline was imposed on 47 complaints. The disciplines were listed by increased level of severity.

Documented Oral Counseling accounted for 43% of the disciplines in Formal cases while Letter of Reprimand accounted for 17% of the disciplines in Formal cases. Training and/or Counseling accounted for 26% of the disciplines in Formal cases and was more frequent in the Formal DI cases than in the Formal CI cases.





# INTERVENTION COUNSELING

## CHAPTER 8

The Intervention Counseling Program is used as an “early warning system” to track police officers with complaint histories for the purpose of identifying potential problems and providing guidance. To receive Intervention Counseling (IC), the subject officers must have the following:

- ❖ Three or more investigations of Formal Citizen-Initiated or Formal Department-Initiated complaints within a 12-month period;
- or-
- ❖ 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 officer,<sup>17</sup> 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.

<sup>17</sup> Subject officer refers to the sworn member of the SJPd against whom the complaint was made.

**Illustration #14:** Intervention Counseling (IC)

Time Period of Intervention Counseling	Total Number of IC Sessions	Number of Subsequent Complaints from IC Date to December 31, 1998					
		0	1	2	3	4	5+
Jan. - Dec. 1996	15	1	2	4	2	5	1
Jan. - Dec. 1997	19	6	5	3	3	1	1
Jan. - Dec. 1998	13	8	3	1	1	0	0

Illustration No. 14 lists the number of IC sessions between January 1 and December 31 for the years 1996 through 1998. The number of subject officers with subsequent complaints from their IC date should not be compared due to the differences in time between the 1996, 1997, and 1998 sessions. A longer time period from the IC date increases the possibility of having subsequent complaints.

Thirteen IC sessions occurred in 1998. Sixty-two percent (62%) of the subject officers received no subsequent complaints following the IC session. Twenty-three percent (23%) of the subject officers received one subsequent

complaint following the IC session. Seven percent (7%) of the subject officers received two or three subsequent complaints following the IC session.

Nineteen IC sessions occurred in 1997. Thirty-two percent (32%) of the subject officers received no subsequent complaint following the IC session. Twenty-six percent (26%) of the subject officers received one subsequent complaint following the IC session. Sixteen percent (16%) of the subject officers received two or three subsequent complaints following the IC session. Five percent (5%) of the subject officers received four, five or more subsequent complaints following the IC session.

Fifteen IC sessions occurred in 1996. Seven percent (7%) of the subject officers received no subsequent complaint following the IC session. Thirteen percent

(13%) of the subject officers received one subsequent complaints following the IC session. Twenty-seven percent (27%) of the subject officers received two while 13% received three subsequent complaints following the IC session. Thirty-three percent (33%) of the subject officers received four while seven percent (7%) received five and/or more subsequent complaints following the IC session.

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 prevent the alleged misconduct from occurring in the future.



# STATISTICAL BACKGROUND OF SUBJECT OFFICERS

## CHAPTER 9

An additional statistical area tracked by the Office of the Independent Police Auditor (IPA) is 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.

### UNIT OF THE SUBJECT OFFICER

Illustration No. 15 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, 1998. Data was rounded off to the nearest percentage.

Three hundred and thirty-seven (337) subject officers who received a complaint were from the

Bureau of Field Operations (BFO). Fifteen (15) subject officers were from the Bureau of Investigations (BOI). Three (3) subject officers were from the Bureau of Administration (BOA - two in permits unit and one in training unit). Two subject officers were from the Office of the Chief (COP - vice unit). One subject officer was from the Bureau of Technical Services (BTS - records and identification unit).

The investigators were unable to identify 69 officers in 62 complaints. These officers were not identified for one of two reasons. Either the complainant did not sign the required Boland Admonishment form,<sup>18</sup> or the investigator was not provided with enough information to accurately identify the subject officer. There were 36 cases where the Boland Admonishment was not signed. In 17

**Illustration #15:** Unit of the Subject Officer

Bureau of Field Operations (BFO)		%
Airport	3	1%
Crime Prevention	3	1%
Field Service Management	1	0%
Field Training	13	4%
Information Center	2	1%
K-9	3	1%
Merge	9	3%
Narcotics Enforcement Team	13	4%
Parks	2	1%
Patrol	247	73%
Pre-Processing Center	2	1%
School Liaison	1	0%
Special Operations	3	1%
Traffic Enforcement Team	17	5%
Violent Crime Enforcement Unit	16	5%
Youth Service Detail	2	1%
<b>Total incidents from BFO</b>	<b>337</b>	<b>100%</b>

Bureau of Investigations (BOI)		%
Assaults	1	7%
Auto Theft/Vehicular Crimes	1	7%
Burglary/Fraud	2	13%
Drug Enforcement Administration	2	13%
Juvenile Crimes	2	13%
Narcotics/Covert Investigation	3	20%
Robbery/Night General	2	13%
Sexual Assault/Child Exploitation	1	7%
Traffic Investigation	1	7%
<b>Total incidents from BOI</b>	<b>15</b>	<b>100%</b>

<sup>18</sup> State law requires that the complainant sign the Boland Admonishment form in order to have the complaint fully investigated.

cases, the investigator did not have the necessary information to identify the subject officer because the complaint was withdrawn or the investigator was unable to contact the complainant.

### ***GENDER OF THE SUBJECT OFFICER***

Illustration No. 16 reports the gender of the subject officers from complaints received between January 1 through December 31, 1998. Data was rounded off to the nearest percentage. Of the 1324 total number of officers in the SJPd, 20% of the officers received a complaint.

### ***ETHNICITY OF THE SUBJECT OFFICER***

Illustration No. 17 presents the ethnicity of the subject officers currently employed in the SJPd as of December 31, 1998. These statistics are from the complaints received between January 1 and

December 31, 1998. Data was rounded off to the nearest percentage.

### ***YEARS OF EXPERIENCE OF THE SUBJECT OFFICER***

Illustration No. 18 and No. 19 present the subject officers' years of experience in the SJPd as of December 31, 1998. These statistics are from the complaints received between January 1 and December 31, 1998. Data was rounded off to the nearest percentage.

**Illustration #16: Gender of the Subject Officer**

Gender	Number of Complaints	%	Number of Officers in the Police Department	%
Male	339	97%	1213	92%
Female	11	3%	111	8%
<b>Total</b>	<b>350</b>	<b>100%</b>	<b>1324</b>	<b>100%</b>

**Illustration #17: Ethnicity of the Subject Officer**

Ethnicity	Total Number of Complaints	%	Total Number of Officers in the Police Department	%
African American	31	9%	73	6%
Asian American	33	9%	97	7%
Hispanic Latino	96	27%	294	22%
Native American	2	1%	8	1%
Filipino American	6	2%	22	2%
European American	182	52%	830	63%
<b>Total</b>	<b>350</b>	<b>100%</b>	<b>1324</b>	<b>100%</b>

**Illustration #18: Years of Experience of the Subject Officer**

Year of Experience	Total Number of Complaints	%	Total Number of Officers in the Police Department	%
0-1+	25	7%	119	9%
2-4+	134	38%	268	20%
5-6+	43	12%	110	8%
7-10+	52	15%	200	15%
11-15+	40	11%	204	15%
16+	56	16%	423	32%
<b>Total</b>	<b>350</b>	<b>100%</b>	<b>1324</b>	<b>100%</b>



Officers with two to four years of experience received the highest number of complaints. These officers accounted for 20% of all officers in the SJPd, and were responsible for 38% of all the complaints received. Officers with more than 16 years of experience followed with 56 complaints. They comprise 32% of all officers in the SJPd and accounted for 16% of all complaints.

Officers with two to four years of experience received the most Unnecessary Force allegations. Overall, the officers with less than one year of experience have the least number of allegations filed against them.

**Illustration #19:** Allegations by Officers' Years of Experience

Year of Experience	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
0-1+	0	0	0	5	1	3	6	0	7	0	22	9%
2-4+	0	0	0	9	7	11	10	0	52	0	89	37%
5-6+	0	0	1	3	1	4	3	0	17	0	29	12%
7-10+	0	0	0	2	0	6	2	0	21	0	31	13%
11-15+	0	0	3	2	0	6	3	4	15	1	34	14%
16+	0	0	0	3	0	9	3	2	19	1	37	15%
<b>Total Allegations</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>24</b>	<b>9</b>	<b>39</b>	<b>27</b>	<b>6</b>	<b>131</b>	<b>2</b>	<b>242</b>	<b>100%</b>
<b>%</b>	<b>0%</b>	<b>0%</b>	<b>2%</b>	<b>10%</b>	<b>4%</b>	<b>16%</b>	<b>11%</b>	<b>2%</b>	<b>54%</b>	<b>1%</b>	<b>100%</b>	

Allegation 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

## **SUBJECT OFFICERS WITH ONE OR MORE COMPLAINT(S)**

Illustration No. 20 presents the number of subject officers by the number of complaints filed against them. The data collected is from a three year time period between January 1 through December 31, 1996, 1997, and 1998.

From January 1 through December 31, 1996, multiple complaints were filed against 106 officers while 287 officers received only one complaint. This means that a total of 393 officers received at least one complaint in 1996.

From January 1 through December 31, 1997, multiple complaints

were filed against 76 officers, a decrease of 28% from 1996, while 254 officers received one complaint (a decrease of 11% from 1996). From January 1 through December 31, 1998, multiple complaints were filed against 65 officers, a decrease of 14% from 1997 and a decrease of 39% from 1996. There were 203 officers who received one complaint in 1998, a 20% decline from 1997 and 29% decline from 1996.

**Illustration #20:** Subject Officers by Number of Complaints

Time Period	Subject Officers by Number of Complaints						Total Subject Officers	Subject Officers with Two or More Complaints
	1	2	3	4	5	6		
Jan. - Dec. 1996	287	77	18	10	1	0	393	106
Jan. - Dec. 1997	254	57	12	4	2	1	330	76
Jan. - Dec. 1998	203	51	10	3	1	0	268	65



# BACKGROUND OF COMPLAINANTS BY COUNCIL DISTRICT

## CHAPTER 10

The Office of the Independent Police Auditor (IPA) utilizes a Voluntary Questionnaire to request information about the statistical background of the 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 how the complainant was referred to either the IPA or the PSCU. An effort is made to collect a questionnaire from every complainant. 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.

### GENDER OF THE COMPLAINANTS

Illustration No. 21 identifies the gender of the complainants by Council Districts for the period of January 1 through December 31, 1998. Data was rounded off to the nearest percentage.

**Illustration #21:** Gender of the Complainants by Council Districts

Council Districts	Gender	
	Male	Female
1 LEZOTTE	8	6
2 POWERS	13	9
3 CHAVEZ	78	34
4 MATTHEWS	10	6
5 DIAZ	22	12
6 FISCALINI	16	10
7 SHIRAKAWA, JR.	24	12
8 WOODY	16	5
9 DIQUISTO	11	7
10 DANDO	10	5
Unknown/Outside City Limits	3	2
<b>Total Complainants</b>	<b>211</b>	<b>108</b>
<b>%</b>	<b>66%</b>	<b>34%</b>

## ***ETHNICITY OF THE COMPLAINANTS***

Illustration No. 22 displays the ethnicity of the complainants by Council Districts for the period of January 1 through December 31, 1998. Data was rounded off to the nearest percentage.

**Illustration #22:** Ethnicity of the Complainants by Council Districts

Council Districts	Ethnicity								
	African American	Asian American	European American	Filipino American	Hispanic Latino	Native American	Vietnamese	Other	Decline
1 LEZOTTE	3	0	2	0	2	1	0	0	6
2 POWERS	4	0	7	0	4	0	0	1	6
3 CHAVEZ	23	2	19	0	32	0	1	1	34
4 MATTHEWS	5	0	2	0	5	0	0	1	3
5 DIAZ	4	0	2	0	17	0	0	0	11
6 FISCALINI	4	0	7	0	6	1	0	0	8
7 SHIRAKAWA, JR.	4	2	3	1	12	1	1	0	12
8 WOODY	2	0	4	0	5	0	2	1	7
9 DIQUISTO	1	0	12	0	0	1	0	1	3
10 DANDO	0	1	5	0	2	1	0	2	4
Unknown/Outside City Limits	0	0	1	0	0	0	0	0	4
<b>Total Complainants</b>	<b>50</b>	<b>5</b>	<b>64</b>	<b>1</b>	<b>85</b>	<b>5</b>	<b>4</b>	<b>7</b>	<b>98</b>
<b>%</b>	<b>16%</b>	<b>2%</b>	<b>20%</b>	<b>0%</b>	<b>27%</b>	<b>2%</b>	<b>1%</b>	<b>2%</b>	<b>31%</b>

**Illustration #23:** Age of the Complainants by Council Districts

Council Districts	Age				
	Under 18	18-30	31-59	60+	Decline
1 LEZOTTE	0	1	7	0	6
2 POWERS	0	4	12	0	6
3 CHAVEZ	2	45	34	1	30
4 MATTHEWS	0	0	14	0	2
5 DIAZ	0	9	13	1	11
6 FISCALINI	1	4	12	1	8
7 SHIRAKAWA, JR.	0	8	14	1	13
8 WOODY	1	6	6	1	7
9 DIQUISTO	1	6	8	0	3
10 DANDO	0	4	7	0	4
Unknown/Outside City Limits	0	0	1	0	4
<b>Total Complainants</b>	<b>5</b>	<b>87</b>	<b>128</b>	<b>5</b>	<b>94</b>
<b>%</b>	<b>2%</b>	<b>27%</b>	<b>40%</b>	<b>2%</b>	<b>39%</b>

## ***AGE OF THE COMPLAINANTS***

Illustration No. 23 lists the age of the complainants by Council Districts for the period of January 1 through December 31, 1998. Data was rounded off to the nearest percentage.

## EDUCATIONAL LEVEL OF THE COMPLAINANTS

Illustration No. 24 lists the educational level of the complainants by Council Districts for the period of January 1 through December 31, 1998. Data was rounded off to the nearest percentage.

**Illustration #24:** Educational Level of the Complainants by Council Districts

Council Districts	Educational Level			
	High School or Below	College Degree	Graduate Degree	Decline
1 LEZOTTE	4	3	1	6
2 POWERS	6	10	1	5
3 CHAVEZ	36	38	5	33
4 MATTHEWS	8	3	3	2
5 DIAZ	16	4	3	11
6 FISCALINI	10	6	3	7
7 SHIRAKAWA, JR.	11	8	4	13
8 WOODY	7	6	0	8
9 DIQUISTO	6	7	2	3
10 DANDO	4	5	2	4
Unknown/Outside City Limits	0	0	1	4
<b>Total Complainants</b>	<b>108</b>	<b>90</b>	<b>25</b>	<b>96</b>
%	<b>34%</b>	<b>28%</b>	<b>8%</b>	<b>30%</b>

## COMPLAINANT'S OCCUPATION

Illustration No. 25 lists the occupation of the complainants for the period of January 1 through December 31, 1998. Data was rounded off to the nearest percentage.

**Illustration #25:** Occupation of the Complainants

Occupation		%
Office Support	6	2%
City or Govt. Employee	7	2%
Decline	106	33%
Disabled	4	1%
Homemaker	16	5%
Laborer	68	21%
Professional	25	8%
Retired	6	2%
Self-employed	10	3%
Services	26	8%
Student	24	8%
Technical	14	4%
Unemployed	7	2%
<b>Total Complainants</b>	<b>319</b>	<b>100%</b>



# ANALYSIS OF THE AUDITED COMPLAINTS

## CHAPTER 11

### AUDIT CRITERIA

In order to audit cases in a uniform and consistent manner, the IPA has developed audit forms which it uses as a checklist 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. The audit criteria is different according to the classification of the complaint. Listed below are the different type of complaint classifications (Formal, Procedural, No Boland, Informal, Policy). Following each classification is some of the criteria addressed by the IPA.

### 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 250 Formal cases audited from

January 1 through December 31, 1998.

### Was review requested by the complainant?

A total of 115 complainants or 46% 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. The number of complainants wanting the IPA to review their complaint has gone up every year since the inception of the office.

### Did the IPA request further action from PSCU?

The IPA requested further action from the PSCU in 27 or 11% of the Formal cases it reviewed. Requests varied from reopening an investigation to providing the IPA with additional information or documentation.

Was review requested by the complainant?

Yes	115	46%
No	135	54%

Did the IPA request further action from PSCU?

Yes	27	11%
No	223	89%



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

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

<b>Notification requested</b>	127	51%
<b>Notice received</b>	46	36%
<b>Interviews attended</b>	25	56%
<b>Interviews not attended</b>	20	44%

*Did the IPA agree with the resolution of the complaint?*

<b>Yes - Agree</b>	205	82%
<b>No - Disagree</b>	45	18%

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 250 Formal cases, the IPA requested to be notified of police officer interviews in 127 cases. Of those, the IPA was notified of only 46 interviews. The Auditor attended 25 interviews. The PSCU failed to provide notice to the Auditor for 81 cases.

**Recommendation:** The PSCU Investigators should document in their case files how notices of

upcoming interviews were given to the IPA. Proof of notice can be documented by saving a copy of the fax notice, email print out, or noting date and time of phone call.

**Did the IPA agree with the resolution of the complaint?**

This section reflects the number of times the IPA agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in 45 of the 250 Formal cases even after further action was requested from the PSCU. In 1998, the IPA disagreed with 18% of the formal cases. This is an increase from 1997, where the IPA disagreed with only 9% of the formal cases.

The IPA may disagree with the resolution for various reasons. In some cases the IPA disagreed with the PSCU about the factual circumstances surrounding the

complaint. In these cases, the IPA comes to a different conclusion about what happened during the incident. One reason for the different conclusion may be due to a disagreement over the credibility of a witness or party.

In other cases the facts were not at issue, however, the IPA concluded that the finding was not supported by the facts. For example, the IPA may have a different opinion as to whether the conduct of the subject officer violated an established law or policy.

Another reason for disagreement of some cases was that the PSCU or another unit of the police department did not conduct a proper investigation. The investigation may have been deemed improper because the investigator failed to take specific investigative steps or other biases were detected.

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

Roughly two thirds 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 36% figure involves complainants who were not accused of violating any laws.

***Was the case sent to the Chain of Command for Findings and Recommendations by the PSCU?***

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

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

<b>Yes</b>	160	64%
<b>No</b>	90	36%

*Was the case sent to Chain of Command for Findings and Recommendations by the PSCU?*

<b>Yes</b>	34	14%
<b>No</b>	210	84%
<b>N/A</b>	6	2%

## **PROCEDURAL COMPLAINTS**

Procedural complaints are those that despite the allegation of misconduct, no factual basis supports the allegation because the subject officer's conduct was within procedure. There were 70 Procedural complaints reviewed in 1998.

*Was the complaint properly classified?*

<b>Yes</b>	66	94%
<b>No</b>	4	6%

*Was the procedure properly applied?*

<b>Yes</b>	67	96%
<b>No</b>	3	4%

*Did the IPA request further action from PSCU?*

<b>Yes</b>	1	1%
<b>No</b>	69	99%

### ***Was the complaint properly classified?***

The IPA found that four 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?***

The IPA found that in three 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. This is seven less than in 1997, when the IPA found that in ten cases the subject officer did not follow the proper procedure.

### ***Did the IPA request further action from PSCU?***

Requests may vary from reopening an investigation to providing the IPA with additional information or documentation. The IPA requested further action from the PSCU in one of the Procedural cases it reviewed. In some cases, the IPA disagreed with the PSCU's assessments; however, no action was requested because the case was fully investigated but the opinions between the PSCU and the IPA differed.

**What is the IPA’s finding of the investigation?**

The IPA disagreed with the finding of the investigation in one of the 70 Procedural cases even after further action was requested from PSCU.

**COMPLAINTS WITHOUT A 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 44 “No Boland” cases.

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

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?**

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 1998 were classified as Class I. Two of them were investigated by the PSCU

*What is the IPA’s finding of the investigation?*

<b>Yes - Agree</b>	67	96%
<b>No - Disagree</b>	3	4%

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

<b>Yes</b>	38	86%
<b>No</b>	6	14%

*Was unnecessary force alleged in this Complaint? Class I or Class II?*

<b>Yes - Class I</b>	3	7%
<b>Yes - Class II</b>	11	25%
<b>No</b>	30	68%

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

<b>Yes</b>	6	14%
<b>No</b>	38	86%

*Was the allegation a minor transgression?*

<b>Yes</b>	29	50%
<b>No</b>	29	50%

despite the complainant's failure to return a signed Boland form 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?***

In cases where the allegations are particularly serious, the PSCU will conduct an investigation despite the fact that the complainant did not sign a Boland Admonishment. The IPA found that six cases were closed when they should have been investigated due to the seriousness of the allegations. Allegations that should have been investigated included discrimination and theft of property.

***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. If the allegations are serious enough or if the allegations tend to show a pattern of misconduct on the part of the subject officer the allegations will be formally investigated despite the complainant's request for the informal process. These complaints are tracked and become part of the officer's PSCU file. The IPA reviewed 58 Informal complaints in 1998.

***Was the allegation a minor transgression?***

In 29 cases, the IPA found that the transgression was not minor; however, the complainant chose

the informal process or the allegations were not serious enough to require a Formal investigation.

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

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?**

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. In 1997, the percentage of cases where the investigator informed the complainant of this option was slightly lower at 91%.

**Did the IPA request further action from the PSCU?**

The IPA requested further action from the PSCU in two of the Informal cases it reviewed. The requests were for additional information or documentation.

**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 31 Policy complaints.

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

<b>Yes</b>	12	21%
<b>No</b>	2	3%
<b>Unknown</b>	44	76%

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

<b>Yes</b>	55	95%
<b>No</b>	1	2%
<b>Unknown</b>	2	3%

*Did the IPA request further action from the PSCU?*

<b>Yes</b>	2	3%
<b>No</b>	56	97%

*Was the complaint properly classified?*

<b>Yes</b>	21	68%
<b>No</b>	10	32%

*Does the complaint pertain to an established policy?*

<b>Yes</b>	29	94%
<b>No</b>	2	6%

*Was the policy properly employed by the department member?*

<b>Yes</b>	27	87%
<b>No</b>	0	0%
<b>Unknown</b>	4	13%

***Was the complaint properly classified?***

Policy complaints refer to complaints where the complainant expresses a disagreement with a SJPD policy, not against the officer who was following the policy. In 1998, the IPA found that ten of these cases should not have been classified as such. While the IPA disagrees with how these cases were classified, the IPA does not believe any misconduct occurred at the scene of the incident. The IPA's disagreement is only with the classification of the complaint received.

***Does the complaint pertain to an established policy?***

The IPA's audit form also reviews the policy which is the subject of the complaint. The corresponding table shows that 29 of the complaints pertained to an established policy. In two cases the complainant alleged that a nonexistent policy should be established by the SJPD.

***Was the policy properly employed by the department member?***

The IPA looks to the facts of the case to determine if the Department member complied with the Department's established policy. The IPA found 27 cases where the Department member properly employed the SJPD policy. In four cases, the facts were not fully developed by the PSCU and the IPA was unable to form a conclusion.

***INQUIRIES***

Inquires refer to contacts citizens have with police officers regarding an issue that would not constitute police misconduct. They could also include those minor complaints that are immediately addressed and resolved to the satisfaction of the citizen. A minor concern that is not satisfactorily resolved can become a complaint. There were a total of 377 inquiries in 1998.

**Was this case properly classified as an inquiry?**

In some cases the IPA had to confer with the PSCU or obtain tapes and records before agreeing with the Inquiry disposition. In two cases, the IPA believed that the allegations warranted a complaint and the PSCU failed to investigate it properly. Hence, the IPA agreed with all but two cases.

**SPECIAL AUDIT OF UNNECESSARY FORCE CLASS I CASES**

In 1994, the IPA recommended that supervisors be required to conduct on-scene investigations following a use of force incident where the suspect required medical attention (Class I use of force). This recommendation was adopted by the SJPD. What follows is a special audit to determine how well the new procedure is being implemented. In 1998, the IPA audited a total of 67 Class I cases.

**What was the degree of injury?**

Minor injuries refers to injuries such as scratches and bruises. Moderate injuries are those that involve cuts or large scrapes. Major injuries involve fractures or permanent injury. In 1998, most of the injuries were either major or moderate. The corresponding table shows that only 11 % of injuries were minor.

**Was the need to use force explained in a police report?**

The corresponding table shows that this question is not applicable in eight cases. These are cases that were originally thought to be Class I cases, but were later determined not to be. In these eight cases there was no force used or the injury was not caused by the officers.

*Was this case properly classified as an inquiry?*

<b>Yes</b>	375%
<b>No</b>	2%

*What was the degree of the injury?*

<b>Minor</b>	8	12%
<b>Moderate</b>	25	37%
<b>Major</b>	30	45%
<b>None</b>	1	1%
<b>Unknown</b>	3	4%

*Was the need to use force explained in a police report?*

<b>Yes</b>	55	82%
<b>No</b>	4	6%
<b>N/A</b>	8	12%



Was a supervisor called to the scene?

<b>Yes</b>	39	58%
<b>No</b>	19	28%
<b>N/A</b>	5	7%
<b>Unknown</b>	4	6%

Was a supplemental report written by a supervisor?

<b>Yes</b>	26	39%
<b>No</b>	30	45%
<b>N/A</b>	5	7%
<b>Unknown</b>	6	9%

Was a statement taken from the complainant?

<b>Yes</b>	18	27%
<b>No</b>	39	58%
<b>N/A</b>	5	7%
<b>Unknown</b>	5	7%

What type of evidence was collected?

<b>Photographs</b>	34	32%
<b>Video taping</b>	1	1%
<b>Witness statements</b>	25	23%
<b>None</b>	13	12%
<b>Unknown</b>	4	4%
<b>Other</b>	30	28%

**Was a supervisor called to the scene?**

The corresponding table shows that a supervisor was called to the scene in 39 of the Class I cases. This question may not be applicable because despite the complainant’s subsequent allegations of unnecessary use of force, there was nothing at the time of the event that would lead the supervisor to believe that Class I use of force was used. In four cases, the case file did not reveal whether or not a supervisor had responded to the scene. It is therefore unknown whether or not a supervisor responded to the scene.

**Was a supplemental report written by a supervisor?**

Out of 67 Class I complaints, the IPA found that a supervisor had written a supplementary report in only 26 cases. The IPA and the PSCU would like to see a supplementary report written in all Class I cases.

**Was a statement taken from the complainant?**

As part of the on site investigation, supervisors should take a statement from the complainant regarding his/her complaint. The statement could be used to corroborate the complainants allegations or to disprove his/her subsequent inconsistent allegations. In the past, these statements have been used to do both.

**What type of evidence was collected?**

The principle reason to conduct an on site investigation of Class I cases is to preserve evidence that would otherwise be lost if the only investigation was conducted later. Obtaining physical evidence and contacting possible witnesses is a crucial part of the on site investigation. The table shows the type of evidence that was collected by the supervisor. The “other” category includes the supervisor’s own observations, articles of clothing, weapons etc.

### ***Was the case sent to BOI for investigation?***

Cases are sent to the Bureau of Investigations (BOI) when it appears that the subject officers could be prosecuted criminally for the alleged conduct. In 1998, no cases were sent to BOI from other departments including the PSCU.

**Recommendations:** Supervisors responding to the scene of a serious use of force should write a supplemental report documenting their investigation and observations.

*Was the case sent to BOI for investigation?*

<b>Yes</b>	0	0%
<b>No</b>	64	96%
<b>N/A</b>	2	3%
<b>Unknown</b>	1	1%



# CASE AUDIT SUMMARIES

## CHAPTER 12

In order to better inform the public 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 THE PSCU***

The complainant alleged that he was handcuffed and shackled by police then taken to the hospital for having ingested illegal drugs. The complainant stated that while outside the hospital, the officer

slammed him on the ground then dragged him inside. The complainant stated that two hospital employees witnessed the incident, but that the PSCU failed to contact them. The IPA contacted the PSCU investigator handling the case and was informed that the complainant could not provide names or any identifying information about the witnesses. The IPA concurred that attempting to search for the possible witnesses would be fruitless since there was little information to identify the witnesses and prove the allegations made by the complainant.

### ***CASE #2 IPA REQUESTS AUDIO TAPE RECORDING OF THE PSCU'S COMPLAINANT INTERVIEW***

The complainant alleged that he was pulled over by the police and cited for a vehicle code violation. The complainant called the IPA after his case had been closed by

the PSCU. The complainant stated that his complaint regarding the officer having threatened him with a gun was not investigated. The IPA reviewed the file and requested the audio taped interview from the PSCU, where the complainant is heard making his complaint. After review of the audio tapes, the IPA determined that all of the complainant's allegations were investigated and resolved properly. The complainant never made allegations regarding being threatened with a gun when he filed his complaint.

### ***CASE #3*** ***IPA REQUESTS POLICE*** ***REPORT***

The complainant stated that while at a relative's house she was involved in a physical altercation with a relative. The complainant alleged that an on duty officer was present and observed the incident. The officer broke up the fight but failed to take a police

report despite the complainant's request to do so. The PSCU closed the case and found that no officer misconduct had occurred. A clear explanation of the finding however, was not included in the case file. The IPA conferred with the PSCU investigator and was informed that a report from a police captain who was familiar with the complaint had not been forwarded to the IPA. After obtaining and reviewing the captain's report, the IPA was satisfied that in fact the officer had written a report on the incident and that the case was properly resolved by the PSCU.

### ***CASE #4*** ***INVESTIGATION IS REOPENED*** ***AT THE REQUEST OF THE IPA***

The complainant alleged that unnecessary force was used during the arrest of her husband and a friend. The complainant stated that the police officers hit them with batons without cause.

The complainant stated that her husband's arm was broken from the baton strikes. The PSCU closed the case with an Exonerated Finding after interviewing the subject officers. The IPA reviewed the case and requested that the PSCU re-open the investigation so that eye-witnesses could be located and interviewed. The case was re-opened and witnesses were interviewed. The IPA was then satisfied with the quality of the investigation and findings.

**CASE #5**  
**IPA ATTENDS OFFICER**  
**INTERVIEW**

The complainant alleged that officers used unnecessary force while arresting a relative for fighting with a neighbor. As part of the investigation on this case, the PSCU interviewed the subject and witness officers. The IPA attended the interviews of some of the officers and provided

questions for the investigator to ask. The allegations against the officers 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**  
**COURT PRELIMINARY HEARING**  
**TRANSCRIPT REQUESTED BY**  
**THE IPA**

The complainant was arrested and prosecuted for robbery. The complainant alleged that he was not responsible for the robbery and that officers used unnecessary force while placing him under arrest. The IPA requested the court preliminary transcripts. By reviewing the transcripts of the sworn testimony, the IPA was better able to determine the validity of the allegations and the Exonerated findings made by the PSCU.



# CONCLUSION

# CHAPTER 13

The IPA has been in existence for five years and has continually worked to achieve its mission. In 1998, many accomplishments were witnessed. Pending recommendations were adopted and implemented such as a new procedure for the forcible taking of blood, a written form for officer identification and the reduction of the time taken to complete investigations. The PSCU should be commended for eliminating the backlog of cases and creating a much more efficient process for the completion of complaints. In addition, a more open and accepting environment was created by the PSCU staff as was evidenced by their participation with the IPA in community outreach, and in providing opportunities to meet privately at the PSCU offices with individuals and community leaders. Another police department change that has positively impacted the citizen complaint process has

been the fact that the current Chief of Police is more personally involved with the complainants.

The Chief provides opportunities on a biweekly basis where residents can meet with him to discuss their concerns. This may be one reason why the total number of complaints decreased this year.

The IPA has also focused in providing services to the public beyond the confines of its office. Community presentations that were jointly conducted by the IPA and the PSCU reached hundreds of people. These presentations will continue in 1999 and will be expanded in order to provide alternative sites where the IPA can maintain direct contact with the local residents. In addition to making neighborhood presentations, the new focus will be to identify community centers in which community leaders can be trained to intake complaints and



then refer the complaints to either the PSCU or the IPA. This will promote two objectives. First, it will provide a means for ongoing communication and secondly, it will make it possible to reach those people that feel more comfortable filing a complaint in their neighborhood and with a person familiar to them. Yet another benefit of this outreach effort is that by identifying key people in the various communities, they will serve as a conduit to the IPA, thereby minimizing language and cultural barriers.

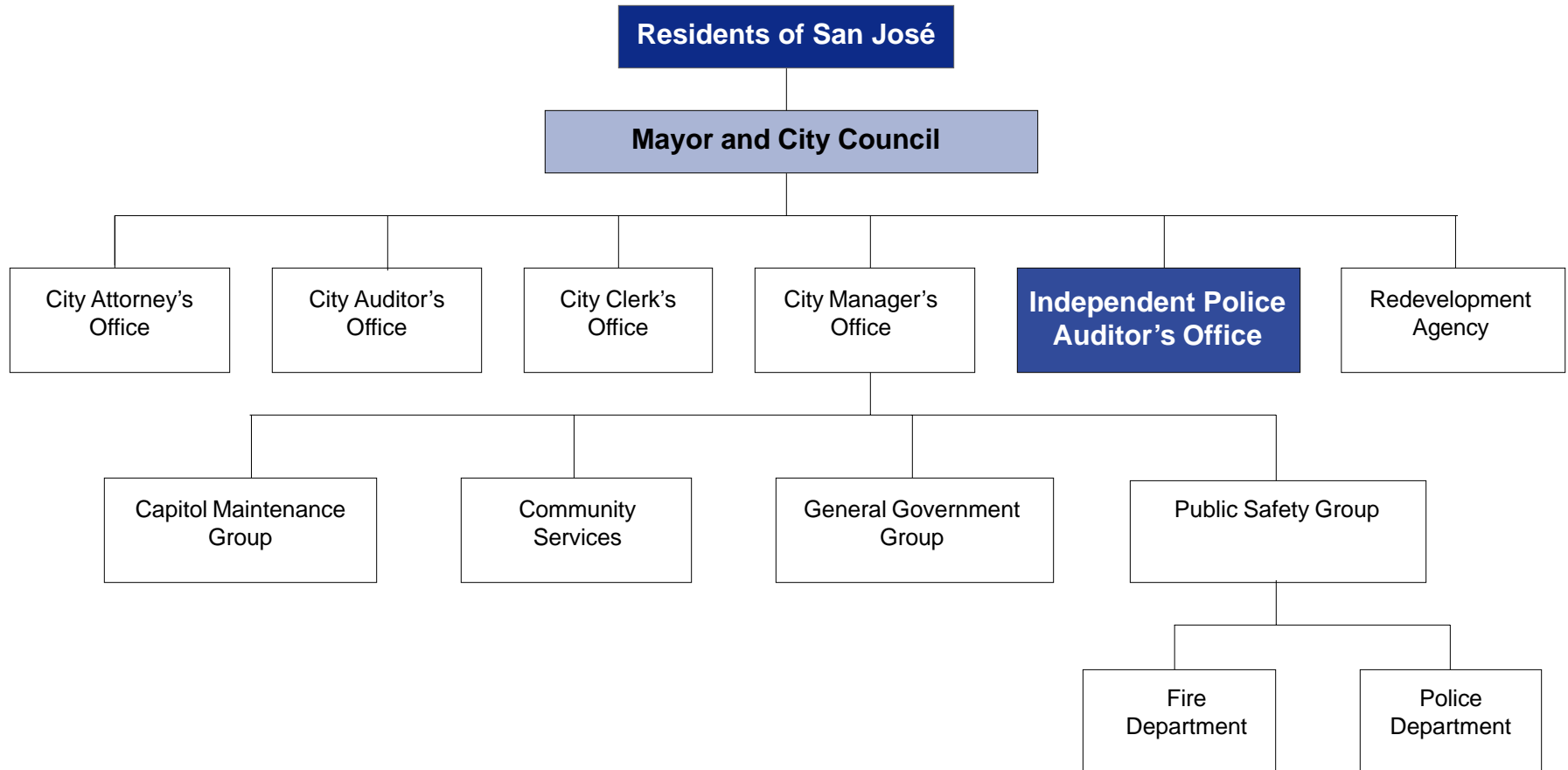
In a further effort to better serve the public, the IPA intends to organize and provide a forum where community leaders can provide the IPA feedback from their community and also take IPA information back to their respective neighborhoods and/or membership. The focus of this coalition will be to aid the IPA in identifying and addressing citizen

complaint issues of concern which are specific to each community (such as the Gay/Lesbian, African American, Latino, Vietnamese, etc.).

The IPA will continue to work on achieving its objectives and in furtherance of its mission. The IPA will report on its progress and challenges in the 1999 Year End Report.

APPENDIX A

SAN JOSÉ CITY ORGANIZATION



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## 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*

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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:	
<b>1993 1st Quarter Report</b>	Create a new system for the classification of complaints	Adopted	1st, 2nd Quarter Reports and 1994 Year End Report	
	Standardize the definition of Procedural and Informal Complaints	Adopted	2nd Quarter Report and 1994 Year End Report	
	Apply Intervention Counseling to all complaints	Adopted	2nd Quarter Report and 1994 Year End Report	
	Establish procedures to address potential bias within the Internal Affairs Unit	Adopted	2nd Quarter Report and 1994 Year End Report	
	Enact policy to ensure objectivity of the intake process	Adopted	2nd Quarter Report and 1994 Year End Report	
<b>1994 3rd Quarter Report</b>	Establish and comply with a timetable regarding the length of time required for complaint classification and investigation	Adopted	1994 Year End Report	
	Implement citizen "Onlooker Policy"	Adopted	1995 Midyear Report	
	Standardize investigation writing format	Adopted	1994 Year End Report	
	Provide report writing training for "Drunk in Public" cases	Adopted	1994 Year End Report	
	Provide chemical testing for "Drunk in Public" cases	Not Adopted	1994 Year End Report	
	Send minor complaints to BFO to expedite investigations	Adopted	1994 Year End Report	
<b>1994 Year End Report</b>	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

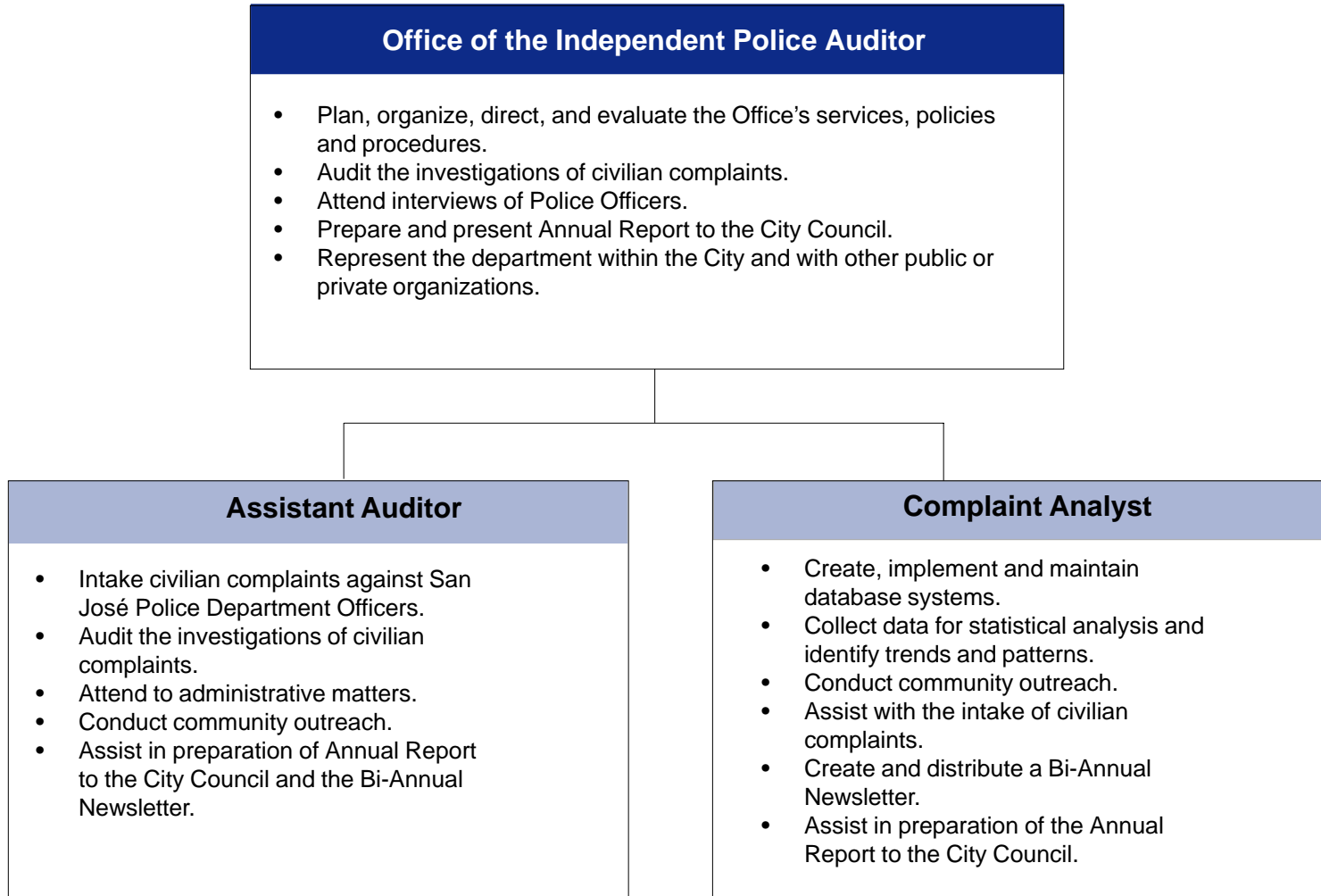
ISSUES RAISED IN:	ISSUE:	DISPOSITION	ISSUES CONCLUDED IN:
<b>1994 Year End Report</b>	Write complainant's statement in addition to recording and provide copy to complainant	Adopted	1994 Year End Report
	Handle Informal Complaints through counseling by Field Supervisor and contact with complainant (where desired)	Adopted	1994 Year End Report
	Revise letters sent to complainants to include information about IPA's role	Adopted	1994 Year End Report
<b>1995 Midyear Report</b>	Maintain a central log of contacts from potential complainants	Adopted	1995 Year End Report
	Obtain additional office space for PSCU	Adopted	1997 Year End Report
	Police Department should refer complainants to either PSCU or IPA	Adopted	1995 Year End Report
	Implement policy to standardize format for officer's interview	Adopted	1995 Year End Report
	Review Off-Duty Employment Practices	Adopted	1997 Year End Report
<b>1996 Midyear Report</b>	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 Mid Year Report
	Retain name of officer where Boland Admonishment is not signed (but need not place in personnel file)	Not Adopted	
	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
<b>1996 Year End Report</b>	Implement process for responding to citizen's request for officer identification	Adopted	
	Establish Class I and Class II of use of force categories	Adopted	1996 Year End Report

## APPENDIX C

ISSUES RAISED IN:	ISSUE:	DISPOSITION	ISSUES CONCLUDED IN:
<b>1996 Year End Report</b>	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
<b>1997 Year End Report</b>	Establish a procedure for officers to identify themselves to civilians when requested to do so. The identification should be made in <b>writing</b>	Adopted	1998 Year End Report
	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	Adopted	1998 Year End Report
	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	Adopted	1998 Year End Report
	Time limits and a reliable tracking system should be set for every bureau and department involved with the complaint process	Adopted	1998 Year End Report

## APPENDIX D

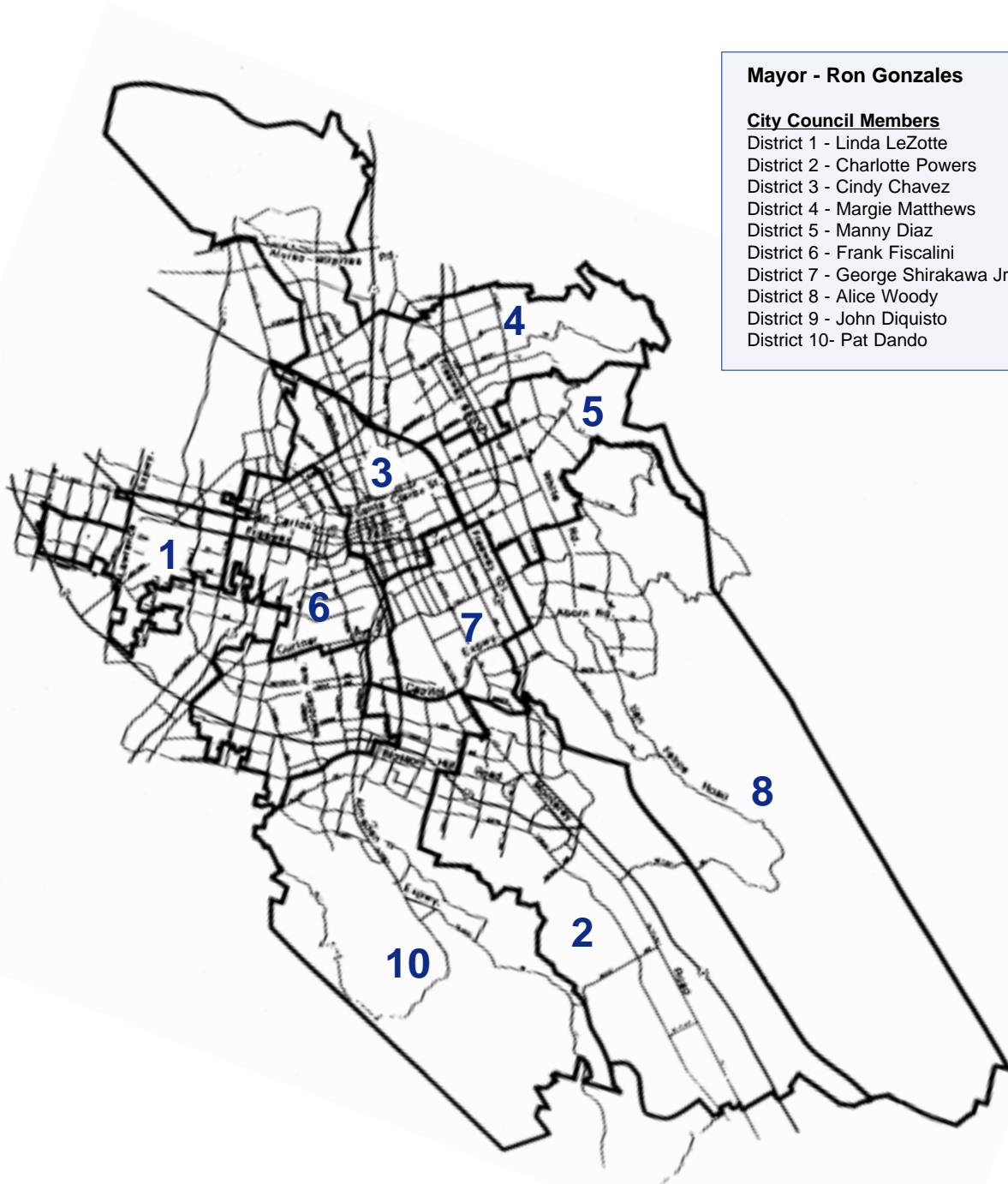
### Independent Police Auditor's Office Main Divisions





## APPENDIX E

### San José City Council Districts



#### Mayor - Ron Gonzales

#### City Council Members

- District 1 - Linda LeZotte
- District 2 - Charlotte Powers
- District 3 - Cindy Chavez
- District 4 - Margie Matthews
- District 5 - Manny Diaz
- District 6 - Frank Fiscalini
- District 7 - George Shirakawa Jr.
- District 8 - Alice Woody
- District 9 - John Diquisto
- District 10 - Pat Dando

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

## APPENDIX F

### 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 officer<sup>1</sup> which may be handled informally by bringing the matter to the attention of the officer's chain of command at the complainant's request.<sup>2</sup> 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.

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<sup>1</sup> Subject officer refers to the officer of whom the complaint is about.

<sup>2</sup> San José Police Department, *Internal Affairs Unit Guideline*, page 3.

## APPENDIX G

### 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. Other reasons may include: lack of signature on the Boland Admonishment; officer resigned from the SJPd before the investigation was closed; or the identity of the officer could not be determined.

## APPENDIX H

### Misconduct Allegations

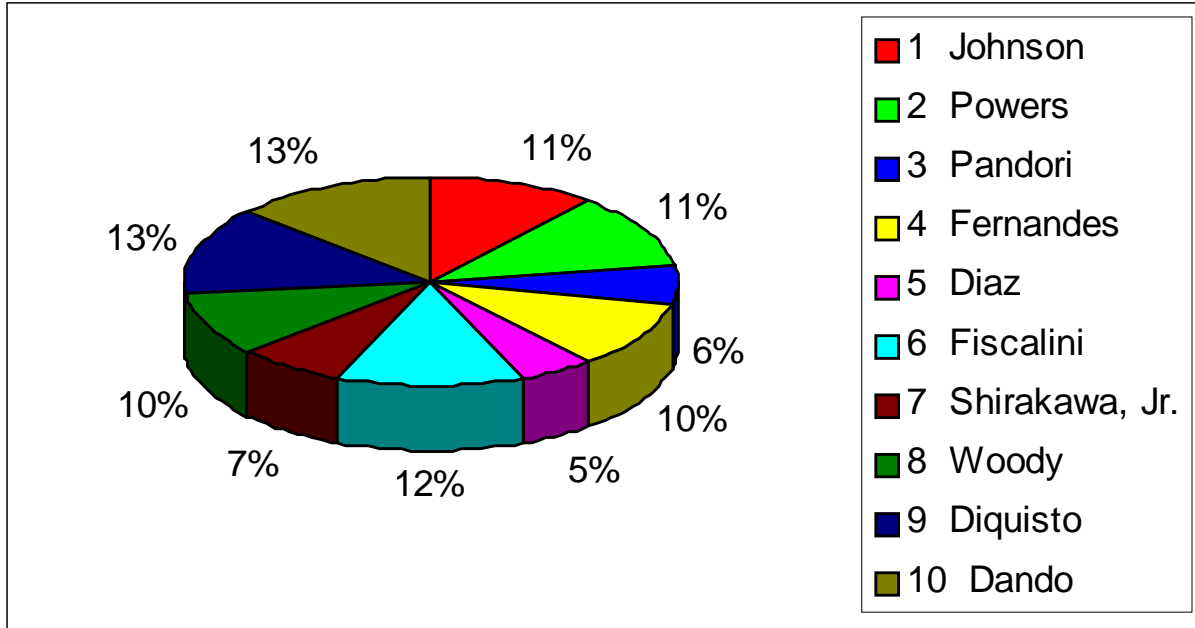
Formal Civilian-Initiated or Formal Department-Initiated misconduct complaints will involve one or more of the following general allegations:

1. Discrimination/Harassment (sexual, racial, etc.) - **DH**
2. Excessive Police Service (harassment, providing confidential information, etc.) - **ES**
3. Failure To Take Action - **FA**
4. Improper Procedure (violation of San José City policy or SJPD Duty Manual.) - **IP**
5. Missing/Damaged Property - **MDP**
6. Rude Conduct (abusive, threatening, profanity, poor attitude, etc., while on duty.) - **RC**
7. Unlawful Arrest - **UA**
8. Unofficerlike Conduct (off-duty behavior, violation of the law, drug/alcohol use, misuse of City property, gratuities, bribes, abuse of authority, etc.) - **UC**
9. Unnecessary Force - **UF**
10. Unlawful Search - **US**

## APPENDIX I

### Election Results of Measure E by Council District

Source: San José City Clerk's Office



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

*\*Percentages are rounded off to the nearest whole number.*