

2000
YEAR
END
REPORT

*Office of the
Independent Police Auditor*



Teresa Guerrero-Daley
Independent Police Auditor

SAN JOSE MAYOR AND CITY COUNCIL



Mayor Ron Gonzales

408-277-4237

mayormail@ci.sj.ca.us

District 1

Linda J. LeZotte

408-277-5438

linda.lezotte@ci.sj.ca.us

District 6

Ken Yeager

408-277-5166

ken.yeager@ci.sj.ca.us

District 2

Forrest Williams

408-277-4282

forrest.williams@ci.sj.ca.us

District 7 (Vice Mayor)

George Shirakawa

408-277-5226

district7@ci.sj.ca.us

District 3

Cindy Chavez

408-277-5231

cindy.chavez@ci.sj.ca.us

District 8

David D. Cortese

408-277-5242

dave.cortese@ci.sj.ca.us

District 4

Chuck Reed

408-277-5320

district4@ci.sj.ca.us

District 9

John Diquisto

408-277-5275

john.a.diquisto@ci.sj.ca.us

District 5

Nora Campos

408-277-5157

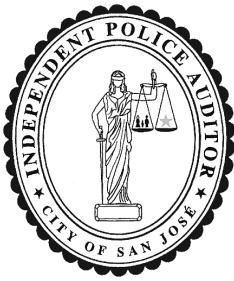
nora.campos@ci.sj.ca.us

District 10

Pat Dando

408-277-5251

pat.dando@ci.sj.ca.us



CITY OF SAN JOSE, CALIFORNIA

Office of the Independent Police Auditor
2 North Second Street, Suite 93
San José, California 95113
Telephone (408) 794-6226
FAX (408) 977-1053

TERESA GUERRERO-DALEY
Independent Police Auditor

April 30, 2001

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

Dear Mayor and City Council Members:

Enclosed is the 2000 Year End Report submitted for your review and approval. This report covers the period from January 1 to December 31, 2000. In addition to comprehensive statistics, this report presents several new issues.

The 2000 Year End Report will be presented at the May 15, 2001 City Council Meeting. If you have any questions or would like an explanation of any portion of this report prior to the city council presentation, please feel free to call me. I welcome your comments and suggestions regarding the improvement of this report.

I would like to thank and acknowledge the IPA staff and the IPA Advisory Committee for their contributions to the development of this report.

Respectfully submitted,

Teresa Guerrero-Daley
Independent Police Auditor

INDEPENDENT POLICE AUDITOR & STAFF



Teresa Guerrero-Daley, Police Auditor - Mrs. Guerrero-Daley is the Independent Police Auditor for the City of San José. She has experience as a lawyer specializing in criminal law. Prior to becoming a lawyer, Mrs. Guerrero-Daley was a private investigator for ten years. Mrs. Guerrero-Daley's prior experience also includes working as a Drug Enforcement Agent for the U.S. Department of Justice. Mrs. Guerrero-Daley has a strong commitment to the community. Recently, she was honored with the Woman of Achievement Award from the Women's Fund and the Exemplary Leadership Award from the Hispanic Development Corporation. Mrs. Guerrero-Daley serves on several committees of the Santa Clara County Bar Association. Other professional memberships include the Institute of Internal Auditors, the Bay Area Police Oversight Network, and the National Association of Civilian Oversight of Law Enforcement.

Steve Wing, Assistant Auditor - Mr. Wing comes to the IPA with more than twenty-four years of public service experience, including work in legal services as a public interest lawyer and service with the City of San Jose in various capacities, including work as a policy analyst, administrative manager, and equal opportunity director. Mr. Wing was one of the founding members of the Asian Law Alliance. During his career with the City of San Jose, he served for five years as the director of the City's equal opportunity and affirmative action programs. He is a past member of numerous community agency boards and other governmental committees and has been a member of the Santa Clara County Bar Association Law Foundation and the Asian Pacific Bar Association. Mr. Wing obtained his Juris Doctor from the Santa Clara University after obtaining a Bachelor's degree in Criminology from the University of California, Berkeley.

Vilcia N. Reyes, Public & Community Relations - Prior to joining the City of San José, Ms. Reyes worked in the news department at KSTS Channel 48-Telemundo in San José. In addition, Ms. Reyes works closely with the community. She is a member of the City of San José Family/Domestic Violence Task Force and the Hispanic Charity Ball of the Hispanic Foundation of Silicon Valley. Ms. Reyes holds a bachelor's degree in Spanish with an emphasis in News Production from Pepperdine University.

Hank Sisneros, Citizen Complaint Investigator - Mr. Sisneros has 20 years of private industry Security Management and Investigations experience. Prior to that, he spent five years as a Deputy Sheriff for Santa Clara County (medically retired). He has a Bachelor's degree in Administration of Justice with a minor in Business. Mr. Sisneros' service to the community include board member for Pueblo de San Jose Kiwanis and board member for Los Amigos de la Biblioteca Latinoamericana. Mr. Sisneros has been a resident of San José since 1959.

Kit Kwan, Data Analyst - Mr. Kwan joins the IPA with two years of public service experience from the Building Division in the City of San Jose. Mr. Kwan speaks fluent Cantonese with some knowledge of Mandarin. He works actively with the Asian community. Mr. Kwan received his bachelor's degree in accounting and management information systems from San Jose State University.

Marifel Juan, Office Specialist - Ms. Juan is currently attending DeAnza College and will soon be transferring to San Jose State University where she will seek a degree in Business. Ms. Juan has been involved in recreational activities for younger children. Ms. Juan takes pleasure in helping the community.

ACKNOWLEDGEMENT

INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE

MISSION

The Mission of this group is to assist the Office of the Independent Police Auditor by providing information on ways to improve the police complaint process, by helping promote public awareness of a person's right to file a complaint, and by increasing police accountability to the public by the San José Police Department.

PURPOSE & OBJECTIVES

The purpose is be to identify, mobilize, and coordinate resources to assure maximum public, private, agency, and individual commitment to provide effective police oversight.

The objectives are to:

1. Promote the mission of the IPA and inform the IPA of the needs/problems of various communities.
2. Promote the maintenance and improvement of standards of quality of police oversight in the City of San José.
3. Increase the forums, sources, and methods of informing the public about the complaint process.

PARTICIPATION

Participation is exclusive to those individuals selected by the Independent Police Auditor and who reside, do business, or have significant human interest in police oversight for the City of San José or neighboring community. The IPA will call meetings on an average of three (3) times per year.

INDEPENDENCE OF THE POLICE AUDITOR

The Police Auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views of the Police Auditor alone. No person shall attempt to undermine the independence of the Police Auditor in the performance of her duties and responsibilities as set forth in the San José Municipal Code Section 2.06.020.

INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE MEMBERS

Tony Alexander

Past president of the NAACP.

Ed Davila

Original member of the Citizen Advisory Group convened to establish the IPA office. Member and past president of the Santa Clara County Bar Association and La Raza Lawyers Association. Member of the Hispanic Bar Association.

Bob Dhillon

Member of the Berryessa Citizens Advisory Committee Council; San José Real Estate Board Government Relations; McLaughlin Corridor Neighborhood Association.

Larry Estrada

Attorney for United States Postal Services.

Paul Feci

Chairman of San Jose Human Rights Commission, Vice President of UFCW, Local 428

Dolores Garcia

Community leader.

Victor Garza

Original member of the Citizen Advisory Group convened to establish the IPA office. Chairman of La Raza Roundtable.

Aminah Ayoola Jahi

Past president and member of the NAACP, San José Branch.

Craig Mann

Member of the Governing Board of the East Side Union High School District and the Board of Directors of MACSA.

Sofía Mendoza

Original member of the Citizen Advisory Group convened to establish the IPA office; Chair, 4 C's Council.

Merylee Shelton

Professor at San José City College.

Wiggys Siversten

Original member of the Citizen Advisory Group convened to establish the IPA office. Founder of the OMNI and co-founder of BAYMEC. Member of the Hate Free Network; Violence Prevention Task Force; San José Domestic Violence Council and Task Force.

Gertrude Welch

Member of the Santa Clara County Human Rights Commission and the Justice Review Committee.

Gary L. Wood

Member of the Citizen Tribunal and the Human Rights Defense Committee.

CHAPTER ONE

INTRODUCTION

Awareness of police misconduct in the United States reached new heights in the year 2000 due in part to the Los Angeles Police Department's Rampart scandal which ranks as one of the worst police scandals in history. The Independent Police Auditor (IPA) provided insight to the Rampart Independent Review Panel on how the IPA conducts civilian oversight of the San José Police Department (SJPD). This information assisted the Rampart Independent Review Panel in preparing their comprehensive investigative report of the Rampart scandal which also made numerous findings and recommendations for changes to how the Los Angeles Police Department operates and is structured.

While the fear of a Rampart-type scandal was instrumental in nudging cities throughout the country toward implementing some form of civilian oversight for their respective police departments, the City of San José did not establish the Office of the Independent Police Auditor in response to a crisis situation. This has helped the IPA to successfully carry out its primary objective that is to provide independent civilian review of the citizen complaint process. To carry out this objective, the IPA has three primary functions:

1. Serving as an alternate office where people may file a complaint of police misconduct;
2. Monitoring and auditing the investigations of citizen complaints conducted by the SJPD; and
3. Promoting public awareness of a person's right to file a complaint.

The IPA continues to closely examine every aspect of the citizen complaint process from the initial interaction between the Internal Affairs officer and the complainant to the conclusion of the investigation. The finding made by the SJPD is examined to insure that it is supported by the evidence and the IPA also reviews the process used to communicate the results of the investigation to the complainant by the Internal Affairs unit.

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EXECUTIVE SUMMARY & RECOMMENDATIONS

FOCUS ON CUSTOMER SERVICE

The efforts made by both the SJPD and the IPA over the past several years to improve community relations and increase public confidence helped San José to positively address several police incidents which occurred in 2000. Consistent with the City's new "Investing in Results" performance measure program to improve customer service, the SJPD has embraced the direction to improve customer satisfaction. These efforts have resulted in significant gains in public confidence as demonstrated by the results of a survey commissioned by the City of San José. This survey revealed that about three-fourths of those residents who have had contact with the SJPD said that the officer with whom they had contact with was courteous and helpful and that two-thirds believed that the SJPD treated people fairly. The findings of the City's survey affirm the IPA's belief that the San José Police Department has a culture of openness, a willingness to accept criticism and a desire to focus on solutions.

CONTENTS OF THE REPORT

Citizen contacts are reported this year by dividing them into serious and minor complaints and cases that are resolved without rising to the complaint level. Public outreach and the expansion of the IPA into the neighborhoods are also reported and the status of pending issues and recommendations from previous years is provided.

The "New Issues" section of the report discusses the IPA's recommendation that the SJPD explore ways to improve, implement and assess a comprehensive ethics program. It is also suggests that the police department should explore a more comprehensive ethics program now during a time when they are enjoying a high level of public confidence. If attempted in the wake of a crisis or when public confidence is down, additional ethical concepts may be viewed with skepticism by the public and resentment by officers as only a temporary cure by management.

Lastly, the report includes a self assessment of the IPA based on the findings of the 2000 Santa Clara County Grand Jury Report, the findings of the 2000 City of San José Survey, customer satisfaction surveys from complainants, surveys collected during community presentations, and from surveys completed by Internal Affairs staff.

CHAPTER TWO

NEW RECOMMENDATION – ETHICS & INTEGRITY STANDARDS

Public trust in police can only exist when police execute their duties fairly, courteously and with no more force than is necessary. A police department that conducts itself in this manner is said to be ethical and operate with integrity. The SJPD has placed great emphasis in enhancing the quality of police services by implementing community policing in every San José neighborhood. At the heart of community policing is police integrity. The police and the community must develop mutual

trust and this requires that the community will have faith in the integrity of the police. The ethics and integrity of the individual police officer must be aligned with the ethics and integrity standards of the police department, which must in turn, be aligned with those of the community.

In order to assess the existing ethical climate in the SJPd, the IPA obtained and reviewed many sources of information, including:

- SJPd Duty Manual which sets parameters and provides guidelines to officers;
- Lt. Tuck Younis who has extensive knowledge and experience in this area and teaches the ethics class;
- Los Angeles Police Department Board of Inquiry Report concerning the ethical issues associated with the Rampart scandal;
- Professor Erwin Chemerinsky's independent analysis of the LAPD Board of Inquiry Report;
- Mr. Hubert William, President of the Police Foundation
- "A Global Market for Ethics," a publication from the Commission on Peace Officer Standards and Training
- Police Integrity, Public Service with Honor, published by the U.S. Department of Justice
- "Ethical Conduct and Discipline in the Queensland Police Service," a study conducted by the Australia Criminal Justice Commission

An effective ethics program requires that integrity be learned and reinforced and begins with the tone set by the Chief of any police department. Police Chief William Lansdowne created and implemented an ethics program that requires all members of the SJPd to take the ethics training class that is now part of the department's Continuous Professional Training. Chief Lansdowne underscores the importance of this training by participating at the beginning of every ethics class. The class stresses the importance of the department's ethical standards and that strict adherence to these standards is necessary for "career survival." Additionally, Field Training Officers receive specialized ethics training and are expected to apply and reinforce these standards in the recruits they train.

WHISTLEBLOWER POLICY

Former San José Police Chief, Joseph McNamara has written, "Police misconduct can only be curtailed when police officers fear that their fellow officers will turn them in." Although SJPd officers can be disciplined for failing to report the misconduct of fellow officers, there is no department policy that specifically informs, protects and encourages the reporting of misconduct.

Creating an environment where the honest cop will come forward remains a challenge for most police departments. Both the public and police officers must be made to feel confident in reporting police misconduct. Since the dangerous nature of a police officer's job makes it understandable why an officer may feel greater loyalty to his/her peers, a whistleblower must be reassured and supported not as an informant but as one who has the best interest of the organization at heart.

EVALUATING THE EFFECTIVENESS OF ETHICAL TRAINING AND STANDARDS

After assessing the SJPD's ethics training, the IPA was informed that the effectiveness of this training had not been evaluated. It was determined that SJPD relies on Internal Affairs files and yearly personnel evaluations as a measure of an officer's adherence to ethical conduct. The SJPD should develop a way to evaluate the effectiveness of their ethics and integrity training programs, which should include, among others, an assessment of officer knowledge, beliefs and opinions toward required ethical conduct. The following areas, among others should be considered:

- level of knowledge about the disciplinary and complaint process and the consequences of unethical behavior
- whether the department has necessary resources and measures to detect and deter wrongdoing
- whether the department is viewed as punitive or supportive
- relations with department management
- whether the public understands their roles as police officers
- reporting misconduct and whether an officer fears retaliation for reporting misconduct
- whether the department's response to misconduct is serious

The IPA obtained permission from the Australia Criminal Justice Commission (CJC) to utilize survey materials that are part of their successful program that measures attitudinal changes in ethical conduct. CJC conducts ongoing research by regularly administering a survey to recruits, first year and experienced officers to monitor changes in attitudes or views towards ethical conduct. The survey contains scenarios of police conduct, which present various types of ethical questions or conduct, which could result in some form of disciplinary action. Officers are asked to rate the conduct presented on a 10-point scale, ranging from "not at all serious" to "extremely serious" and the officers are asked to do this rating as an individual officer, as a fellow officer, as the police department and as a member of the public.

The IPA believes that this survey would serve as an excellent tool to evaluate and measure the ethical training program of the SJPD. Ultimately, this measurement tool could be used to align the views of the individual officer with those of the police administration and the public.

OPTIMUM TIME TO STRENGTHEN THE ETHICS PROGRAM

A common problem encountered in implementing or strengthening ethics training in a police department is that it is often attempted in the aftermath of a crisis or when public confidence in the police department is very low. In this situation, police officers will more likely resent or view this type of ethics training as a way to appease the critics and the public will be equally dissatisfied because of their skepticism in the motives for the additional ethics training and suspicions of the chance for any real change.

The SJPD is currently enjoying a high level of public confidence as shown by results of a random customer satisfaction survey of 1,000 city residents commissioned by the City of San José in the Fall of 2000. 77% of those surveyed who had contact with the SJPD indicated that the SJPD officer was courteous and pleasant. 64% responded that generally speaking, the SJPD treats all members of the public fairly. The SJPD also has a reputation for being on the cutting edge of community policing programs and is not currently confronting any type of crisis. Therefore, this is the optimum time to implement a process to align the ethical values between the police department and the citizens of San José.

RECOMMENDATIONS

1. To reassure the public that it is safe to file complaints, the Chief of Police should create policy to prohibit actual or attempts to threaten, intimidate, mislead, or harass potential or actual complainants and/or witnesses.
2. The Chief of Police should include in all citizen complaint printed materials wording that clearly states that; “Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation and immediate action will be taken if an officer retaliates against a complainant directly or indirectly” or other similar words that emphasizes the Chief’s position.
3. The San José Police Department Duty Manual does not include a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistle-blower policy for the San José Police Department.
4. The Chief of Police should continue to develop the Ethics and Integrity Training to reflect and align with the ethics expected by the citizens of San José.

CHAPTER THREE

COMMUNITY OUTREACH

As stated previously, community outreach to promote public awareness of a person's right to file a complaint concerning police misconduct is one of the primary functions of the Office of the Independent Police Auditor (IPA). The IPA has dedicated the necessary resources to insure that this very important function is not relegated to a secondary duty. Community outreach is an area that many police oversight agencies neglect. Consequently, an acceptable level of public confidence is never reached.

With the addition of two staff members in August, the Public and Community Relations officer has been able to concentrate solely on community outreach while the IPA office has also been able to provide better customer service to individual complainants and meet the increased demand from the public.

COMMUNITY PRESENTATIONS AND EVENTS

The response from community organizations and associations to have the IPA conduct presentations continued to be positive in the year 2000. The IPA attended 59 community presentations and events, 11 of which were conducted for youth groups or organizations that work with youth. The IPA continued to reach out to new and different neighborhood and business associations and to different areas of the City as well. An expanded presentation was developed in both English and Spanish, which contains information specific to the council district in which the presentation was made. The IPA also continued its practice of inviting beat officers and members of the Internal Affairs Unit to attend community presentations.

REACHING OUT TO YOUTH

One of the IPA's goals is to educate and inform the youth so they can make wise decisions when encountering law enforcement. In 2000, the IPA focused on working closely with youth by partnering with agencies that work with young people, including, Clean Slate, Washington United Youth Center, Role Model Program, Catholic Charities and Mexican American Community Services Agency. The continuing objective is for the IPA to gain trust and credibility with youth and to convey the importance that young people know they have a place where they can voice their concerns and be taken seriously.

As a result of working with youth, the IPA learned that young people need a better understanding of police procedures and criminal laws. With this in mind, the IPA is working on creating an information brochure that will target youth and provide them with information about civil rights, police procedures, laws and suggested behavior when interacting or encountering law enforcement officers. The brochure will cover commonly asked questions about police harassment, traffic stops, Fifth

Amendment rights and detentions.

REFERRAL SITES

The IPA began establishing referral sites in 1999. The goal of the referral sites is to serve as an information center for residents who may be seeking information on how to file a police misconduct complaint. The referral site would only provide basic information about the services offered by the IPA and refer any possible complainants to the IPA for additional assistance. Preferred sites are community centers or other locations frequently visited by the public.

In 2000, 14 new referral sites were established, bringing the total number throughout the City to 31. Three of the new sites are in Council districts that did not previously have a site. The IPA also has received assistance from 18 branch libraries and other city and county agencies as places where IPA brochures are made available to the public.

WORK WITH PROFESSIONAL AND COMMUNITY ORGANIZATIONS

The IPA continues to work successfully with various professional and community organizations to promote IPA awareness by staying actively involved with many groups. As a member of the Bay Area Police Oversight Network (BAPON), which includes eight northern California cities, the IPA hosted the April meeting of BAPON which included a full day of training. It is the IPA's opinion that in order to stay in touch with the needs and concerns of the community, the IPA needs to be actively involved in the community.

In addition to actively participating in community organizations to insure that the IPA is aware of community needs and concerns, the IPA continues to receive input on police related concerns from the Independent Police Auditor Advisory Committee (IPAAC). The IPA formed this group of culturally diverse community leaders in 1999.

CHAPTER FOUR

VEHICLE STOP DEMOGRAPHIC STUDY

In December 2000, the San José Police Department (SJPd) released data from the Vehicle Stop Demographic Study for the period of July 1, 1999 to June 30, 2000. The study was designed to collect data that would identify the ethnicity, gender, age, location and action taken against a driver as a result of a vehicle stop by a SJPd police officer. It was anticipated and believed that the results of this study would clearly show that members of the SJPd do not engage in racial profiling or conduct pretext stops of minority community members.

The term “racial profiling” has long been a sensitive issue that lacks an accepted and recognized definition. In a vehicle traffic stop, racial profiling occurs when the officer uses race or ethnicity as the deciding factor for making the traffic stop. Suspicion must be based on more than just race or ethnicity. However, it is important to remember that it is legal for a police officer to utilize racial characteristics to make a stop of an individual if the description of the suspect being sought contains racial characteristics.

ANALYSIS OF VEHICLE STOP DATA

While statistics don’t always tell the whole story, through the collection of similar data as that collected by the SJPD, it has been shown that racial profiling exists in some parts of the country. Even though the type of data being collected may be viewed as subjective and untrustworthy, the fact that law enforcement is taking the time to collect “racial profiling” data, is definitely a move in the right direction.

The SJPD’s analysis of data from the Vehicle Stop Demographic Study, indicated that Hispanic Americans and African Americans are stopped at a rate slightly higher than their overall representation within San José as a whole. Although the figure for African Americans does not seem to be significantly disproportionate, the figure for Hispanic Americans on the other hand appears to be problematic and requires further study. By the SJPD’s estimates, Hispanics comprise approximately 31% of the population in San José and are known to be concentrated in higher numbers in some police districts. However, in looking at the central core of the city and analyzing the data from 10 of the 16 policing districts that cover the downtown and the Foothill (Eastside) Division, Hispanic Americans account for 48% of the vehicle stops in these areas alone.

The SJPD study attributes the increased number of stops of minorities to socio-demographic realities of the city and the necessity by the SJPD to deploy more officers accordingly. The hypothesis raised in the study is that more officers are assigned to higher crime sectors/precincts; therefore, minorities who live in these neighborhoods in greater numbers are more likely to get stopped. This analysis may be plausible, but does not explain why Hispanics are being stopped in many areas where they don’t have a large presence or residence. For example, in analyzing the police districts in the Foothill Division, Hispanics make up a large percentage of the residents in the Mary (King and McKee) and Charles (Alum Rock) police districts, but Hispanics do not reach the same proportions in the other two policing districts, Paul (Evergreen) and William (Berryessa).

COMPLAINTS FILED ALLEGING RACIAL PROFILING

The Vehicle Stop Demographic Study indicated that only sixteen official complaints were received from citizens claiming to

have been subjected to a racial profile stop. There could be several reasons for this low number in official complaints filed for alleged racial profiling. Currently, the SJPd has only one classification for chronicling a complaint of racial profiling and that is Discrimination/Harassment (DH). In order to be classified as a DH complaint, the SJPd requires that a complaint must contain what it considers objective criteria. Examples of objective criteria include allegations that the officer used a racially derogatory word or slur, a gesture or action that shows racial bias or can be construed as discriminatory.

Therefore, the mere fact that a person feels they were stopped because of their race is not currently considered sufficient objective criteria to constitute a complaint for racial profiling. This is the case even if it is affirmed that there was no apparent reason for the stop and the complainant may have been handcuffed, searched and subsequently released with no legal action taken against them. In most cases, this type of complaint would be handled informally and not undergo the same level of investigation as a formal complaint.

The IPA believes that the SJPd should develop a method to track all complaints which include allegations of racial profiling or discriminatory stops even if the complaint may not contain “objective criteria” sufficient to establish a discrimination complaint. This will allow tracking and analysis of this serious concern.

PROCESS FOR DATA COLLECTION

In the Vehicle Stop Demographic Study, the SJPd reports that the scope of the program was limited by the officer’s acceptance of a data collection process that was not intrusive of their time. To accomplish this, the department developed a process using alpha codes, like those already in use, that could be easily recited or manually entered by the officer at the end of a vehicle stop.

Although this was an acceptable starting point for SJPd, other law enforcement agencies have started collecting similar data and have expanded the scope of the data being collected to include much more detail. In San Diego California, the San Diego Police Department (SDPD) started collecting data in January 2000. During a six-month reporting period, SDPD documented 91,522 stops. SDPD officers are required to fill out a form (4x6 card) in the field. The card usually takes no more than 20 seconds to complete. The Sacramento Police Department also collects more data than SJPd and uses a Scantron form that provides more efficient data entry.

One area where both San Diego and Sacramento collect data beyond San José is data concerning whether the driver was searched and if so, what type of search was conducted, whether any contraband was found or property seized. It is important for the SJPd to collect detailed “search information” similar to the Sacramento and San Diego police departments.

RECOMMENDATIONS

1. The Chief of Police should expand the fields for data collection to determine how the individual stopped was treated, i.e., was there a search. This should include search information and the factual basis for a stop and the action taken by the officer as a result of the stop.
2. Develop a uniform definition of and process for tracking all “Racial Profiling” allegations in all instances where the complainant alleges that their vehicle stop or police contact was racially motivated.
3. The San José Police Department should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking, and analysis of “Racial Profiling” and all other types of citizen complaints.

CHAPTER FIVE

UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

This chapter contains updates on prior recommendations made by the Independent Police Auditor (IPA). The IPA tracks all prior and pending recommendations until a final resolution to each recommendation is reached. In addition, random audits to measure compliance with prior recommendations are also reported in this section.

MEDIATION PROGRAM

As a part of the new issue section of last years-annual report, the IPA recommended a voluntary mediation program for implementation by the San José Police Department (SJPD). On April 8, 2000, the City Council approved the recommendation and response from the San José Police Department to study the feasibility of implementing a mediation program. The IPA envisioned that the proposed mediation program would be an alternative to the formal complaint investigation process that would allow the complainant and the subject officer to engage in meaningful dialogue.

UPDATE: The feasibility study was conducted and completed by the SJPD. The SJPD is committed to designing a voluntary mediation program that will be beneficial for both complainants and officers. To that end, members of the SJPD have participated in meetings with the IPA and members from the Judicial Arbitration and Mediation Services (JAMS), in particular with retired Judge John A. Flaherty. JAMS has agreed to work with the IPA and the SJPD to launch a pilot program wherein members from JAMS will act as mediators. With the credibility provided by JAMS, it is anticipated that the San José Police Department Mediation Program will become operational in the 2001 calendar year.

CITIZEN REQUEST FOR OFFICER IDENTIFICATION

In the IPA 1997 Year End Report, the issue of officer identification was raised for the first time. The IPA's recommendation that the SJPD should develop a policy to direct officers to properly identify themselves, preferably in writing when requested by a citizen was adopted by the City Council. Upon adoption of this recommendation in 1998, the SJPD modified an existing form (incident card) for use by the officers in the field and issued a directive found in the Duty Manual that outlines the use of the card.

In the year 2000, the IPA audited 18 cases where the issue of officer identification was alleged. Nine were handled informally or without requiring a full investigation. In the remainder of the cases, the allegation was part of a Formal complaint, and in most cases the identification allegation was handled in the scope of the investigation. Of the 18 cases, two were sustained.

Although this seems to be a recurring problem that requires constant attention, the fact that many of the cases are being handled informally rather than through a formal investigation may be exacerbating the problem by minimizing the importance of the directive in the Duty Manual. The issuance of an "Incident Card" in response to a request from a member of the public, should be just as important as other police duties. Officers should seek to minimize conflict in these situations by promptly providing their name and badge number. This is the type of complaint that should become obsolete. The IPA will continue to monitor this issue and will look for consistency in classifying this type of complaint in the future.

RECOMMENDATION

The San José Police Department's Internal Affairs Unit should formally investigate all complaints alleging that officers refused to identify him/herself under an Improper Procedure allegation.

OFFICER INVOLVED SHOOTINGS

In the Independent Police Auditor 1998 Year End Report, the IPA recommended that its jurisdiction be expanded to include the review of police shootings whether or not a complaint was filed. The IPA requested that all officer-involved shootings resulting in injury or death be subjected to review by the IPA. In July of 1999, the Chief of Police, in response to the IPA's recommendation, established a process to review officer involved shootings. The purpose of this review process was to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure. The Chief called this review process the San José Police Department Officer-Involved Shooting Incident Training Review Panel.

In the year 2000, there was a total of five officer-involved shooting incidents involving San José Police Department officers. The Shooting Review Panel examined these incidents. Three out of the five shootings resulted in fatal injuries to the person shot. Two of the fatalities resulted from gunshot wounds to the chest and one to the head. These figures show a decrease from 1999's figures of eight shootings, in which seven were fatalities. Although the incident count is lower, there are still some issues to consider.

One issue to consider is that the percentage of fatalities compared to shootings was at 87.5% in 1999 and decreased to 60% in 2000. Although the percentage has decreased, efforts to decrease that percentage further still need to be examined. Another issue to consider is that two out of the five suspects were armed with a weapon other than a firearm. For these types of cases, officers should have other alternatives to lethal force. A third issue to consider is that out of the five incidents, two of the people shot had mental illness histories. One question that arises is whether police officers are adequately trained to deal with the mentally ill and combative suspects. Another factor is that four out of the five suspects were minorities. This is an important factor to consider as to whether a language barrier between the officer and the suspect could have led to the shooting.

CONCLUSION

An analysis of the officer involved shootings in 2000 raised more questions than provided answers. However, there was a marked improvement from 1999. The number of officer-involved shootings declined to five from eight. The ratio of fatalities compared to shooting incidents also declined, from 87.5% in 1999 to 60% in 2000. Although the number of shootings has decreased, there are still areas that can be improved upon.

RECOMMENDATIONS

1. Continue to identify alternate, less lethal weapons and make them more readily accessible.
2. Provide specialized training in handling suspects armed with non-automatic projectile weapons.
3. The Critical Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with mental illness histories.
4. Continue to recruit and hire officers with bi-lingual skills.

CHAPTER SIX

RESPONSE TO THE GRAND JURY REPORT

On June 26, 2000, the Santa Clara County Grand Jury released their 1999-2000 Final Report titled “Investigation of the Oversight System for Reviewing Use-of-Force Cases in the San José Police Department.” The focus of the Grand Jury’s review was in the area of Use-of-Force complaint investigations against police officers employed by the City of San José. The Grand Jury made only two recommendations that were specific to and that required a response from the IPA.

1. That the IPA advises the City Manager of all complaint investigation cases in which it disagrees with the Chief.
2. That the IPA and/or designee attend all Class 1 Unnecessary Force interviews conducted by Internal Affairs.

In response to the first recommendation, the IPA informed the Grand Jury that the 1999 IPA Year End Report made reference to the number of cases in which the IPA disagreed with the Chief’s findings. In each of these cases the City Manager had an opportunity to inquire and consider the issues in disagreement. The City Manager also had an opportunity to either agree with the Chief’s finding or change the finding to reflect the concerns raised by IPA that led to the disagreement.

In response to the second recommendation, the IPA informed the Grand Jury that the Police Auditor would make attendance at the Class 1 Unnecessary Use-of-Force interviews a priority. The Police Auditor also advised the Grand Jury that without an agreement with the Police Officer’s Association, that allows the Police Auditor to delegate attendance at an officer interview to a qualified IPA staff member, the issue of attendance would continue to be problematic. At the time this response was made, the delegation issue was going through a formal dispute resolution process with the Police Officer’s Association and the City of San José.

On February 2, 2001, the IPA received a favorable Arbitration Decision from retired Justice Nat Agliano regarding the IPA’s authority to delegate the duty of attending subject officer interviews. Justice Agliano of JAMS agreed that the City Charter and the Municipal Code provide to the Independent Police Auditor the authority to delegate her duties and responsibilities and that this function is a matter of managerial discretion not subject to meet and confer.

CHAPTER SEVEN

YEAR END STATISTICS

This chapter provides information about the different types of complaints that were received from January 1 through December 31, 2000. It discusses the allegations in the complaints filed, the findings, and the discipline imposed. It also provides a review of the complaint process.

HOW THE COMPLAINT PROCESS WORKS

All contacts from the public are documented cases. Cases include those public contacts that are resolved to the satisfaction of the complainant and that do not require further investigation or complaints, which are further divided into several classifications, such as: Formal, Informal, Procedural and Policy. A complaint is an act of expressed dissatisfaction, which relates to Department operations, personnel conduct or unlawful acts. Typically the Internal Affairs Unit (IA) unit conducts administrative investigations that are generally adjudicated through the department. However, in some cases the IA unit may be required to conduct a parallel investigation with a criminal investigation.

IA investigates most allegations involving officer misconduct and investigators are fact finders only. They do not sustain a complaint nor do they recommend discipline. In cases where the IA Investigator concludes that the investigation supports sustainable allegations, the investigation is sent to the subject officer's chain of command. The commanding officer reviews the investigation and/or conducts further investigation to determine if the complaint should be sustained. If the commanding officer sustains the complaint, then the case is sent to the Disciplinary Review Panel to determine the type of discipline to impose.

DISCIPLINARY REVIEW PANEL

An area of concern for the IPA is the process that is used by the Disciplinary Review Panel to determine the final outcome of the investigation of a citizen complaint. The purpose of the Disciplinary Review Panel is to determine the finding and the type of discipline to recommend to the Chief of Police. The IPA has encountered difficulty in auditing and reconciling the Internal Affairs written investigation, the written investigation by the subject officer's supervisor, and the final recommendation by the Disciplinary Review Panel.

The IPA found that in the audit of three separate citizen complaint investigations where the subject officer's first line supervisor indicated that the evidence supported a sustain finding, the Disciplinary Review Panel did not recommend a sustain finding and there was no written record explaining their decision. The Disciplinary Review Panel leaves no paper trail to audit. This lack of information has been problematic because without detailed information from the Disciplinary Review Panel explaining their decision, the final outcome is left to speculation, criticism, and a lack of confidence in the process.

A clear, logical, and fair process should be in place to determine or explain how the Disciplinary Review Panel reached a finding. The IA investigators and subject officer's supervisor are in the best position to make a determination on the merits of the investigation because they conducted the investigation. Deciding the finding and the type of discipline to impose, if any, are two very separate and distinct functions. A citizen complaint supported by the evidence should be sustained even if no

discipline is imposed.

RECOMMENDATION

The Disciplinary Review Panel should document, at the conclusion of the hearing, how they reached their findings to enable the IPA to conduct an audit.

CASE CLASSIFICATION

As noted in previous annual reports, there are six classifications of complaints: Formal, Informal, Policy, Procedural, No Boland, and Inquiry. The reasons for classifying the complaints into different types are: (1) to streamline the investigation process so that cases that do not require a full investigation are resolved sooner while the cases requiring more time are given appropriate time to investigate; (2) to track Formal, Informal, and Procedural complaints by officers' names as part of an "Early Warning" system that identifies those officers qualifying for Intervention Counseling; (3) to comply with motions for discovery in criminal and civil proceedings; and (4) to identify patterns or trends so that recommendations can be made to change an existing policy or procedure.

Statistical information is provided in this Chapter which shows that there was a total of 694 cases filed in 2000. A breakdown by type of complaint and the office in which the complaint was filed is provided.

INTERVENTION COUNSELING

The "Intervention Counseling" process is an early warning system for identifying and/or correcting errant behavior. The process is designed to identify officers that receive three or more Formal complaints or a combination of five or more complaints of any type within a 12-month period. Once an officer has been identified who meets the above criteria, they are scheduled and required to attend an informal counseling session. Counseling sessions usually include the Deputy Chief of the subject officer's bureau, the Internal Affairs Commander, and the immediate supervisor.

This informal counseling session involves a review of the complaint(s) against the subject officer and is done without regard to a finding of sustained or not sustained. This meeting is intended to be a proactive attempt to address real or perceived unacceptable behavior before it becomes a real problem. Because this is an informal process, no formal record is made of the substance of the counseling session and only the fact that the officer was counseled is tracked. This past year, thirteen (13) officers received Intervention Counseling, only one received a subsequent complaint.

UNNECESSARY FORCE COMPLAINTS

This past year, there were 220 Formal complaints received from January 1 through December 31, 2000. This is a decrease in nine Formal Complaints over last year's figures. Of the 220 Formal complaints, 84 were classified as an Unnecessary Force (UF) complaint. This is a decrease of 30 complaints or 26%. Because each complaint may contain more than one allegation, this year there were 129 Unnecessary Force allegations. This is a reduction of 54 allegations or a 30% decrease in the number of allegations made over last year figures.

Unnecessary Force complaints are divided into two categories: Class I and II. A Class I case involves a complaint in which the complainant requires immediate emergency medical attention for their injuries. Class II cases includes those complaints in which the complainant did not require immediate medical care. Of the 84 Use of Force cases filed, 16 were Class I and the remaining 68 were Class II cases.

There were a total of 144 different types of force alleged in 2000. In each complaint, the complainant may have alleged more than one type of force that was used by the subject officer(s). The four types of force most commonly alleged were baton, feet, car (officer), and hands. In 2000, the officer's use of a baton allegedly resulted in injury to the complainant in 10 cases or 7% of the time. This is a slight decrease from prior years. The alleged use of force resulting from the officer using his/her feet, such as leg sweeps or kicking the complainant occurred in 15 cases or 10% of the time. This also is a decrease from the previous year.

The area afflicted is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown. Each complaint may allege more than one area of body afflicted by the alleged use of force. In 2000 the distribution of alleged injury was 22% to the head, 18% to the torso, 38% to the limbs, 12% of multiple body parts injured, and 10% were unknown. In Appendix F, the injuries to the head decreased in occurrence but increased in percentage relevant to the number of complaints filed.

The "Degree of Injury" results from the alleged use of force ranged from minor to major and included categories for "None Visible" and "Unknown" degrees of injury. In 2000, there were 84 UF cases with the following distribution of alleged injuries: 15% major injuries, 6% moderate, 55% minor, 9% had no visible injury, and 16% were unknown degree of injuries. In Appendix G, throughout the years, minor injuries remain the highest degree of injuries alleged by the complainant. However, the moderate degree of injuries dropped from 18% in 1996 to 6% in 2000. The 6% figure is slightly higher than the 1999 figure of 4%.

Discipline is only imposed on Formal complaints, which are the most serious misconduct complaints. This type of complaint is initiated by a citizen (Citizen-Initiated - CI complaints) or by the Chief of Police (Department-Initiated - DI complaints.) In the year 2000, 18 out of 187 Formal CI closed cases were sustained, which resulted in a 10% sustained rate. In contrast, 31 out of 41 Formal DI closed cases were sustained, a 76% sustained rate. The combined sustained rate for Formal cases overall is 23%.

Of the 228 Formal cases closed in this reporting period, January 1 through December 31, 2000, discipline was imposed in 74 cases. The three types of discipline imposed for Formal cases with the highest frequency were: Training and/or Informal Counseling (22), Documented Oral Counseling (35), and Letter of Reprimand (5).

DID THE AUDITOR ATTEND OFFICER INTERVIEWS CONDUCTED BY IA AFTER BEING NOTIFIED?

Due to the ongoing challenge during 2000 by the San José Police Officer Association, the IPA was unable to delegate attendance at officer interviews to a qualified staff member, which in turn, reduced the IPA's ability to attend subject and witness officer interviews. In 2000, of the 201 Formal cases, the IPA requested to be notified of police officer interviews in 85 or 72% of the cases. Of those, the IPA was notified of 67 interviews, with the Police Auditor attending 29 interviews where notification was received. IA failed to provide notice to the Auditor or the notice was not provided in time in 18 cases. Notification is still an area that can be improved in the coming year. It appears that some of the notification problems were attributable to the turnover in IA investigators. The IPA has discussed these issues with the IA commander and is confident that this situation will improve in 2001.

DID THE IPA AGREE WITH THE FINDING 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 4 or 2% of the 201 Formal cases even after further action was requested from IA. In 1999, the IPA disagreed with 6 or 5% of the Formal cases.

CHAPTER EIGHT

CASES BY COUNCIL DISTRICT

In this chapter, the Council District charts show cases and allegations in the respective City Council District. Illustration A lists each Council District and the types of cases that were received in each District. A Council District indicates the location

where the incident occurred and not necessarily where the complainant resides.

Typically, the highest numbers of cases (198 or 29 % of all complaints) were generated in District 3, largely because of the diverse activities generated in the downtown area. District 5, a neighboring district, has the second highest number of cases (77); District 6 has the third highest number of cases (67); and District 7 has the fourth highest number of cases (61).

EVOLUTION OF CASE CLASSIFICATIONS

A comparative five year analysis of classified cases by Council District is provided for the years 1996 through 2000. There is a fluctuation in the number of complaints during these five years due in part to how the classification of cases has changed in an effort to streamline the investigation of complaints. During this time period the IPA and IA offices have worked through many issues to insure that complaints were being classified correctly and that the information was made adequately available to each office. After several years of working out different classifications issues, a comprehensive database was developed to track complaints and share information between the two offices. The new database became operational in 1998.

CHAPTER NINE

STATISTICAL BACKGROUND OF SUBJECT OFFICER

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 (Citizen-initiated and Department-Initiated), Informal, and Procedural complaints. Specific areas include the subject officer's work unit, gender, and years of experience with the SJPd at the time the incident occurred. It should be noted that cases that are classified as Inquiries do not track the subject officer.

Of the 1,371 officers working for the SJPd, 32% of the officers received a complaint. Female officers, who make up 9% of the force, were subject to 9% of the complaints filed. 2000 data also indicates that the percentage of complaints for different ethnic groups in the SJPd closely matched their percentage make up in the department. Years of experience data indicate that officers with two to four years of experience received the highest number of complaints. These officers account for 16% of the SJPd workforce but were involved in 26% of the complaints. However, this is a reduction from the previous year's 41%

CHAPTER TEN

BACKGROUND OF COMPLAINANT BY COUNCIL DISTRICT

The Office of the Independent Police Auditor (IPA) utilizes a Voluntary Questionnaire to request information about the statistical background of the complainants. The purpose of the Voluntary Questionnaire is to gather personal data from the complainant. This information is used to monitor community trends by ethnicity and helps to design IPA services around community needs and expectations. The Voluntary Questionnaire has been in place since 1995 and has been used to track and compare complainant data year to year.

GENDER OF COMPLAINANT

During the 2000 calendar year a total of 423 complainants responded to the Voluntary Questionnaire. Of those responding, there were more male complainants (62%) than female complainants (38%). This is a 5% increase in the number of female complainants over the year prior.

ETHNICITY OF COMPLAINANT

The ethnicity of the complainant is shown in Appendix L. The data collected is by Council District for the period of January 1 through December 31, 2000. As noted in this appendix, Council Districts 3, 5 & 7 generate the majority of the complaints filed. Hispanics/Latino filed the most complaints, 160 complaints (38%), a 6% increase over the prior year. European Americans filed 106 complaints (25%) an 8% increase and African Americans filed 55 complaints (13%) a 3% increase over prior year complaints filed.

AGE OF THE COMPLAINANT

As in previous years, complainants between the age of 31–59 and 18–30, filed the majority of complaints. This past year, there was an interesting rise in the number of complainants over 60 years of age that filed complaints. In 1999, this age group filed only 2% or 9 complaints, while this past year they filed 9% or 36 complaints. Staff believes this rise may be attributed to IPA community outreach efforts that have typically been attended by more senior community members.

EDUCATION LEVEL OF COMPLAINANT

Almost half (41%) of the complainants have received an education beyond the twelfth grade. It's interesting to note that of the total number of complainants filing a complaint, 41% have attended college, with 9% of the total number having attended

college for more than four years. The above figures tend to dispel the assumption that most complainants come from the uneducated sector of the community.

CHAPTER ELEVEN

CONCLUSION

The Office of the Independent Police Auditor (IPA) realized several significant accomplishments over the past year. The relocation of the office, from its previous location at 4 North Second, Suite 650 was finalized on August 5, 2000. The new location keeps the IPA in a central downtown location that is close to several forms of public transportation, and in a location where historically the greatest percentage of citizens that tend to utilize the services of the IPA reside, work or play.

As part of the 1999-Year End Report, the IPA recommended adding subpoena power for the San José Police Department Internal Affairs Unit, to assist in compelling civilian witnesses to divulge information critical to an investigation, release and/or provide physical evidence such as medical records that may be integral to an investigation. The City Council adopted this recommendation and authorized subpoena power to the Internal Affairs Unit.

The IPA also proposed a “Voluntary Mediation Program” and the development of specialized training courses to enhance the communication skills of the officers assigned to meet and greet the public. The recommendations for developing a “Mediation Program” and “Specialized Communications Training Courses” was adopted by the City Council. A “Voluntary Mediation Program” will be implemented in the 2001 calendar year.

A major goal for the 2001 calendar year is for the IPA to take a proactive approach to civilian oversight of police practices. This proactive approach will include exploring innovative ways to reduce the frequency of complaints alleged to have violated policies stemming from prior IPA recommendations, identify police conduct that is resulting in complaints and/or law suits, and create a vertical review process that brings together city departments that directly or indirectly address police misconduct.

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Awareness of police misconduct in the United States reached new heights in the year 2000. In California, the Los Angeles Police Department's Rampart investigation, one of the worst police scandals in American history, dominated the news. The Independent Police Auditor (IPA) met with members of the Rampart Independent Review Panel to provide insight on how the IPA provides civilian oversight to the San José Police Department (SJPD). In November 2000, the Rampart Independent Review Panel released one of the most comprehensive reports on the Rampart¹ investigation, containing numerous findings and recommendations aimed at addressing issues that go beyond operational matters and into structural changes for the LAPD.

MISSION

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

Perhaps the fear of a Rampart scandal was most instrumental in nudging cities throughout the country into implementing some form of civilian oversight for their respective police departments. The lessons learned from Rampart will serve as a reminder of the consequences of lax oversight. But it is this trial by fire that also produces innovative and

imaginative methods in balancing the need for police to have wide latitude to aggressively fight crime and the need to keep this wide latitude in check.

Seven years ago, the San José City Council passed an ordinance to establish the Office of the Independent Police Auditor. The IPA was created to

¹ Report of the Rampart Independent Review Panel, on page 11. This report was a combined effort, of over 12,500 volunteer hours from over 190 community leaders, consisting of attorneys, investigators, accountants, educators, retired judges, retired law enforcement officers, business executives, and others.

provide civilian oversight of the investigation of citizens' complaints by the San José Police Department. Unlike in some cities, civilian police oversight in San José was not created in the aftermath of a police crisis. Nevertheless, the City of San José established the IPA with the intention of evaluating, after one year of operation, the effectiveness of the IPA office. With full support from the Mayor, the City Council placed a measure on the ballot to move towards making the IPA a permanent office. On November 4, 1996, San José residents voted to amend the City Charter making the IPA a chartered office.

FUNCTIONS OF THE IPA

The IPA has three primary functions: (1) it serves as an alternate office where people may file a complaint, (2) it monitors and audits the investigations of citizen complaints conducted by the SJPD; and (3) it promotes public awareness of a person's right to file a complaint. Every aspect of this process is closely examined from the initial interaction between the Internal

Affairs Officer and the complainant, to the conclusion of the investigation. The finding is examined to insure that it is supported by the evidence. Finally, an examination of the process used to communicate the results of the investigation to the complainant by Internal Affairs is conducted. The IPA's primary objective is to provide independent civilian review of the citizen complaint process.

THE PUBLIC IS THE CUSTOMER

Throughout the year 2000, several police incidents surfaced, but the San José Police Department weathered these incidents well, perhaps because of the high level of public confidence and goodwill it has banked. The city's emphasis in improving customer satisfaction through the "Investing in Results"² performance measurement system was a directive from the Mayor and the City Council. The direction to improve customer satisfaction was embraced by the members of the SJPD which ultimately has led to the SJPD making tremendous gains in public

confidence. This observation is based on the results of a survey commissioned by the City of San José which revealed that:

- About one in four residents has had contact with the San José Police Department in the past year, and three-quarters of those say that the officer with whom they had contact was courteous and helpful;
- The survey also indicated that, of those who had contact with the SJPD, two-thirds believe that the SJPD treats people fairly.

The findings of the City's survey affirm the IPA's belief that the San José Police Department has a culture of openness and a willingness to accept criticism and to focus on solutions. While not totally embracing the IPA, even the San José Police Officer's Association (SJPOA) has open dialogue and a professional relationship with the IPA. Police officers often refer complainants to the IPA, their attitude being that

² The 2000 San Jose Citizen Survey involved 1,000 randomly selected telephone interviews conducted by Fairbank, Maslin, Maullin & Associates (FMM&A). Many questions were designed to provide data for the City's "Investing in Results" (IIR) performance measurement system.

“they have nothing to hide.”

CONTENTS OF THE REPORT

Citizen contacts are reported this year by dividing them into serious and minor complaints, and cases that are resolved without rising to a complaint. The handling from beginning to end of each type of complaint is thoroughly covered in this report. Public outreach and the expansion of the IPA into the neighborhoods is also reported. Like in every IPA report, pending issues and recommendations are carried forward to the following year where the status of those recommendations is reported.

In the “New Issues” section of this report, the IPA recommends that the San José Police Department explore ways to improve, implement, and assess a comprehensive ethics program. High public confidence is a fragile and illusive state that is easily toppled by a single, high profile incident of police misconduct. Therefore, it is during a time when a police department is enjoying a high level of public confidence, strong leadership, and high morale, that the opportunity for structural changes lie. Ethical concepts cannot be implemented successfully in

the wake of a crisis or when public confidence is down because it will ultimately be viewed with skepticism from the public, with resentment from the officers, and as a temporary cure by management.

Lastly, this report includes a self assessment of the IPA based on the findings of the 2000 Santa Clara County Grand Jury report, the findings of the 2000 San José City Survey, customer satisfaction surveys from complainants, surveys collected during community presentations, and from surveys completed by the staff of the San José Police Department’s Internal Affairs Unit.

2

NEW RECOMMENDATION - ETHICS & INTEGRITY STANDARDS

Most communities vest great authority, responsibility, and trust in the judgement of police officers. Public trust in police is defined as having a strong reliance on the integrity, ability, and character of the police. It can only exist when the police execute their duties fairly, courteously, and with no more force than necessary. A police department that conducts itself in this manner is said to be ethical and operating with integrity. This is the desired state that all police departments should strive to achieve.

The San José Police Department (SJPD) has placed great emphasis in enhancing the quality of police services by implementing community policing in every neighborhood throughout the City. In order for community policing to truly be effective, police officers must believe that they are in partnership with the public. At the heart of community policing is police integrity and one cannot exist without the other. Police officers realize the need to form a partnership with the community to fight crime, but police officers must move beyond the need to enlist community support to fight crime. The police and the community must develop mutual trust. Mutual trust implies that the

community will have faith in the integrity of the police and that the police will go beyond the realm of just trusting other police officers but extend that virtue to community partners.

Ethics, integrity, and the confidence to report police misconduct are all essential virtues that the police should align with the public they serve. The ethics of the individual police officer must be aligned with those of the police department and the police department's ethics and integrity standards must be aligned with those of the community.

How to align these integrity standards will be further developed in this chapter.

METHODOLOGY

In assessing the ethical climate that exists in a police department, we must first start by asking, "What is ethics?" Webster's dictionary defines ethics as, the moral quality of a course of action. In the Independent Police Auditor's (IPA) research of this topic, many sources of information were examined. The first source examined was the San José Police Department's Duty Manual. This manual serves to give San José police officers direction, set parameters,

and provide guidelines to officers in the performance of their duties. The expected ethical conduct is covered in Section “C” of the police duty manual along with other proscribed conduct. The Law Enforcement Code of Ethics is also found in Section C.

In addition to the Duty Manual, an overview of the San José Police Department’s ethics program was provided by an Ethics instructor who has extensive knowledge and experience in this topic. It should be noted that the Ethics instructor was previously assigned to Internal Affairs and worked closely with the Independent Police Auditor staff.

The IPA has followed the Los Angeles Police Department’s Rampart scandal and has studied the L.A.P.D.’s Board of Inquiry Report. Ethical issues in this report were examined. Professor Erwin Chemerinsky’s independent analysis of this same report was also studied.

In addition, the IPA met and moderated a panel with Mr. Hubert Williams, President of the Police Foundation and a research fellow at Harvard Law School’s Center for Criminal Justice. Mr. Williams shared insights on ethical

and integrity issues facing law enforcement throughout the country.

A publication from the Commission on Peace Officer Standards and Training (POST) entitled, “A Global Market for Ethics” was also reviewed. In addition, many excerpts and concepts cited in this IPA report were taken directly from a book published by the U.S. Department of Justice entitled, Police Integrity, Public Service with Honor.

Lastly, the IPA reviewed an excellent study conducted by the Australia Criminal Justice Commission entitled, “Ethical Conduct and Discipline in the Queensland Police Service.” This study captured the views of recruits, first year, and experienced officers through analysis of an ethics survey. The most remarkable aspect of this survey is that it asks the officer taking the survey, to examine a scenario and respond to the ethical question from four different perspectives, the typical working police officer, the police department, the public, and him/herself.

CORRUPTION STARTS SMALL

Police officers, in order to execute their

duties, must be allowed to use discretion. No codified set of laws, policy and procedure manuals or other written guidelines can ever cover all the life situations that officers encounter. Officers are expected to assess a situation and take the course of action that in their opinion is in the best interest of society and in compliance with the law. A further expectation is, that police officers will act in a moral, prudent, and just manner. A lesson learned from the Rampart scandal is that corruption starts small. These LAPD officers had a history of rationalizing small takes, and they engaged in lies of convenience. Rampart officers routinely conducted searches without warrants and intimidated people into consenting. The LAPD failed to correct this unethical, errant behavior which progressed from misconduct to criminal conduct.

IMPLEMENTING AN EFFECTIVE ETHICS PROGRAM

Can integrity be taught? Most experts agree that integrity must be learned and reinforced.

Police departments must be led by

example; chiefs set the ethical tone for the organization because he/she will ultimately determine the character of the organization. When William Lansdowne became Chief of Police of the San José Police Department, he brought a vision: to create and implement an effective ethics-training program. Ethics is now a four hour block as part of the Continuous Professional Training (CPT), in the police department. Everyone from patrol officers to the Chief of Police receives this training. The importance of ethics training must be made clear to the rank and file; therefore, Chief Lansdowne makes it a point to be present at the beginning of every ethics class.

The IPA monitored one of these classes and observed that the class was taught with a unifying theme and a clear conception of the goal of ethics training. This training did not appear to be provided for the purpose of appeasement. Officers were taught that the strict adherence to the police department's ethical standards would mean "Career Survival." Officers were told that they were more likely to lose their jobs and a career in police work due to an unethical decision than over a "shooting." The instructor emphasized

the impact that termination or ending their career in a cloud of shame through a criminal indictment has on their families. It was only a few years ago that former San José Police Officer John Venzon was convicted for a series of burglaries and thefts while on duty. A sad reminder that even the safest large city in the United States is not immune to police corruption.

The application of ethical standards in the San José Police Department starts in the hiring process and will not end until the officer leaves employment. Police recruits start their first day of training at the police academy with an ethics course. The SJPD also has specialized ethics courses for the Field Training Officers (FTO). FTO trainers receive a block of four hours of ethics training which they in turn are expected to apply and to reinforce these police department's ethical standards in the recruits they train.

Both the Christopher and the Mollen Commission, which reviewed the conduct of the Los Angeles and New York Police Departments, respectively, identified deficiencies in first line supervision as a cause of police corruption. Police officers in the SJPD

have bargained for the right to transfer every six months to different police beats. At times, officer's yearly evaluations are done by different supervisors who have not had the benefit of monitoring the officer's performance for the entire evaluation period. Supervisor shopping is a practice that allows the grouping of lax supervisors with errant police officers. The SJPD will soon begin to monitor first line supervisors by tracking the subject officer's supervisor and monitoring to see if the recurrence of complaints is due to a lack of supervision.

WHISTLEBLOWER POLICY

It is clear that the San José Police Department has invested significant resources to create a police environment where officers are trained to make decisions governed by ethical standards. Officers must apply these ethical standards not just to their own behavior, but also to the behavior of fellow officers. Joseph McNamara, former San José Chief of Police wrote that, "Police misconduct can only be curtailed when police officers fear that their fellow officers will turn them in." The SJPD does not have clear guidelines detailing

what an officer can expect if he/she reports misconduct. While it is common knowledge that failure to report misconduct can result in disciplinary action up to and including termination, there is no department policy that specifically informs, protects, and encourages reporting of police misconduct.

Rules and expectations concerning whistleblowers must be clear and realistic. Both the public and police officers must be made to feel confident in reporting misconduct. If what to expect is not clearly spelled out and information detailing the process is not readily available, neither the public nor police officers are likely to come forward. Because of the dangerous nature of a police officer's job and their dependency on fellow officers for their safety, it is understandable why an officer would feel greater loyalty to his/her peers. Whistleblowers must be given realistic and practical guidelines to assess and carry out this most difficult duty.

Creating an environment where the honest cop will come forward remains a challenge for most police departments. Often times officers feel they are being

punished for whistleblowing. A lawsuit filed in January 2001, against the LAPD, alleged that nearly 200 officers were punished for reporting misconduct and illegal activities. The plaintiff officers allege that they suffered discrimination, harassment, and other forms of retaliation for whistleblowing.

A concern frequently expressed by potential and actual complainants is the fear of retaliation from the officers who are the subject of their complaints. They express fear that the officer, directly, or through his influence on other officers, will harm the complainant or his/her family. The IPA has not seen clear evidence of a pattern of police retaliation. Although complainants have reported having had subsequent contact from the subject officer while their complaint was pending, very rarely did the officer intentionally make contact. For the most part, the situation entailed the officer responding to a call at the same location, or a vehicle stop where it is unlikely that the officer recognized the complainant prior to the stop.

A whistleblower must be reassured and supported not as an informant but as one who has the best interest of the organization at heart. The Mollen

Commission, led by Judge Milton Mollen, conducted the corruption investigation of the New York Police Department. Judge Mollen wrote, "Dissenters must have a voice and should be encouraged to come forward." He posed these questions, "What happens to good, idealistic recruits? What happens in training, supervision, and patrol that changes these people?" Judge Mollen ended his report by saying, "The biggest victim of the crooked cop is the honest cop." The IPA agrees that there is no doubt that safeguards for whistleblowers are imperative to any successful ethics and integrity program.

EVALUATING THE EFFECTIVENESS OF ETHICAL TRAINING AND STANDARDS

After assessing the San José Police Department's ethics training, the IPA inquired and was informed that the effectiveness of the department's ethics training had not been evaluated. Can ethical conduct be measured? Currently, the SJPD relies on Internal Affairs files and yearly personnel evaluations as a measure of an officer's adherence to ethical conduct.

In evaluating the effectiveness and direct impact that ethical training may have on the individual officer, one first has to look at the organizational standards of conduct that the police department has set and assess if these standards have been clearly communicated to the officers. If they have, are these standards strictly enforced, and is swift action taken when violations occur? Other areas to evaluate are:

- What is the level of knowledge about the disciplinary and complaint process?
- Do officers believe that the police department has the necessary resources and measures to detect and deter wrong doing? Or is there a sense that ethical conduct occurs out of personal choice and not because of the likelihood of getting caught?
- Is the organization viewed as punitive rather than supportive?
- Do officers feel that they are rewarded for proper conduct or is the only opportunity to interact with command staff when the officer does something wrong?
- Do officers feel positive not only about their immediate supervisors but about upper management?
- Do officers think that upper management is approachable and are they setting a good example for new officers or does the police department condone two standards, one for officers and sergeants and one for lieutenants and above?
- Do officers feel that they must stick together, do they have an us vs. them mentality?
- Do officers feel that the public does not understand their role as police officers?
- Do police officers feel comfortable reporting misconduct?
- Do officers think that it is not unusual for an officer to turn a blind eye to the misconduct of other officers?
- Do officers feel that it is not worth it to snitch on a fellow officer and do they fear retaliation, getting the cold shoulder, being ostracized or worst being labeled a “rat”?
- Do officers know the consequences of unethical behavior?

Answers to these questions are necessary to properly assess the effectiveness of ethical and integrity training programs. The SJPD should seek to obtain answers to the questions above and not depend on anecdotal data.

The Research and Preventative Division of the Australia Criminal Justice Commission (CJC) conducted a very successful program that sought to measure attitudinal changes in ethical conduct. The CJC conducts ongoing research by regularly administering a survey to recruits, first year, and experienced officers to monitor changes in attitudes or views towards ethical conduct. The survey includes a series of scenarios based on situations in which police might find themselves involved. The scenarios describe conduct by police which, if proven, would generally result in some form of disciplinary action. For each scenario the officer was asked to rate the conduct described on a 10-point scale, ranging from “not at all serious” to “extremely serious,” according to how

the conduct would be rated by the respondents themselves, the typical working police officer, the police department, and the public. The survey seeks to find out what the police think of the disciplinary and complaint procedures by analyzing their responses to a number of scenarios of unethical conduct by police officers. The surveys, which take approximately 20 minutes, are administered in class while officers are attending the academy or in-house training. Surveys contain no identifying information and all participants are assured that their anonymity will be protected.

The IPA wrote to the Director of the Research and Prevention Division of the Criminal Justice Commission to request authorization to replicate their survey. Dr. David Brereton, the Director, agreed to allow use of their study. Even though this study was designed for implementation in Australia, the scenarios used in the survey are scenarios applicable to any police department in the United States. There is no known police department in the United States that is currently using this type of measurement tool to assess

the ethical and integrity views of their police officers. With some modification, this survey would serve as an excellent tool to evaluate and measure the ethical training program of the San José Police Department. Ultimately, this measurement tool would be used to align the views of the individual officer with those of the police administration and the public.

POLICY IMPLICATIONS FOR STRATEGY DEVELOPMENT

The research data that can result from creating a measuring tool to identify shifts in views towards ethical conduct would be extremely useful in developing strategies in the following areas as previously identified by the CJC.¹

Some of these strategies are:

- modifying management styles;
- adopting a more proactive and coordinated approach to promoting attitudinal and behavioral changes in the SJPD.
- Changing police views as to the seriousness of misconduct;
- clarifying ethical standards;
- encouraging “rank and file” police officers to report misconduct by their peers;
- enhancing the training of officers once they are in the field;

OPTIMUM TIME TO STRENGTHEN THE ETHICS PROGRAM

A common problem encountered in implementing or strengthening ethics training in a police department is that it is usually done in the aftermath of a crisis or when public confidence is at a record low. The result is that police officers resent or view this type of sensitivity training as a way to appease the critics and likewise, the public is skeptical of the motives for this type of training and suspicious of the results.

In the Fall of 2000, the City of San José commissioned a random, city-wide customer satisfaction survey² wherein, 1,000 residents were surveyed. Of those surveyed, 25% or 250 residents replied that they had contact with the San José Police Department in the past year. Of the 250 respondents, 77% stated that the police officer was

¹ Ethical Conduct and Discipline in the Queensland and Police Service, November 1995.

² City of San José 2000 Community Survey - Report of Survey Results. November 14-19, 2000.

courteous and pleasant to deal with; 64% responded that generally speaking the San José Police Department treats all members of the public either very or somewhat fairly.

The San José Police Department is currently enjoying a high level of public confidence, is not in the midst of a crisis, and has the reputation of being on the cutting edge of new and proactive policing programs. Therefore, this is the optimum time to implement a process to align ethical values between the police department and the citizens of San José.

The SJPD should implement a process by which the police department can assess the current knowledge, attitudes, or views of police officers towards the required ethical conduct expected of each officer. The police department should find out what its officers think of the disciplinary and complaint procedures. Thereafter, the SJPD should conduct ongoing research to monitor any shifts in the attitudes or views of the SJPD officers on issues relating to ethical conduct.

RECOMMENDATIONS

1. To reassure the public that it is safe to file complaints, the Chief of Police should create policy to prohibit actual or attempts to threaten, intimidate, mislead, or harass potential or actual complainants and/or witnesses.
2. The Chief of Police should include, in all citizen complaint printed materials, wording that clearly states that, “Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation and immediate action will be taken if an officer retaliates against a complainant directly or indirectly.” or other similar words that emphasizes the Chief’s position.
3. Neither the San José Municipal Code nor the San José Police Department Duty Manual contain a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistleblower policy for the San José Police Department.
4. The Chief of Police should continue to develop Ethics and Integrity Training to reflect and align with the ethics expected by the citizens of San José.

The Office of the Independent Police Auditor (IPA) has three primary functions: to serve as an alternative forum for citizens to file a complaint, to monitor and audit the investigations of citizen complaints, and to conduct community outreach. The IPA has dedicated the necessary resources to insure that this very important function is not relegated to an optional or a secondary duty. Community outreach is an area that many police oversight agencies neglect and as a consequence, an acceptable level of public confidence is never reached. Of the cities that have had to undertake a restructuring of their civilian oversight agencies because of a lack of confidence from their citizens, most if not all, did not have a community outreach program.

This year has been an exciting and busy year for the IPA. In August, the IPA moved to a new office and two new staff members were hired. The addition of an intake/investigator and an office specialist has helped the IPA office by allowing the staff to dedicate more time to each individual complainant and meet the increased demand from the public. The additional personnel have also allowed for the public and community relations officer to concentrate on

community outreach. The education of the community is a continual goal of the IPA office.

There is no doubt that the additional office support guarantees the continual commitment to provide the public with quality, professional customer service. This is evident in the results of the IPA's Customer Satisfaction Survey that show that the two new positions have strengthened communication between complainants and the IPA; and therefore, have provided greater customer service satisfaction to the complainants. Results from the Customer Satisfaction Surveys are discussed in detail in page 14 of this chapter.

COMMUNITY PRESENTATIONS AND EVENTS

In the year 2000, the response from community organizations and associations to invite the Police Auditor to conduct presentations was very positive. Although the number of presentation requests was lower than in 1999, the depth and follow up of issues raised was greater.

This year the IPA attended 59 commu-

nity presentations and events; 11 of them were presentations done to youth or people who work with youth. Just as in 1999, this year the IPA office contacted different organizations, neighborhood and business associations to invite them to schedule presentations. This year, the IPA did presentations in five of ten council districts, but overall, districts 3 and 5 requested the most presentations.

The IPA created PowerPoint presentations in English and Spanish. The presentations contained information and data that directly pertained to the council district the audience was from, as well as general information about the history and functions of the IPA. Beat officers and members from the Internal Affairs Unit (IA) were invited to attend the community presentations.

It is also important to highlight that in the year 2000, the IPA conducted two presentations for the In-House Police Academy. The Police Auditor had the opportunity to speak to 68 new officers. These presentations are vital because new officers are given information on the history and functions of the IPA but more importantly because they are provided with information on preven-

tive measures on how to avoid receiving citizen complaints.

At the June Police Academy presentation, the IPA conducted a survey to assess officers' familiarity with police oversight; 30 new officers participated in the survey. Officers were asked to rank in a scale of one to eight (one being "strongly disagree" and eight being "strongly agree") their opinions on police misconduct, reporting police misconduct ("whistleblowing") and police ethics. In general, new officers responded that the SJPd has rules for proper conduct, which have been made clear to them. Some officers also responded that the SJPd should take a very tough line on improper behavior.

See Appendix A for a complete list of all the presentations conducted by the IPA.

REACHING OUT TO THE YOUTH

This year the IPA focused on working closely with the youth by partnering with agencies that work with young people, such as Clean Slate, the Washington United Youth Center, the Role Model Program, Catholic Charities,

and Mexican American Community Services Agency. One of the IPA's goal is to educate and inform the youth so they may make wise decisions when encountering law enforcement. It is important for the IPA that youth are informed of their right to file a citizen complaint if they feel they have been mistreated. The IPA's objective is to gain trust and credibility with the youth. The IPA strives to convey the importance that young people know they have a place where they can voice their concerns and where they feel they will be taken seriously.

The IPA emphasizes that it is equally important to educate parents as well as youth about the citizen complaint process. The IPA believes that parents can serve as an important tool in reaching out to the youth. For this reason, the IPA has been working closely and plans to continue working with the parent groups of different community agencies.

As previously mentioned, this year the IPA did 11 presentations to youth and adults who work with youth. These presentations served as a great opportunity for the IPA to learn more about the concerns and interests of San José's

youth regarding the police. From these meetings the IPA was able to learn that many of the questions and complaints youth have about law enforcement are due to a lack of understanding of police procedures and criminal laws. With this in mind, the IPA is creating a youth brochure that will be ready for distribution in 2001. The goal of this youth brochure is to provide youth with information about Civil Rights, police procedures and suggested behavior when interacting or encountering the police. The brochure seeks to answer commonly asked questions involving police harassment, traffic stops, Fifth Amendment rights, and detentions.

COMMUNITY PRESENTATION SURVEYS

In order for the IPA to learn about each neighborhood's concerns and problems, the IPA gathers voluntary surveys at community presentations. The surveys allow the IPA to identify those communities where the IPA needs to increase its community outreach efforts. The surveys also assist in identifying possible locations for IPA Referral Sites.

In 2000, one hundred and thirty-five

surveys were collected and analyzed. Below are some results from the surveys.

1. Do you feel comfortable filing a complaint against a San José police officer?

Yes	48
No	14
Somewhat	92

2. Did you ever want to file a complaint against a San José police officer, but did not?

Yes	24
No	70

2a. Respondants had multiple reasons.

Fear of police retaliation	6
Felt the complaint would not be taken seriously	16
Did not know how to file a complaint	11
Did not want to take the time to file a complaint	4
Other reason	7

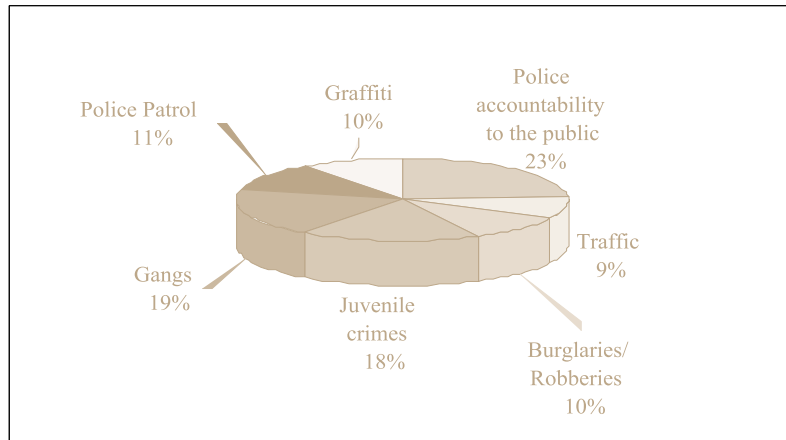
3. Have you had the need to call for police service within the last (3) years?

Yes	39
No	56

3a. If yes, was the response time satisfactory to you?

Yes	29
No	10

4. What are your major police concerns?



COMMITMENT TO PROVIDING QUALITY CUSTOMER SERVICE

In the year 2000, the Mayor and City Council introduced the Investing in Results (IiR) Process, a results-driven and customer-oriented program. The goal of IiR is to deliver the highest-quality services in the most cost-effective manner.

In accordance with the IiR goals, the IPA created customer satisfaction surveys. These surveys are designed to measure the level of satisfaction from people who file complaints at the IPA office. The surveys measure the quality of customer service each complainant receives when he/she first calls the office to file a complaint. Currently the survey is only available in English and

Spanish. It is important to note that every complainant is advised that the information reported is confidential; will not affect the investigation or the outcome of the complaint and will not become part of the complainant's file.

From July 1 to December 31, 2000, 65 surveys were mailed to complainants and 29 were answered and returned.

Over 90% of the people surveyed rated the IPA's responsiveness average or above. Over 90% also felt that the IPA staff thoroughly explained the citizen complaint process to them. Overall, 86% of all the complainants polled were satisfied or very satisfied with the services they received when they first contacted the IPA; while 14% did not have an opinion.

IPA SURVEYS THE IA UNIT

The second customer satisfaction survey conducted by the IPA inquires into the level of customer satisfaction from one of the other stakeholders, the Internal Affairs Unit (IA). This survey is conducted twice a year.

The first survey was done in September, 2000. All 15 IA staff members, both law enforcement and administrative support, were surveyed. IA staff were asked to rate the professionalism of the IPA staff. Thirty-four percent of the IA staff rated the IPA excellent; 25% above average; and 25% average. Over 90% of the IA staff rated the IPA office

CUSTOMER SATISFACTION SURVEY RESPONSES

"Thank you for hearing me and for your staff's quick response."
8/29/00

"Everyone I spoke to was very professional and understanding. My faith in the system after this incident has become even stronger than in the past."
11/19/00

"I think that the IPA gives good customer service to the public who files a complaint. I liked how all my questions were answered."
10/03/00

"Everything was done very professionally. The IPA staff was very thorough and considerate."
12/12/00

accessible. Overall, over 70% of the IA staff expressed satisfaction with the services they received from the IPA.

REFERRAL SITES

In 2000, the IPA established 14 new referral sites, bringing the total number of referral sites throughout the City to 31. The IPA began establishing referral sites in 1999. The goal of the referral sites is not to perform the duties of the IPA office, but to serve as information centers for residents who may be seeking information on how to file a citizen complaint. The referral site concept has been a success. Many complainants have been referred to the

IPA through these sites who otherwise might not have had access to this office.

Of the 14 new referral sites, three were established in districts that did not have a referral site last year. Preferred sites are community centers or other locations frequently visited by the public. The IPA provides the staff at each referral site with an orientation session on the services and functions of the IPA. Each referral site is provided with a binder that contains information about the IPA, the citizen complaint process and referral numbers for social

and legal services. The IPA also provides each site with copies of its “Commonly Asked Questions” brochure, which is available in six different languages

The IPA has also received the assistance from the 18 local libraries. Each library has agreed to display IPA brochures at each of their information counters. IPA brochures are also available at City Hall, the San José Police Department, the Public Defender’s Office and the Downtown Information Center. The IPA is currently working with the

San José Fire Department in making IPA brochures available at every fire station. See Appendix B for a complete list of all IPA Referral Sites.

BAY AREA POLICE OVERSIGHT NETWORK

The IPA has been an active member of the Bay Area Police Oversight Network (BAPON) for the past seven years. BAPON is an association that is represented by eight cities in Northern California that have some form of police oversight. Members include: The



The IPA is very active in the community. In the year 2000, the IPA attended over 50 community events.

Berkeley Police Review Board, the Novato Police Department, the San José Office of the Independent Police Auditor, the San Francisco Office of Citizen Complaints, the Richmond Police Commission, the Oakland Citizen's Police Review Board, the Sacramento Office of Police Accountability and the Santa Cruz's Citizens Police Review Board.

This year, BAPON meetings were held in January in the City of Novato and in April in the City of San José, hosted by the IPA. The April meeting entailed a full day of training. Attendees came to San José from throughout the state and

some from out of state. It was a productive meeting that allowed participants to share training success stories and challenges in their cities.

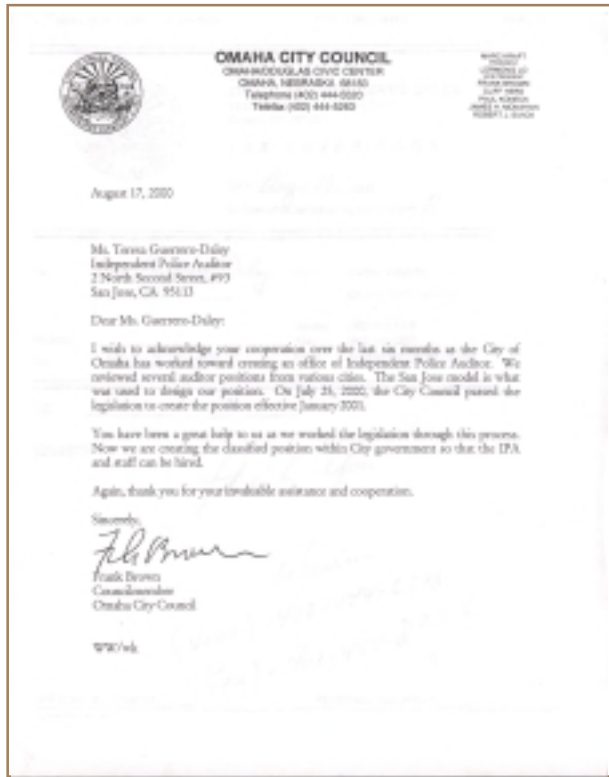
THE IPA WORKS WITH LOCAL AGENCIES

The IPA worked year round with different local agencies to promote IPA awareness. The collaboration between the IPA and the different organizations was successful. Local agencies were able to learn about the functions and services of the IPA. It is the IPA's opinion that in order to stay in touch with the needs and concerns of the

community, it needs to be actively involved in the community. The IPA is able to accomplish this by taking an active role in organizations such as the Nuevo Mundo Advisory Board, Catholic Charities –YES, the Role Model Program, California Association of Human Relations Organizations (CAHRO), La Raza Roundtable, and the City of San José Family/Domestic Violence Task Force. The IPA also worked with the National Association for the Advancement of Colored People (NAACP), the Racial Justice Coalition, the Hispanic Chamber of Commerce, the Santa Clara County Grand Jury, the San José Human Rights Commission and



The IPA attended the Sixth Annual NACOLE Conference.



Letter from Omaha City Council. The City of Omaha is the fifth city to adopt the Police Auditor Model.

the Criminal Justice Work Group. The IPA expects to continue working with these organizations in the future.

NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

In September, the Police Auditor and Assistant Police Auditor attended the Sixth Annual National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference. The Police Auditor was a guest speaker and presenter at the conference. The Police

Auditor was nominated and elected to the NACOLE Executive Board.

NACOLE is a national organization that provides continuing education for practitioners of civilian oversight.

INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE

In 1999, the IPA formed an advisory committee called the Independent Police Auditor Advisory Committee (IPAAC) comprised of culturally diverse community leaders. The purpose of the

IPAAC is to provide input on police related concerns and issues brought to its attention by the public as well as provide feedback on past IPA recommendations.

The IPAAC members serve at the pleasure of the Police Auditor and are required to attend a minimum of two meetings a year.

In the year 2000, the IPAAC members met three times. The IPAAC also hosted the IPA Open House Reception in December where members of the community had the opportunity to visit the IPA's new office and meet the IPA staff and IPAAC members. Among those dignitaries in attendance were Councilmember Cindy Chavez and William Lansdowne, Chief of Police.

A MODEL OF SUCCESS

The recent police misconduct incidents experienced throughout the nation have created an increased interest from the public to learn more about police oversight. As a result of the increased interest, the success of the IPA's program has caught the attention of many cities and agencies. This year, the following cities and agencies

requested printed materials from the IPA: City of Riverside, Seattle Chapter of the American Civil Liberties Union (ACLU), City of Pittsburg Citizen Police Review, Select Commission on Race and Police Community Relations, Rhode Island, Los Angeles Police Department Rampart Review Panel, City of El Paso, California Coalition of Concerned Citizens, Louisville Police CACU, City of New York Complaint Review Board, City of Fresno Police Oversight Committee, and the City of Omaha. In addition to printed materials, the City of Riverside, the City of El Paso, and the Los Angeles Police Department Rampart Review Panel requested presentations from the Police Auditor.

In 2000, the San José Independent Police Auditor's Office served as the model for the City of Omaha in structuring its own police oversight office. The IPA provided city officials with information on office structure, history, success stories and challenges. The City of Omaha's Independent Police Auditor Office will be implemented in the year 2001.

WEBSITE

In 1998, the IPA created its own website where the public can obtain information about the office, the citizen complaint process and/or file a complaint electronically.

The IPA website has proven successful in making the citizen complaint process accessible to anyone who has access to a computer and the internet. This is especially beneficial for anyone who is not available to come in person or call the office to file a complaint, or may feel more comfortable filing a complaint via email.

In the year 2000, the IPA website received over 15,500 visits. Visitors from Canada, Netherlands, Australia, Germany, to name a few, accessed the IPA website. The website was especially effective in assisting with the distribution of the 1999 Year End Report, as this report was downloaded more than any other file. Since the IPA has only a limited number of printed copies, the website has served as both an effective and economical way of providing information to the people of San José and people around the world.

The IPA has also linked its website to



other websites such as the Billy DeFrank Gay & Lesbian Community Center, the Mayfair Initiative and the Northside Neighborhood Association. The benefit in doing this is that anyone who has access to the internet can access the IPA website via these links.

interviews to KNTV – Channel 11, KSTS – Channel 48, KDTV – Channel 14, and KTVU – Channel 2. Office events were announced on Bay City News Services.

PUBLICATIONS

IPA year end reports and newsletters are available on the website at

www.ci.sj.ca.us/ipa/home.html.

Copies of all the year end reports are also available at the City Clerk’s Office for a nominal cost. The 1999 Year End Report is also available on audio tape at the IPA office for persons with vision disabilities. The annual report was recorded free of charge by Books Aloud.

MEDIA

As in the past, in the year 2000, the IPA worked actively with the different media. The Auditor was a guest on KBAY 94.5 FM, the Gene Burns Program on KGO Newstalk AM 810 and the Community Channel (“The Law and You”).

The Auditor also gave on camera

4

VEHICLE STOP DEMOGRAPHIC STUDY

In December 2000, San José Police Chief William M. Lansdowne released data from the pilot Vehicle Stop Demographic Study for the period July 1, 1999, to June 30, 2000. The study was designed to collect data that would identify the ethnicity, gender, age, location and action taken against a driver as a result of a vehicle stop by a police officer employed by the San José Police Department (SJPD). It was anticipated and believed that the results of this study would clearly show that members of the SJPD do not engage in racial profiling or conduct pretext stops of minority community members. As noted in the Independent Police Auditor (IPA) 1999 Year End Report, the SJPD was the first major city police department to voluntarily implement this type of study and collect vehicle stop data for review and analysis.

The term “racial profiling” has long been a sensitive issue that lacks an accepted and recognized definition. In regards to vehicle traffic stops, racial profiling for the most part is a police officer’s use of race or ethnicity as a deciding factor in making a traffic stop. Although the term racial profiling has been used to describe unwarranted stops on minority citizens, the terms “Driving

While Black” or “Driving While Brown” (DWB) have been used by the general public to describe how minorities believe they are characterized by law enforcement throughout the country.

Not every vehicle traffic stop of a minority is a result of racial profiling. It is important to remember that it is legal for a police officer to suspect or focus on an individual who has been identified or described as a person having committed a crime even when the description contains racial characteristics. On the other hand, it is racial profiling when an individual is stopped merely because of the type of car driven by certain minorities (stereotype), or just because they happen to be in a neighborhood that is predominately populated by a different racial or socioeconomic group. Suspicion must be based on more than just race or ethnicity. A stop by a police officer must be based on a reasonable suspicion. The U.S. Supreme Court in the landmark case, *Terry v Ohio* (1968) 392 US, defined “reasonable suspicion” as activity in which the facts or circumstances are out of the ordinary and the activity is related to a crime and the person to be stopped is related to that activity.

Illustration A: SJPD Estimated Race/Ethnicity of San José Residents

SJPD Estimated Race/Ethnicity of San José Residents (Used in this study)					
	African American	Asian American	Hispanic American	European American	Other
Estimated % of group within San José's total population	4.5%	21%	31%	43%	0.5%

ANALYSIS OF VEHICLE STOP DATA

While statistics don't always tell the whole story, through the collection of similar data as that collected by the SJPD, it has been shown that racial profiling exists in some parts of the country. Even though the type of data being collected may be viewed as subjective and untrustworthy, the fact that law enforcement is taking the time to collect "racial profiling" data, is definitely a move in the right direction.

Because Census 2000 statistical data on the racial/ethnic breakdown of today's San José residents was not available, the SJPD had to estimate the racial/ethnic makeup throughout the city using 1990 census data. The above chart shows the estimated breakdown as projected by the SJPD.

During the twelve-month period of this

study, the SJPD made 97,154 vehicle stops. Of the 97,154 vehicle stops recorded in all four divisions, 25,064 stops were omitted from the Demographic Study. It could be argued that not factoring one-fourth of all stops recorded renders the study invalid.

However, this omission was due to the fact that these 25,064 stops were made by Special Traffic Enforcement teams. Special Traffic Enforcement teams are set up in response to complaints from residents or businesses and primarily include radar enforcement. These traffic stops are less subjective, include multiple officers, and multiple stages for each stop. To facilitate the collection of data, the study focused on four of the five Police Divisions: Western, Southern, Central, and Foothill. Unlike the Airport, the fifth division, which is a single reporting district, the four larger Divisions are divided into 16 separate policing districts. Geographically, each

policing district varies in size, depending on the population and/or the number of calls for service within the district. The number of officers assigned to each policing district vary throughout the districts. Of the roughly 646 officers assigned to field patrol duty throughout the city, 448 officers are assigned to the Foothill Division (Eastside) and the Central Division (Downtown) and its surrounding area.

In the December 1, 2000 Vehicle Stop Demographic Study, the SJPD reported that its analysis of the data collected in the study indicated that Hispanic Americans and African Americans are stopped at a rate slightly higher than their overall representation within San José as a whole. Although the figure for African Americans does not seem to be significantly disproportionate, the

Illustration B: Vehicle Stop Data

Police Districts	Landmarks within Police Districts	Officers Assigned	Hispanic Americans Stopped	% of Hispanics Stopped	Total # of People Stopped per District
P	Evergreen	41	1,547	37%	4,220
C	Alum Rock	46	2,785	63%	4,435
M	King/McKee	39	2,891	65%	4,446
W	Berryessa	38	1,129	36%	3,146
V	City Hall	36	2,233	50%	4,424
E	Downtown	37	1,278	33%	3,915
K	Empire Garden	48	3,318	55%	6,026
L	Fairgrounds	47	3,640	50%	7,228
F	Park/Race	34	1,278	33%	3,915
S	Delmas/Bird	44	2,194	46%	4,754
AP	Airport	38	23	46%	50
Total		448	22,316	48%	45,559

figure for Hispanic Americans on the other hand appears to be problematic and requires further study.

By the SJPD's estimates, Hispanics comprise approximately 31% of the population in San José and are known to be concentrated in higher numbers in some police districts. In looking at the central core of the city and analyzing the data from 10 of the 16 policing districts that cover the downtown and the Foothill (Eastside) Division, Hispanic Americans account for 48% of the vehicle stops in these areas alone. Illustration B shows the figures as

reported in the SJPD Report.

As previously mentioned, by the SJPD's estimate, Hispanic Americans represent 31% of the residents living in the City of San José. By just taking a broad view of the vehicle stop data collected in the core areas of San José, the number indicates that Hispanic Americans are being stopped at a rate significantly higher than their representative number in the community. If using 2000 census data, the rate of Hispanics stopped is closer to the population rate.

COMPLAINTS FILED ALLEGING RACIAL PROFILING

In the San José Police Department's December 2000, Vehicle Stop Demographic Study, it reported that only 16 official complaints were received from citizens claiming to have been subjected to a racial profile stop. There are several reasons for this low number in official complaints filed for alleged racial profiling. Currently, the SJPD has only one classification for chronicling a complaint of racial profiling and that is Discrimination/Harassment (DH).

Because of the stigma associated with an allegation of discrimination, before a police officer is made the subject of a discrimination allegation, the SJPD requires that a complaint must contain what it considers objective criteria. For example, allegations that the officer used a derogatory word; term; gesture or action that shows bias or can be construed as discriminatory. Therefore, the mere fact that a person feels they were stopped because of their race is not currently considered sufficient objective criteria to constitute a complaint for racial profiling. This is the case even if the person affirms they were stopped for no apparent reason, handcuffed, searched and subsequently

released with no legal action taken against them. In most cases, this type of complaint would be handled informally and not undergo the same level of investigation. Efforts have been made to capture racial profiling allegations as part of the complainant's statement, even if it is not an official discrimination allegation. This will allow tracking and future analysis of this serious concern.

A close study of the 16 racial profiling complaints and those citizen contacts that did not rise to a complaint because the allegations lacked objective criteria, revealed the following. Only in the Southern Division was the number of stops of European American rates higher than the corresponding percentage rate of the total population (10% higher). In all four divisions, African Americans were stopped at a slightly higher rate than the "Estimated percentage Group within San Jose's Total population (4.5%)." An examination of these cases indicates that there were several types of "racial profiling" complaints. Several complainants felt they were stopped solely because they

were driving a nice car and because they were African American. Some Hispanic complainants felt that the reason they were stopped was because of the way they "looked," either because of their long hair and tatoos or simply because they "looked Hispanic." Several Hispanic complainants also alleged that they were stopped because of the type of car they were driving.

PROCESS FOR DATA COLLECTION

The SJPDP has been recognized for being the first to voluntarily implement a process for addressing the issue of racial profiling; however, more needs to be done and the program objectives need to be widened. The SJPDP has prided itself on creating a data collection process that is easy to manage and uses Computer Aided Dispatching (CAD) technology already in place for tracking officer activity in the field. In the December 2000, Vehicle Stop Demographic Study, the SJPDP reports that the scope of the program was limited by the officer's acceptance of a data collection process that was not

intrusive of their time. To accomplish this, the department developed a process using alpha codes, like those already in use, that could be easily recited or manually entered by the officer at the end of a vehicle stop.

MOVING FORWARD WITH MORE DETAILED DATA

Although this was an acceptable starting point for the San José Police Department, other law enforcement agencies have started collecting similar data and have expanded the scope of the data being collected to include much more detail. In San Diego California, the San Diego Police Department (SDPD) started collecting data in January 2000.¹ During a six-month reporting period, the SDPD documented 91,522 stops. SDPD officers are required to fill out a form (4x6 card) in the field. The card usually takes no more than 20 seconds to complete, and collects data as noted below.² As a result of this study, the SDPD found that in comparison to the characteristics of San Diego's driving-age resident population, both Hispanic

¹ San Diego Police Department, September 21, 2000, Vehicle Stop Mid-Year Report, ("SDPD Stop Study")

and African American's drivers were over-represented in vehicle stops. experience searches and arrests than Asian or European American drivers.”³ In Sacramento, California, the Sacramento Police Department (SPD) has clear guidelines in regards to chronic vehicle stop data.⁴ The SPD's July 2000 General Order 210.08 requires recording of search data, including the legal basis and factual basis for the search.

More interesting, the San Diego vehicle stop data indicated that, once stopped, Hispanic and African American drivers were substantially more likely to

It is important for the SJPD to collect detailed “search information” similar to the Sacramento Police Department and

2 The San Diego PD collects for every vehicle stop:

- Date and time of stop;
- Division where stop occurred;
- Primary reason for the stop (moving violation; equipment violation; radio call/citizen contact; officer observation/knowledge; supplemental information on the suspect, etc.);
- Driver's sex and age;
- Driver's race;
- Action taken (citation, written warning, verbal warning, field interrogation);
- Whether the driver was arrested;
- Whether the driver was searched, and if so:
 - Type of search (vehicle, driver, passenger);
 - Basis for the search (visible contraband, contraband odor, canine alert, consent search: 4th Amendment waiver, search incident to an arrest, inventory search prior to a vehicle impound, observed evidence related to criminal activity);
 - Whether a Consent to Search Form was obtained;
 - Whether contraband was found;
 - Whether property was seized.

3 If stopped, Latinos had a 10.6 percent chance of being searched; blacks a 10.2 percent chance; Asians and Pacific Islanders, a 3.4 percent chance; and Whites, a 3.0 percent chance. If inventory of impounded vehicles were not counted, blacks had a 5.8 percent chance of being searched; Latinos, 2.8 percent; Asian/Pacific Islanders, 2.0 percent; white, 1.5 percent. If stopped, blacks had a 3.0 percent chance of being arrested; Latinos, 2.7 percent; white, 1.3 percent; Asian/Pacific Islander, 0.9 percent. Id.

4 SPD employs a Scantron Form, which has 17 different variables for the officer to fill out. The form is set up so that it can be filled out quickly after each stop by darkening an appropriate box in each category. The 17 categories and related choices are;

- Time of stop, with choices for a.m. or p.m. and the hour and minute of the stop;
- Date of stop, with choices for date, month and year;
- Reason for stop, with choices for:
 - Hazardous violation of the Vehicle Code;
 - Violation of the Penal Code;
 - Violation of a city ordinance;
 - Call for service;
 - Preexisting knowledge or information;
 - Equipment or registration violation;
 - Special detain (i.e., DUI Checkpoint; narcotic suppression detail)
 - Other
- Race, gender of the driver;
- Driver's date of birth;
- Driver's license number and state;
- Yes or no to whether the driver was asked to exit the car;
- Was a search done, with choices for the driver, passenger, or the vehicle or no;
- Search authority, with choices for consent. Terry cursory (reasonable grounds to believe that a person may be armed and dangerous), incident to an arrest, parole/probation, or tow inventory;
- What was discovered or seized with choices for weapons, drugs, cash, the vehicle, alcohol, other property, or nothing;
- The results of the stop, with choices for citation, arrest, etc;
- The stop location, by precinct;
- The vehicle license plate and state;
- The duration of the stop and total minutes;
- The officer's badge number and the badge number of a secondary officer, if applicable;
- Whether the patrol car was equipped with a video camera or not.

the San Diego Police Department. In addition, officers should chronicle the factual basis for the stop and the action taken as a result of the stop.

IPA ANALYSIS

The SJPD study attributes the increased number of stops of minorities to socio-demographic realities of the city and the necessity by the SJPD to deploy more officers accordingly. The hypothesis raised in the study is that more officers are assigned to higher crime sectors/precincts; therefore, minorities who live in these neighborhoods in greater numbers are more likely to get stopped. This analysis may be plausible, but does not explain why Hispanics are being stopped in many areas where they don't have a large presence or residence. For example, in analyzing the police districts in the Foothill Division, Hispanics make up a large percentage of the residents in the Mary⁵ and Charles⁶ police districts, but Hispanics do not reach the same

proportions in the other two policing districts, Paul⁷ and William.⁸

Using the 2000 Census data, the SJPD should attempt to determine the number of licensed drivers within each racial/ethnic group within each police division. For example, of the 31% Hispanic population in San José, what percentage is of driving age? Currently, Hispanics are stopped more often than the number of Hispanics living in San José based on the number of vehicle stops in all four divisions (72,090). Would this percentage increase if the percentage of persons of driving age was known?

The SJPD Demographic Study involved 97,154 vehicle stops made in San José's four police divisions from July 1, 1999 to June 30, 2000. It appears that every third stop was of a Hispanic and every fourth stop was of a European American. The other stops included African Americans, Asian Americans and other ethnic groups. An analysis of the

complaints received, whether at Internal Affairs or at the Office of the Independent Police Auditor, revealed that complaints alleging racial profiling stops were based more on poor communication skills by the officer than objection to the stop itself. Officers require good communication skills in every aspect of their police duties. Yet, they receive very little training in developing good communication and interpersonal skills. This is an area that the SJPD has made some progress and should continue to refine police officers' people skills.

RECOMMENDATIONS

1. The Chief of Police should expand the fields for data collection to determine how the individual stopped was treated, i.e. was there a search. This should include search information and the factual basis for a stop and the action taken by the officer as a result of the stop.

5 King and McKee is located in the Mary Police District, within the Foothill Division.

6 Alumn Rock is located in the Charles Police District, within the Foothill Division.

7 Evergreen is located in the Paul Police District, within the Foothill Division.

8 Berryessa is located in the William Police District, within the Foothill Division.

2. Develop a uniform definition of and process for tracking all “Racial Profiling” allegations in all instances where the complainant alleges that his/her vehicle stop or police contact was racially motivated.

3. The San José Police Department should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking, and analysis of “Racial Profiling” and all other types of citizen complaints.

This chapter contains updates on prior recommendations made by the Independent Police Auditor (IPA). The IPA tracks all prior and pending recommendations until a final resolution to each recommendation is reached. In addition, random audits to measure compliance with prior recommendations are also reported in this section. For example, the IPA has reported annually on the issue of citizens filing complaints because they allege that officers refused to provide identification when asked. The number of recurring complaints alleging an officer's failure to provide identification is analyzed and if necessary, new recommendations to minimize or eliminate the cause of the complaints are made.

MEDIATION PROGRAM

As a part of the new issue section of last year's annual report, the IPA recommended a voluntary mediation program for implementation by the San José Police Department (SJPD). On April 8, 2000, the City Council approved the recommendation and response from the San José Police Department to study the feasibility of implementing a

mediation program. The IPA envisioned that the proposed mediation program would be an alternative to the formal complaint investigation process that would allow the complainant and the subject officer to engage in meaningful dialogue.

The current IPA model employed by the City of San José does not provide or allow for citizen-officer interaction once the complaint has been filed. It was the IPA's belief that through the creation of a voluntary mediation program, the citizen would have the ability to access a process that would allow them to get an answer to a question or a clarification to a concern. This type of sentiment is not uncommon as noted in a report issued by the City of Portland, Police and Citizen's Talking (PACT). In that report a Portland mother is quoted as saying "I don't want the officer disciplined. I want a conversation."¹ Often the citizen is only seeking an opportunity to be heard and a chance to hear the response first hand from the officer.

In response to the IPA's recommendation, the San José Police Department

1 Draft report, City of Portland, Office of Neighborhood Associations, Neighborhood Mediation Center, April 18, 1997

agreed that the proposed mediation program could be a viable option for both the citizen and the police officer. The Chief of Police assigned the Internal Affairs Unit to research the feasibility of developing such a program and to submit a report with findings and recommendations.

The IPA recognizes that it is not uncommon for a police association to have strong opposition to a mediation process because of a belief that participation may imply guilt by the subject officer. There may also be a fear that a complainant who is dissatisfied with the outcome of mediation would have the option of filing a complaint through the formal process anyway.

Some of these concerns were anticipated when the recommendation was made to implement a mediation program. It is a belief by the IPA that a mediation process that is fair and equitable to all concerned can be designed and implemented. At this point the IPA suggests that when the SJPD conducts its feasibility study, it considers both perspectives, that of the police officer and the citizen in determining whether an existing

mediation program can be effectively implemented.

UPDATE

The feasibility study was conducted and completed by the San José Police Department (SJPD). The SJPD is committed to designing a voluntary mediation program that will be beneficial to both complainants and officers. To that end, members of the SJPD have participated in meetings with the IPA and members from the Judicial Arbitration and Mediation Services (JAMS), in particular with retired Judge John A. Flaherty. JAMS has agreed to work with the IPA and the SJPD to launch a pilot program wherein members from JAMS will act as mediators. In order to instill confidence in this new mediation program, the choice of mediators is very important and must come from a group such as JAMS whose members are held in high esteem by citizens and police officers. It is anticipated that the San José Police Department Mediation Program will become operational in the 2001 calendar year.

CITIZEN REQUEST FOR OFFICER IDENTIFICATION

In the IPA 1997 Year End Report, the issue of officer identification was raised for the first time. At that time, the IPA expressed concern that a number of complainants were alleging that officers were failing to properly identify themselves when asked to do so. The IPA recommended that the SJPD should develop a policy to direct officers to properly identify themselves, preferably in writing when requested by a citizen. Upon adoption of this recommendation in 1998, the SJPD modified an existing form (incident card) for use by the officers in the field and issued a directive found in the Duty Manual that outlines the use of the card.

Even though the SJPD has made an effort to address the identification issue by placing a directive in the Duty Manual, stronger measures must be taken to assure compliance by the officers. In the year 2000, the IPA audited 18 cases where the issue of officer identification was alleged. Nine of these cases were handled informally or without requiring a full investigation. In the remainder of the cases, the allegation was part of a Formal

complaint, and in most cases the identification allegation was handled in the scope of the investigation. Of the 18 cases, two were sustained.

An analysis of these cases indicates that there are varied allegations of how officers failed to identify themselves, as the department directive included in the Duty Manual requires. These allegations include the following types of situations: officers who refused to identify themselves; officers who refused to provide a pen or pencil to the complainant; officers who issued complainants a citation in retaliation for the complainant requesting the identification of the officer; and officers who have been rude by suggesting that the complainant must not be able to read since their badges are visible. In each situation, it has been alleged that the officer had failed to provide them with written identification information as the Duty Manual requires.

Although this seems to be a recurring problem that requires constant attention, the fact that many of the cases are being handled informally rather than through a formal investigation may be exacerbating the problem by minimizing the importance of the directive in the

Duty Manual. The issuance of an “Incident Card” in response to a request from a member of the public should be provided without delay. Officers should seek to minimize conflict in these situations by promptly providing their name and badge number. This is the type of complaint that should become obsolete. The IPA will continue to monitor this issue and will look for consistency in classifying this type of complaint in the future.

RECOMMENDATION

The San José Police Department’s Internal Affairs Unit should formally investigate allegations of officers refusing to identify him/herself under an Improper Procedure allegation.

OFFICER-INVOLVED SHOOTINGS

In the Independent Police Auditor 1998 Year End Report, the IPA recommended that its jurisdiction be expanded to include the review of police shootings whether or not a complaint was filed. The IPA requested that all officer-involved shootings resulting in injury or death be subjected to review by the IPA. In July of 1999, the Chief of Police,

in response to the IPA’s recommendation, established a process to review officer involved shootings. The purpose of this review process was to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure. The Chief called this review process the San José Police Department Officer-Involved Shooting Incident Training Review Panel, see Appendix S.

The members of this panel include the Chief of Police, the Deputy Chief for the Bureau of Field Operations, the Independent Police Auditor, the Training Unit Commander, and a representative from the City Attorney’s Office. Once the panel comes together to review an incident, the SJPD Homicide Unit, which is responsible for investigating all officer-involved shootings that result in injury or death, provides the review panel with an oral and PowerPoint presentation. The review panel then considers all the information provided and makes recommendations that can lead to the adoption of a new training plan or a change/development of a policy or procedure.

In the 1999 calendar year, San José Police Department officers were involved in eight shootings, seven of which resulted in a fatal wound to the suspect. Although the review panel was created in August of 1999, the Shooting Review Panel was able to review seven of the eight officer-involved shootings. One shooting incident was still pending Grand Jury review; therefore it was not reviewed until the year 2000. As a member of the review panel, the Independent Police Auditor participated in all shooting reviews and provided input as necessary. Whenever possible, the police auditor reviews the investigative files prior to attending the meetings of the Shooting Review Panel.

ANALYSIS

In the year 2000, there were a total of

five officer-involved shooting incidents involving San José Police Department officers. The Shooting Review Panel examined these incidents. Three out of the five shootings resulted in fatal injuries to the person shot. Two of the fatalities resulted from gunshot wounds to the chest and one to the head. These figures show a decrease from 1999's figures of eight shootings, in which seven were fatalities. Although the incident count is lower, there are still some issues to consider. One issue to consider is that the percentage of fatalities compared to shootings was at 87.5% in 1999 and decreased to 60% in 2000. Although the percentage has decreased, we still need to look at what can be done to decrease that percentage further. Another issue to consider is that two out of the five suspects were armed with a weapon other than a firearm. For these types of cases,

officers should have other alternatives to lethal force. A third issue to consider is that out of the five incidents, two of the people shot had a history of mental illness. One question that arises is whether police officers are adequately trained to deal with mentally ill and combative suspects. Another factor is that four out of the five suspects were minorities. This is an important factor to consider as to whether a language barrier between the officer and the suspect could have led to the shooting.

FATALITIES

In 1999, of the eight officer-involved shootings, seven resulted in fatal wounds. In 2000, the number of officer-involved shootings decreased to five, which included three that, resulted in fatal wounds. Two issues to examine include the following: The first issue is,

Illustration A: Officer-Involved Shooting Cases

*Crisis Intervention Team (CIT): A select squad of patrol officers who will respond immediately to emergencies exclusively involving potential encounters with mentally ill people.

whether some of the fatalities could have been avoided if less lethal weapons were available or used. In only one out of the five shootings was a less lethal weapon deployed before the officers' guns were discharged. In the one incident where a less lethal weapon, a stunbag gun, was deployed, it proved to be ineffective. The officer had to fire his gun subsequently.

The second issue to look into is the placement of the gunshot wounds on the body. Of the three fatalities, two suffered wounds to the chest and one to the head. The two who were not fatally wounded, one received wounds on his leg and flank, and the other one received wounds on his upper torso. Should officers always shoot to kill, or can they shoot to disable? This is a frequently asked question by the public. Officer involved shootings happen very quickly, and are usually split second decisions. Officers are trained to shoot to stop the threat to themselves or others. People do not remain stationary targets therefore; aiming for the outer extremities is extremely difficult and can increase the risk to the officer and to others.

SUSPECTS ARMED WITH WEAPONS

Out of the five officer-involved shootings in the Year 2000, three of the suspects were armed with firearms, and two of them were armed with non-automatic propulsion weapons. One had a homemade spear, and the other had an axe and a knife. The latter was fatally wounded. When suspects are not armed with a firearm, officers may have an opportunity to use alternatives other than shooting if they are not in imminent danger.

In these situations, it is important to have less lethal weapons readily available. Retreat is not legally required but is an alternative in cases where officers need time to reassess the situation. In two out of the five shootings, the suspects shot at the officers. The officers returned fire inflicting fatal wounds to the suspect in one incident and non fatal injuries in the other.

SUSPECTS WITH MENTAL ILLNESS HISTORIES

Two of the five suspects in Year 2000 officer-involved shootings had mental illness histories. That is a 40% ratio.

Officers who are used to dealing with suspects who wantonly break the law may not be capable of detecting suspects who do not have the mental capacity to know that they are breaking the law. Suspects with mental illness may be more prone to ignore, not understand, or resist officers' orders. All officers need to be trained to recognize symptoms of whether a suspect may be mentally ill. The SJPD is making great inroads in providing this type of training to its officers.

LANGUAGE BARRIERS

Four out of the five suspects were minorities. Two were Hispanic, one Vietnamese, and one Chinese. Their level of understanding and fluency in the English language at the time of the shooting is unknown. If a language barrier existed, this would have made an already tense situation even worse. How does an officer handle a situation when they encounter a suspect who only speaks a language other than the ones the officer speaks? Although many officers are bilingual or maybe even multi-lingual, there may still be situations where a shooting may have been avoided if language was not a barrier. In one case, prior to the

shooting, the suspect indicated to the officers that he did not speak English. It is unknown what role, if any, this played in the final outcome. San José is a city where minority populations are now the majority. San José has large populations who only speak Spanish or Vietnamese. The San José Police Department must have contingencies in place to address this growing need.

CONCLUSION

An analysis of the officer involved shootings in 2000 raised more questions than provided answers. However, there was a marked improvement from 1999. The number of officer-involved shootings declined to five from eight. The ratio of fatalities compared to shooting incidents also declined, from 87.5% in 1999 to 60% in 2000. Although the number of shootings has decreased, there are still areas that can be improved upon.

RECOMMENDATIONS

1. Continue to identify alternate, less lethal weapons and make them more readily accessible
2. Provide specialized training in handling suspects armed with non-automatic projectile weapons.
3. The Critical Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with mental illness histories.
4. Continue to recruit and hire officers with bi-lingual skills.

On June 26, 2000, the Santa Clara County Grand Jury released their 1999-2000 Final Report titled “Investigation of the Oversight System for Reviewing Use-of-Force Cases in the San José Police Department.” The focus of the Grand Jury’s review was in the area of Use-of-Force complaint investigations against police officers employed by the City of San José. The Grand Jury made only two recommendations that were specific to and that required a response from the IPA.

1. That the IPA advises the City Manager of all complaint investigation cases in which it disagrees with the Chief.
2. That the IPA and/or designee attend all Class 1 Unnecessary Force interviews conducted by Internal Affairs.

In response to the first recommendation, the IPA informed the Grand Jury that the 1999 IPA Year End Report made reference to the number of cases in which the IPA disagreed with the Chief’s findings. In each of these cases the City Manager had an opportunity to inquire and consider the issues in disagreement. The City Manager also

had an opportunity to either agree with the Chief’s finding or change the finding to reflect the concerns raised by IPA that led to the disagreement.

As noted in the 1999 Year End Report, the IPA disagreed with the findings in four cases. Before a meeting with the City Manager is requested for disagreement review, the Police Auditor first attempts to resolve the disputed findings with the Internal Affairs Commander, then the Chief of Police in successive order. Once the Chief of Police and the Police Auditor have discussed the areas in disagreement, the Chief can either agree with the Police Auditor’s analysis and change the findings or continue to disagree with the analysis and allow the finding to stand as presented. If the Chief selects to let the finding stand, the Police Auditor may then choose to appeal to the City Manager for final disposition.

The review process for reconsidering a finding when a disagreement exists is designed to allow the Police Auditor with a process that is fair and impartial. To this end, the City Manager will continue to receive a written notices from the IPA and a request to meet to

consider the factual basis in dispute. The City Manager will then make a decision that is final and based on the facts as presented. In response to the second recommendation, the IPA informed the Grand Jury that the Police Auditor would make attendance at the Class 1 Unnecessary Use-of-Force interviews a priority. The Police Auditor also advised the Grand Jury that without an agreement with the Police Officer's Association, that allows the Police Auditor to delegate attendance at an officer interview to a qualified IPA staff member, the issue of attendance would continue to be problematic. The delegation issue ultimately went through a formal dispute resolution process with the Police Officer's Association and the City of San José.

The issue of attendance at officer interviews is one that the IPA has always taken seriously. The Police Auditor has made several attempts to improve attendance by delegating the duty to a qualified staff member or by foregoing a personal commitment or other assigned duty. As a City Office,

the Police Auditor and members of the IPA have a responsibility to participate in a variety of city programs like; Investing in Results; Public Safety City Service Area; staff recruitment and development; and an assortment of other duties that require time and commitment.

In order for the City of San José to continue to have a highly respected and recognized "Citizen Complaint" process, the challenges to the IPA's authority in discharge its duties, by the Police Officer's Association, must be addressed swiftly by the City.

UPDATE

On February 2, 2001, the IPA received a favorable Arbitration Decision from retired Justice Nat Agliano of JAMS¹ regarding the IPA's authority to delegate the duty of attending subject officer interviews. Justice Agliano agreed that the City Charter and the Municipal Code provide to the Independent Police Auditor the authority to delegate her duties and responsibilities and that this function is a matter of

managerial discretion not subject to meet and confer.

¹ JAMS stands for Judicial Arbitration Mediation Services.

The Office of the Independent Police Auditor (IPA) and the San José Police Department's Internal Affairs Unit (IA) are separate offices available for the public to file complaints against members of the San José Police Department (SJPD). The IPA is an oversight office that monitors and tracks an investigation while it is being investigated by the IA Unit. Even though the IPA is not the primary investigatory agency, it does have the authority to attend IA interviews of subject and witness officers. In addition, the IPA has the authority to request an investigation and/or conduct a follow-up investigation once it has been closed as part of the audit process.

This chapter will discuss the different types of cases that were received from January 1 through December 31, 2000.

It will also discuss the allegations in the cases filed, the findings, and the discipline imposed. The IPA reports its year-end statistics in various ways in an attempt to make it more interesting for the reader. The analysis is only statistical and should not be used to

deduce specific and/or conclusive results from the data.

HOW THE COMPLAINT PROCESS WORKS

All contacts from the public are documented as cases. Cases include complaints which are further divided into several classifications such as: Formal, Informal, Procedural and Policy. A complaint is an act of expressed dissatisfaction which relates to Department operations, personnel conduct or unlawful acts.¹ Typically, IA conducts administrative investigations that are generally adjudicated through the department. However, in some cases the IA unit may be required to conduct a parallel investigation with a criminal investigation.

Typically, the Internal Affairs Unit investigates most allegations involving officer misconduct. Investigators at Internal Affairs are fact finders only. They do not sustain a complaint nor do they recommend discipline. In cases where the IA Investigator concludes

¹ San José Duty Manual, Section C1703, Complaint defined: A complaint is an act of expressed dissatisfaction which relates to Department operations, personnel conduct or unlawful acts. Inquiry defined: Citizen contact with a Department member regarding an issue of concern that is immediately addressed and resolved to the satisfaction of the citizen. A concern that is not satisfactorily resolved can become a complaint.

that the investigation supports sustainable allegations, the investigation is sent to the subject officer's chain of command. The commanding officer reviews the investigation and/or conducts further investigation to determine if the complaint should be sustained. If the commanding officer sustains the complaint, then the case is sent to the Disciplinary Review Panel to determine the type of discipline to impose.

Once an investigation is completed, a copy of the investigation file is sent to the IPA for auditing. By prior practice, IA would immediately send the complainant and the subject officer a closing letter advising them of the finding in their case. Because this practice did not allow time for the IPA to agree or disagree with the results of the investigation before a notification was sent, the IPA and IA mutually agreed to a change in the process. The

new process gives the IPA two weeks to review the completed investigation before a notification is made or a closing letter sent. During this two-week period, if the IPA determines that there may be an area of concern with the investigation, the IA Commander is notified and the two-week time line is stayed. Notifications and/or closing letters are held until the area of concern is satisfied or the case is reopened for further investigation. If the IPA makes no request during the two-week period, IA proceeds to send the closing letters/notices to the complainant and subject officer.

CASE CLASSIFICATION

There are seven case classifications:

Formal, Informal, Policy, Procedural, No Boland, Inquiry, and Citizen

Contact. A **Formal** complaint may be citizen-initiated (CI) or department-initiated (DI), which is a complaint initiated by the Chief of Police. An

Informal² 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

Policy³ complaint relates to an established policy properly employed by the officer, which the complainant believes to be inappropriate or invalid. A

Procedural⁴ is a complaint that after the initial investigation, it is determined that the subject member acted reasonably and within Department policy and procedure given the specific circumstances and that despite the allegation of misconduct, there is no factual basis

2 San José Duty Manual, Section C1716, Informal Complaint defined: It is determined that the allegation involves minor transgressions that may be handled by bringing the matter to the attention of the subject member's supervisor and chain of command. The utilization of this process does not imply that the subject member has in fact committed the transgression as described by the complaint.

3 San José Duty Manual, Section C1721, Policy Complaint defined: A complaint which pertains to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid.

4 San José Duty Manual, Section C1711, Procedure Complaint defined: (A) After the initial investigation, it is determined that the subject member acted reasonably and within Department policy and procedure given the specific circumstances and the facts of the incident and that, despite the allegation of misconduct, there is no factual basis to support the allegation. (B) 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 complaint.

to support the allegation. A **No Boland**⁵ case is a case that is closed within 30 days from the date the case was received due to the complainant failing to sign the Boland Admonishment. State law requires that the complainant sign a Boland Admonishment form in order to have the complaint fully investigated. An **Inquiry**⁶ refers to a case that is immediately resolved to the satisfaction of the citizen, without requiring an extensive investigation. A **Citizen Contact** is a case that does not involve an expressed dissatisfaction with police services provided by a San José police officer.

The reasons for classifying the cases into different types are: (1) to streamline the investigation process so that cases that do not require a full investigation are resolved sooner while the cases requiring more time are given appropriate time to investigate; (2) to track Formal, Informal, and Procedural complaints by officers' names as part of an "Early Warning" system that identifies those officers qualifying for Intervention Counseling; (3) to comply

Illustration A: Cases by Different Classifications

Type of Cases	IPA Intake	IA Intake	Total Cases
Formal: Citizen-Initiated Complaints	73	98	171
Formal: Department-Initiated Complaints	0	49	49
Informal Complaints	17	40	57
Procedural Complaints	41	39	80
Policy Complaints	7	10	17
Subtotal	138	236	374
No Boland (Withdrawn Cases)	23	23	46
Inquiry (Cases immediately resolved)	62	136	198
Citizen Contacts (Informational)	28	48	76
Total Cases in 2000	251	443	694

Complaints are those cases where the complainant signs all the State required forms.

with motions for discovery in criminal and civil proceedings; and (4) to identify patterns or trends so that recommendations can be made to change an existing policy or procedure. Illustration A shows a breakdown of the total number (694) of cases received from January 1 through December 31, 2000 by the type of complaint and the office in which the complaint was filed.

Illustration B reflects the cases received from January 1 through

December 31 for the year 1996, 1997, 1998, 1999, and 2000 at the IPA and IA. In 2000, the IPA received 251 cases while IA received 443 cases. Although the cases received by the IPA remained consistent with prior years, the IA unit received 147 (21%) fewer cases. The total cases received for this year is 694.

FORMAL COMPLAINTS

The SJPD uses the Formal complaint classification to address serious

⁵ See Appendix D (Boland Admonishment). CA. Penal Code Section 148.6.

⁶ San José Duty Manual, Section C1703. Inquiry defined: Citizen contact with a Department member regarding an issue of concern that is immediately addressed and resolved to the satisfaction of the citizen. A concern that is not satisfactorily resolved can become a complaint.

violations of a department policy, procedure, rules or regulations by its officers. From January 1 through December 31, 2000, there were 201 Formal cases audited by the IPA. Of these, 93 were a result of a call for service, 79 were self initiated by the subject officer, 20 were traffic related and nine were classified as other.

It is important to understand that the 201 Formal cases represent the number of investigations completed by IA and audited by the IPA in 2000. This total may differ slightly from the total number of complaints filed throughout 2000, because some cases may have been filed in 1999, completed in 2000, while others that were filed in 2000 may still be under investigation.

ANALYSIS OF UNNECESSARY FORCE COMPLAINTS

This past year, there were 220 Formal complaints received from January 1 through December 31, 2000. This is a decrease of nine Formal complaints over last year's figures. Of the 220

Illustration B: Five Year Analysis of the IPA Case Intake

Intake Received	Time Period				
	1996	1997	1998	1999	2000
IPA Cases	154	127	249	229	251
IA Cases	453	319	500	590	443
Total Cases Received*	607	446	749	819	694
Percentage of IPA Received**	29%	34%	37%	29%	36%

*The total cases received for the year 1998, 1999, and 2000 include Inquiry cases.

**The percentage of the intake conducted by the IPA is calculated by dividing the IPA cases by the total cases received in 2000. Formal DI cases are excluded; these cases are initiated by the Chief of Police.

Formal complaints, 84 were classified as Unnecessary Force (UF) complaints. This is a decrease of 30 complaints or 26%. Because each complaint may contain more than one allegation, this year there were 129 Unnecessary Force allegations. This is a reduction of 54 allegations or a 30% decrease in the number of allegations made over last year's figures.

Unnecessary Force complaints are divided into two categories: Class I and II. A Class I case involves serious bodily injury.⁷ All others are Class II cases which include complaints in which the complainant did not require

immediate medical care. Of the 84 UF complaints filed, 16 were Class I, and the remaining 68 were Class II complaints.

Appendix E, Appendix F, and Appendix G present a five-year view of the type of force used, the body area afflicted by the force used, and the degree of injury from the force used. Note that statistical information such as the type of force alleged, body area afflicted, type of force used, and the degree of injury resulting from the force is tabulated based on what is alleged by the complainant.⁸

⁷ CA. PC 243.4 F (4). "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; wound requiring extensive suturing; serious disfigurement..

In Appendix E, there was a total of 144 different types of force alleged in 2000. In each complaint, the complainant may have alleged more than one type of force that was used by the subject officer(s). For example, a complainant may have alleged that the subject officer struck him/her with a baton, and while taking them into custody, placed the handcuffs on tightly, or unnecessarily twisted an arm in the handcuffing process. This example would account for two types of force being used: one for the baton strike and one for twisting the arm or placing the handcuffs on too tightly.

In Appendix E, the four types of force most commonly alleged are; baton, feet, car (officer), and hands. In 2000, the officer's alleged use of a baton resulted in injury to the complainant in 10 cases or 7% of the time. This is a slight decrease from prior years. The alleged use of force resulting from the officer using his/her feet, such as leg sweeps or kicking the complainant occurred in 15 cases or 10% of the time. This is also a decrease from the previous year.

In Appendix F, the area afflicted is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown.⁹ Each complaint may allege more than one area of body afflicted by the alleged use of force. For example, a citizen may allege that the officer punched him/her in the stomach and kicked him/her in the knee. The body area injured would be the torso and the limbs. In 2000 the distribution of alleged injury was 22% to the head, 18% to the torso, 38% to the limbs, 12% of multiple body parts injured, and 10% were unknown. In Appendix F, the injuries to the head decreased in occurrence, but increased in percentage relevant to the number of complaints filed.

In Appendix G, the Degree of Injury resulting from the alleged use of force ranged from minor to major and included categories for "None Visible" and "Unknown" degrees of injury.¹⁰ For example, a citizen alleged that the officer pushed him/her against the wall while handcuffed, causing abrasions to the facial area. This is counted as a

minor injury. In 2000, there were 84 UF cases with the following distribution of injuries: 15% major injuries, 6% moderate, 55% minor, 9% with no visible injury, and 16% with unknown degree of injuries. As shown in Appendix G, throughout the years, minor injuries remain the highest degree of injuries alleged by the complainant. However, the moderate degree of injuries dropped from 18% in 1996 to 6% in 2000. The 6% figure is slightly higher than the 1999 figure of 4%. Overall, 80% of all reported use of force allegations involved minor, no visible, or unknown injuries.

In the year 2000, 18 out of 187 Formal CI closed cases were sustained, which resulted in a 10% sustained rate, see Illustration C. In contrast, 31 out of 41 Formal DI closed cases were sustained, a 76% sustained rate. It should be noted that Department Initiated complaints include external matters where a citizen brought the incident to light as well as internal matters involving only police officers, such as tardiness, abuse of sick leave, etc. The

⁸ See Appedix H (Use of Force).

⁹ See Appedix F (Body Area Afflicted by Force).

¹⁰ See Appedix G (Degree of Injury).

Illustration C: Year 2000 Closed and Sustained Cases.

Formal Complaints	Cases Closed	Cases Sustained	Sustained Rate
Citizen Initiated (CI)	187	18	10%
Department Initiated - Citizen Nexus (DI-CN)	9	7	78%
Department Initiated - Non-Citizen Nexus (DI-NCN)	41	31	76%
Total	237	56	24%

combined sustained rate for Formal cases overall is 21%.

AUDIT CRITERIA OF FORMAL COMPLAINTS

In an effort to maximize the availability of data captured in the complaint database, the IPA developed a checklist for gathering data and a process for evaluating the quality of the investigations. This process allows for consistency between auditors and provides a database that can be manipulated and randomly searched for critical trends and patterns. By developing a process that can audit and capture varied trends and patterns, the database is designed to highlight the critical elements, actions, and aspects of an investigation. Consistency in capturing data is important. A significant aspect of the

database is that it was designed to capture the nature of the complaint by using different auditing criteria for the different complaint classifications: Formal, Procedural, No Boland, Informal, Policy, and Inquiry. Although every complaint is important, this section only provides a synopsis of the Formal complaint audits.

Chart A - Requests for Reviews

Yes	89	44%
No	112	56%

DID THE COMPLAINANT REQUEST REVIEW BY THE IPA?

Of the total number of complaints audited, 89 complainants or 44%

requested the IPA to review their cases, see Chart A. Although most of the requests were made after IA had already closed the case, a small percentage of the requests for review were made while the investigation was still active.

DID THE IPA REQUEST FURTHER ACTION FROM IA?

The IPA requested further action from IA in 13 or 6% of the Formal cases it reviewed. Requests varied from reopening an investigation to providing the IPA with additional information or documentation. Although the number of complaints varies from year to year, this year marked another decrease in the number of further action requests by the IPA. As a comparison, during the 1998 calendar year, the IPA made 27 requests, or 11% of the Formal cases audited.

Chart B - Requests for Further Action

Yes	13	6%
No	188	94%

DID THE AUDITOR ATTEND OFFICER INTERVIEWS CONDUCTED BY IA AFTER BEING NOTIFIED?

Formal complaints are the only type of complaint that has a process that is mandated by law (Government Code 3300) for questioning and interviewing SJPd officers, pursuant to the investigation of a complaint. At this time last year the Police Auditor reported that the issue of delegating attendance at officer interviews to a qualified staff member was being challenged by the Police Officer's Association and was scheduled to go through the arbitration process. On January 29, 2001, Justice Nat Agliano rendered his decision concluding, *"the matter of delegation is not one on which the parties must meet and confer. In the discretion of the Auditor, the Auditor's Executive Assistant may attend Internal Affairs questioning of officers."* Because this decision was not rendered until 2001, during 2000, the Auditor still had to consider factors such as seriousness of the allegations, status of the officer being interviewed (subject or witness officer), and time constraints as to the Auditor's availability before making a decision to attend an officer interview.

During 2000, the IPA requested to be notified of police officer interviews in 85 of the 201 Formal cases or 72% of the cases. Of those, the IPA was notified of 67 interviews, with the Police Auditor attending 29 interviews where notification was received. IA failed to provide notice to the Auditor or the notice was not on time for 18 cases, see Chart C. Notification is still an area that can be improved in the coming year.

Chart C - Officer Interviews

Notification Requested	85	72%
Notice Received	67	79%
Interviews Attended	29	34%
Interviews not Attended	35	41%
No Interviews *	22	26%

RECOMMENDATION

It appears that some of the notification problems are attributed to the turnover of investigators at IA. In an effort to negate this concern, strong emphasis must be placed on providing investigators with on-going training that addresses the importance of maintaining a case file that chronicles how notices of upcoming interviews were given to the

IPA. Proof of notice can be documented by saving a copy of the fax notice, saving an e-mail print out, or making a notation in the case file, with the date and time if a phone call was used to make the notification. A form to document and track an officer interview notification has been put into place, but it is sometimes not used.

As previously mentioned, the Independent Police Auditor is currently the only IPA representative that attends officer interviews. With the ruling by Justice Agliano, plans are underway to have the Assistant Auditor attend officer interviews when the need arises.

DID THE IPA AGREE WITH THE FINDING 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 4 or 2% of the 201 Formal cases even after further action was requested from IA. In 1999, the IPA disagreed with 6 or 5% of the Formal cases.

Even though the IPA may disagree with a case resolution for a number of

reasons, in most cases where there is a disagreement, weight given to the credibility of the complainant and/or witnesses appears to have been the difference.

Another reason that disagreements have occurred is because findings that were changed by the Disciplinary Review Panel appeared to be contrary to the evidence in the investigation, and no explanation for the change in the finding was given.

DISAGREED CASES BY THE IPA

CASE #1 – Complainant alleged he was forced to walk to a patrol car even though he sustained a broken leg as a result of the use of force by an officer and was complaining of pain. The findings by the SJPD exonerated the officer. The IPA disagreed because the testimony of an independent witness corroborated the complainant's statement and should have been given greater weight in determining the final outcome.

CASE #2 – Complainant alleged that while officers had him face down on the ground, placing handcuffs on him,

someone standing close by kicked him on the head. The complaint said the footwear worn by the person that kicked him was distinctive, and his observation and description of the footwear was corroborated by one of the officer's assisting with the handcuffing procedure. The findings by the SJPD exonerated the officer because there was no eye witness to identify the officer as the person kicking the complainant. The IPA disagreed because the case could have been proven circumstantially.

CASE #3 – Complainant alleged she was unlawfully arrested for disturbing the peace, and when the officer attempted to take her into custody, the officer unnecessarily twisted her wrists causing severe pain. The findings by the SJPD exonerated the officer. The IPA disagreed because a witness officer felt the subject officer exacerbated the problem by being over bearing and causing the negative response by the complainant that led to her arrest.

CASE #4 – Complainant alleged that an off-duty officer working a pay job made unnecessary and provocative comments to her. The complainant felt the comments were rude and unprofes-

sional. The findings by the SJPD were Not Sustained against the officer. The IPA does not agree with this finding.

Chart D - Cases Agrees with Finding

Agreed	197	98%
Disagreed	4	2%

DISCIPLINARY REVIEW PANEL

An area of concern for the IPA is the process that is used by the Disciplinary Review Panel to determine the final outcome of the investigation of a citizen complaint. The Disciplinary Review Panel is comprised of Command Staff, the Internal Affairs Commander and/or investigator, and the subject officer's direct chain of command. The purpose of the Disciplinary Review Panel is to determine the finding and the type of discipline to recommend to the Chief of Police. By bringing all the members of the chain of command together in one session to decide the finding of a citizen complaint, it expedites the process. The role of the Internal Affairs Unit is to conduct the investigation of a citizen complaint in a thorough, objective, and fair manner. While the

IA Unit is not authorized to make a finding that the investigation supported the allegation, they are authorized to determine that no misconduct occurred thus closing the investigation without sending it to the subject officer's chain of command. The IPA has encountered difficulty in auditing and reconciling the Internal Affairs written investigation, the written investigation by the subject officer's supervisor, and the final recommendation by the Disciplinary Review Panel.

The IPA found that in the audit of three separate citizen complaint investigations conducted by the IA Unit, the evidence supported a sustain finding. The IPA further found that a separate investigation of these same three cases conducted by the subject officer's first line supervisor also indicated that the evidence supported a sustain finding. Nevertheless, the Disciplinary Review Panel did not recommend a sustain finding and there was no written record explaining their decision. The Disciplinary Review Panel leaves no paper trail to audit. This lack of information has been problematic because without detailed information from the Disciplinary

Review Panel explaining their decision, the final outcome is left to speculation, criticism, and a lack of confidence in the process.

A clear, logical, and fair process should be in place to determine or explain how the Disciplinary Review Panel reached a finding. The IA investigators and subject officer's supervisor are in the best position to make a determination on the merits of the investigation because they conducted the investigation. Deciding the finding and the type of discipline to impose, if any, are two very separate and distinct functions. A citizen complaint supported by the evidence should be sustained even if no discipline is imposed.

RECOMMENDATION

The Disciplinary Review Panel should document, at the conclusion of the hearing, how they reached their findings to enable the IPA to conduct an audit.

DISCIPLINE IMPOSED

Of the 228 Formal cases closed in this reporting period, January 1 through December 31, 2000, discipline was imposed in 68 cases, see Illustration D.

Discipline¹¹ is only imposed on Formal complaints, which are the most serious misconduct complaints. This type of complaint is initiated by a citizen (Citizen-Initiated - CI complaints) or by the Chief of Police (Department-Initiated - DI complaints.)

In Illustration D, the disciplines are listed by increased level of severity. When an officer is retired from the department, the open investigation is closed with a No Finding. The retired category is not a disciplinary action, but rather it is included for the purpose of tracking the number of officers who retire prior to the completion of a citizen complaint investigation.

An officer receives discipline based on the entire complaint and not based on each separate allegation. For example, an officer may have had three allegations sustained, but will receive only one discipline such as documented oral

¹¹ See Appedix K (Definition of Disciplines Imposed).

Illustration D - Discipline Imposed for Formal Cases

Discipline Imposed	CI	DI	Total	%
Training and/or Counseling	12	10	22	33%
Documented Oral Counseling (D.O.C.)	13	22	35	52%
Letter of Reprimand (L.O.R.)	2	3	5	8%
10-Hour Suspension	0	1	1	1%
20-Hour Suspension	0	1	1	1%
80-Hour Suspension	0	1	1	1%
Retired	1	2	3	4%
Total	28	40	68	100%
%	41%	59%	100%	

counseling, letter of reprimand, suspension, demotion, transfer, or termination. Also, an officer may receive training and/or counseling, even though the allegation in a complaint is not sustained.

In Illustration D, the three types of discipline imposed for Formal cases with the highest frequency are: Training and/or Informal Counseling (22), Documented Oral Counseling (35), and Letter of Reprimand (5).

In Illustration E, the data reflects the type of allegations where discipline was imposed.

Illustration F depicts five years of Formal disciplines for cases closed

from January 1 through December 31, 1996, 1997, 1998, 1999, and 2000.

Illustration F shows that the disciplines imposed most frequently are Training and/or Counseling, Documented Oral Counseling, Letter of Reprimand and Suspension.

INTERVENTION COUNSELING

The Intervention Counseling (IC) process is an early warning system for identifying and/or correcting possible errant behavior. The process is designed to identify officers that receive three or more Formal complaints or a combination of five or more complaints of any type within a 12-month period. The process for initiating a counseling session used to be dependent on the completion of an investigation, however, IA has started the practice of scheduling and holding counseling sessions when the criteria has been met, even if a case(s) is still open. Once an officer who meets the above criteria has been identified, he/she is required to attend an informal

Illustration E - Allegations of Discipline Imposed for Formal Cases

Type of Discipline Imposed	Allegations					
	IP	MDP	RC	UA	UC	UF
Training and/or Counseling	10	2	3	2	2	3
Documented Oral Counseling (D.O.C.)	19	10	2	0	4	0
Letter of Reprimand (L.O.R.)	1	1	0	0	1	2
10-Hour Suspension	1	0	0	0	0	0
20-Hour Suspension	0	0	0	0	1	0
80-Hour Suspension	0	0	0	0	1	0
Retired	0	0	0	0	3	0
Total Allegations	31	13	5	2	12	5
IP = Improper Procedure MDP = Missing/Damaged Property RC = Rude Conduct UA = Unlawful Arrest UC = Unofficerlike Conduct UF = Unnecessary Force						

Illustration F - Five Year View of Discipline Imposed

Type of Discipline Imposed	1996	1997	1998	1999	2000	Total	%
Training and/or Counseling	21	19	20	11	22	93	26%
Documented Oral Counseling (D.O.C.)	24	15	23	15	35	112	32%
Letter of Reprimand (L.O.R.)	19	13	11	7	5	55	15%
10-Hour Suspension	4	4	4	1	1	14	4%
20-Hour Suspension	0	5	3	5	1	14	4%
40-Hour Suspension	1	2	2	6	0	11	3%
80-Hour Suspension	1	1	2	2	1	7	2%
100-Hour Suspension	0	0	1	0	0	1	0%
120-Hour Suspension	2	2	1	0	0	5	1%
160-Hour Suspension	1	3	1	2	0	7	2%
13 Month Suspension	1	0	0	0	0	1	0%
Demotions / Transfers	0	0	0	1	0	1	0%
Terminations	2	0	1	2	0	5	1%
Retired	3	3	3	2	3	14	4%
Resigned	4	6	5	0	0	15	4%
Total Discipline Imposed	83	73	77	54	68	355	100%
%	23%	21%	22%	15%	19%	100%	

counseling session. Counseling sessions usually include the Deputy Chief of the subject officer's bureau, the Internal Affairs Commander, and the immediate supervisor. This informal counseling session involves a

review of the complaints against the subject officer and is done without regard to the finding. This meeting is intended to be a proactive attempt to address real or perceived unacceptable behavior before it becomes a real

problem. Because this is an informal process, no formal record is made of the substance of the counseling session and only the fact that the officer was counseled is tracked. This past year, thirteen (13) officers received Intervention Counseling, only one received a subsequent complaint.

Illustration G lists the number of IC sessions between January 1 and December 31 for the years 1996 through 2000. As noted in the chart, the total number of intervention counseling sessions has fluctuated slightly from year to year, but the number of repeat complaints has significantly decreased as a result of an intervention counseling session. In 1997, there were 14 subsequent complaints after an intervention counseling session, compared to only one this year.

Illustration G - Intervention Counseling

Time Period of Intervention Counseling	Total Number of IC Sessions	Number of Subsequent Complaints from IC Date to December 31, 2000					
		0	1	2	3	4	5+
Jan. - Dec. 1996	12	1	1	3	2	2	3
Jan. - Dec. 1997	21*	5	3	4	2	3	2
Jan. - Dec. 1998	12	1	3	4	2	0	2
Jan. - Dec. 1999	15	5	3	4	1	2	0
Jan. - Dec. 2000	13	12	1	0	0	0	0

*In 1997, two officers received Intervention Counseling twice. Subsequent complaints for these officers were counted from their first IC date.

8

CASES BY COUNCIL DISTRICTS

In this chapter, the Council District charts show cases and allegations in the respective City Council District. Illustration A lists each Council District and the types of cases that were handled in each District. A Council District¹ indicates the location where the incident occurred and not necessarily where the complainant resides. The term Unknown/Outside City Limits means the location of the incident could not be identified or the incident did not occur within the San José city limits. The first row in Illustration A lists the type of cases (See Appendix C): Formal (CI or DI), Informal (IN), Policy (PO), Procedural (PR), No Boland (NB), Inquiry (IQ) and Citizen Contact (CC). Illustration A shows not just the number of complaints but all the citizen contacts received from January 1 through December 31, 2000. Typically, the highest numbers of cases (198 or 29 % of all complaints) were generated in

Illustration A: Cases by Council District

1 See Appendix I (Council Districts).

Illustration B: Five Year Analysis of Cases by Council District

District 3, largely because of the diverse activities generated in the downtown area. District 5, a neighboring district, has the second highest number of cases (77); District 6 has the third highest number of cases (67); and District 7 has the fourth highest number of cases (61).

Illustration B shows a comparative five-year analysis of classified cases by Council District. The time period is January 1 through December 31 for the year 1996 through 2000. Please note that the total cases received in 1999 and 2000 include Inquiry cases, making the

total higher than other years. In Illustration A, the effects of more scheduled activities in certain districts appears to generate more complaints. This becomes apparent when comparing the complaints generated in Districts 3, 5, 6, and 7 each year.

A Formal complaint is a misconduct complaint that is citizen-initiated (CI) and/or initiated by the Chief of Police (DI). A misconduct complaint involves a complaint that alleges a violation of the law; a violation of a department policy or procedure; or a violation of a city rule or regulation. A single

complaint filed by a citizen may contain multiple allegations.² For example, a citizen may have alleged that unnecessary force was used in his arrest and that the arresting officer called him a “punk” and searched his vehicle without consent. This single complaint may have three different allegations: Unnecessary Force, Rude Conduct, and Unlawful Search.

Illustration C shows the Formal allegations by Council District for the time period of January 1 through December 31, 2000. There were a total of 498 allegations, which were attrib-

² See Appendix J (Misconduct Allegations).

Illustration C: Formal Allegations by Council District

uted to the 220 Formal complaints received in 2000. Only Formal complaints are broken into types of allegations. Council District 3 accounted for 74 Formal complaints, and produced 148 Formal allegations or 30% of all allegations received. This was a slight decrease from last year's figures. In 2000, the most frequent allegation filed was Improper Procedure (IP - 131 allegations or 26% of all allegations), followed by Unnecessary Force (UF -

129 allegations or 26% of all allegations), , and Rude Conduct (RC - 81 allegations or 16% of all allegations).

***EVOLUTION OF
CASE
CLASSIFICATIONS***

Illustration B shows a comparative five-year analysis of classified cases by Council District. The time period is from January 1 through December 31

for the years 1996 through 2000. There is a fluctuation in the number of complaints filed during these five years.

Throughout the past five years, the classification of the different types of cases has changed in an effort to streamline the investigation of complaints.

In order to understand these changes, it is important to go back to 1993 when

the IPA office was established. The first public report issued by the IPA contained statistics for the first quarter of operations, September 13, through December 13, 1993. The IPA reported all complaints, using the then definition of a complaint found in the San José Police Department Duty Manual at that time. However, the SJPD only reported those complaints it classified as misconduct complaints (under 300 yearly) and not those which it entered in a procedural log (over 1,000). These two different types of classifications and the manner reported were problematic and inaccurate as revealed in a subsequent audit. An audit of the procedural log by the IPA revealed that misconduct complaints were buried in the procedural log lowering the total number of complaints reported by the SJPD to the public. In addition to problems with inaccurate accounting, the complaints labeled as procedural were kept in a simple, hand written log, without mention of the subject officer, and with a minimum of information about the nature of the allegation or disposition. This log was used as a catch all for all contacts, including those contacts that were not complaints.

In January 1994, after meetings between the IPA and the Chief of Police, it was agreed to change the process for classifying and handling complaints. Four categories of complaints were created by the SJPD: Formal, Informal, Procedural, and Policy.¹⁴ The Formal, Informal, and Procedural complaints were designed to track the subject officer and strengthen the Intervention Counseling Program, an “early warning” system.

By June 1994, the new complaint classification system was fully implemented. In the first 12 months of operation, (9/93 - 9/94) there was a 40% increase in Formal Citizen Initiated complaints alone.

After a year of the new classification system being fully operational, new problems were encountered. There was no quick process for documenting and tracking, in one central place, the intake of citizen complaints. When an Internal Affairs investigator took the statement of a complainant, at times it took months, before the complaint was classified and entered in the central database. Complainants would call to inquire about their complaints but could not obtain any information because

they were not yet in the database, the complaints could not be located, and on a few occasions, complaints were lost. It was also difficult to accurately count the number of complaints filed in any given year because each IA investigator had in his/her sole possession notes from intakes of citizen complaints that were not yet accounted for.

In the 1995 IPA Midyear Report, the IPA recommended that a central ledger be kept to document all contacts from the public. All Internal Affairs investigators were to immediately enter in this ledger the name of the complainant, intake officer, date, time, nature of the call and how the contact was resolved. For example, once a complaint was classified, it would show that the contact was now “Procedural Complaint Number 95-001.”

By the end of 1995, more adjustments to the central ledger were made because timely follow-up with the entries was lacking. The 1995 IPA Year End report recommended that on a monthly basis, the ledger be reviewed and updated to show the progress with each entry.

During the years 1996 and 1997, the SJPD and the IPA sought ways to create

a more efficient way to track complaints and exchange information. A new comprehensive database was designed and a direct computer link between the two offices was researched.

In 1998, the new database and direct computer link became operational. A central, hand written ledger was no longer necessary because the new database system would now be able to electronically and sequentially track complaints by classification. Contacts from the public that did not pertain to a San José Police Officer or that were informational in nature, or where the citizen was satisfied with the explanation were documented as “Inquiries.” The Inquiry category became a catch-all for contacts from the public but was never intended to supplant legitimate complaints. In 1998, there was a total of 377 contacts classified as Inquiries and 364 were classified as a type of complaint, making a total of 741 citizen contacts for that year. Only 364 classified complaints were reported as part of the chart in Illustration B.

In 1999, an audit of the Inquiries revealed that this category contained a mixture of citizen contacts, including some that should have been com-

plaints, contacts that did not pertain to the SJPd and contacts where the citizen was merely asking a question. By 1999, there were more contacts from the public classified by Internal Affairs as Inquiries (436) than the sum total of all the other types of complaints (349). In addition, another category was created to track those withdrawn complaints lacking a signed Boland Admonishment, as required by state law.

During 2000, the IPA and the IA Commander closely monitored the classification of complaints, especially those classified as Inquiries. The Inquiry classification has helped to streamline complaints and the rise in number is reflective of the good communication and interpersonal skills of the intake officers at Internal Affairs. While these public contacts may start with an expression of dissatisfaction with the conduct of a San José police officer, they usually end with the caller satisfied with the explanation given. Inquiries will be closely reviewed to:

- insure that this type of case alleges dissatisfaction with police service received from the SJPd; (or contain the elements of a complaint)

- insure the complainant is satisfied with the explanation given and does not wish to pursue a complaint;
- insure the cases are properly closed without requiring further investigation, but are subject to being reopened as a complaint.

Inquiries will no longer include contacts from the public that do not pertain to the SJPd or are informational only. These type of contacts will be recorded as Citizen Contacts and will be tracked only for assessing human resources needs.

It is important that all citizen contacts be documented even if not all contacts require an investigation. Under-reporting of citizen complaints undermines public confidence in the citizen complaint process.

An additional statistical area tracked by the IPA is the background of the subject officers who are listed in Formal (Citizen-Initiated and Department-Initiated), Informal, and Procedural complaints. Specific areas include the subject officer's work unit, gender, and years of experience with the SJPD at the time the incident occurred. It should be noted that cases that are classified as Inquiries do not track with the subject officer. Therefore, they are excluded from the statistical analyst.

GENDER OF THE SUBJECT OFFICER

Illustration A reports the gender of the subject officers from complaints received between January 1 through December 31, 2000. Data was rounded

off to the nearest percent. Of the 1371 officers working for the SJPD, 32% of the officers received a complaint.

Females, who make up 9% of the force, were subject officers in 9% of the complaints filed.

ETHNICITY OF THE SUBJECT OFFICER

Illustration B shows the ethnicity of the subject officers employed in the SJPD as of December 31, 2000. These statistics are from the complaints received between January 1 and December 31, 2000. Data was rounded off to the nearest percent. The data shows that in every ethnicity there was no more than a one-percent deviation from the representative number.

Illustration A: Gender of Subject Officer

9

STATISTICAL BACKGROUND OF SUBJECT OFFICER

Illustration B: Ethnicity of Subject Officer

with 86 complaints. The 16+ year group makes up 32% of all officers in the SJPD and accounted for 20% of all complaints.

Officers with two to four years of experience received the most Unnecessary Force allegations, 38, see Illustration D. Overall, the officers with less than one year of experience have the least number of allegations filed against them. This is because these officers were under close supervision and scrutiny, they were involved in training at the academy and they were working under field training officers.

YEARS OF EXPERIENCE OF THE SUBJECT OFFICER

Illustration C and Illustration D present the subject officers’ years of experience in the SJPD as of December 31, 2000. These statistics are from the complaints received between January 1 and December 31, 2000. Data was rounded off to the nearest percent.

Officers with two to four years of experience received the highest number of complaints. These officers account for 16% of all officers employed by the SJPD and were responsible for 26% (113) of all the complaints received. This is a significant decrease from last year’s figure of 41%. Officers with more than 16 years of experience followed

SUBJECT OFFICER WITH ONE OR MORE COMPLAINTS

Illustration E reflects the number of subject officers by the number of complaints filed against them. The data collected is from a five year time period between January 1 through December 31, 1996, 1997, 1998, 1999, and 2000. The highest number of different officers receiving two or more complaints was in the 1996 calendar year, 110. A total of 392 different officers received at least one complaint in 1996. From January 1 through December 31, 1997, multiple

Illustration C: Subject Officer’s Years of Experience

Illustration D: Allegations by Officer’s Years of Experience

complaints were filed against 77 different officers, while 253 officers received one complaint. During the 1998 calendar year, multiple complaints were filed against 66 officers, a 14% percent decrease from 1997. There were 207 officers who received one complaint in 1998, an 18% percent decrease from	1997. During the 1999 calendar year, multiple complaints were filed against 73 officers, a ten percent (10%) increase over 1998. There was a six percent (6%) decrease in the number of officers receiving one complaint, from 207 in 1998 to 220 complaints in 1999. In comparison, during the 2000 calendar	year, multiple complaints were filed against 83 different officers, a 14% increase over 1999. There was a nine percent (9%) increase in the number of officers receiving one complaint, from 220 in 1999, to 240 complaints in 2000.
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Illustration E: Subject Officer by Number of Complaints

Illustration F: Subject Officers Receiving Complaints from Complainants by Ethnicity

SUBJECT OFFICERS
RECEIVING COMPLAINTS
FROM COMPLAINANTS BY
ETHNICITY

Illustration F presents a view of subject officers receiving complaints from complainants by ethnicity for the period of January 1 through December 31, 2000. From each complaint, there may be more than one complainant and/or more than one subject officer. In the case of multiple complainants, only the primary complainant is counted. This is in contrast to the tabulation for the subject officer, where each officer

involved in a case is tracked. The illustration shows the ethnicity of the primary complainant with the corresponding ethnicity for the subject officer(s) involved in a complaint. The primary complainant is the first complainant listed in a case or the complainant that was directly involved in the incident that resulted in the complaint against the subject officer(s). As an example; a case involves three officers (African American, Hispanic/Latino, White/European American) and two complainants. The primary complainant is Hispanic/Latino and the

co-complainant is White/European American. In this case because only the primary complainant is counted, the table would show a (1) in the column for the Hispanic/Latino complainant. In the column for the Subject Officers, African American, Hispanic/Latino, and White/European American would each get a (1) in their respective columns. It should be noted that excluded from the table is the figure for cases where an officer was not or could not be identified or the complaint was a policy violation. Policy cases are those cases that are determined to be a violation

against a department policy and not a complaint against an officer's action or inaction. Department-Initiated cases are investigations that are initiated by the Chief of Police. Department-Initiated investigation can either be administrative or criminal in nature and are most often personnel related or involve an unknown complaint.

The purpose of Illustration 9F is to show the ethnic makeup of officers and the complainants and to illustrate that no one ethnicity is being singled out or targeted for enforcement. Even though the figures may show a trend, the fact that a significant number of complainants refuse to complete the voluntary questionnaire affects the reliability of the data collected.

The Hispanic/Latino complainant group had the highest percentage (36%) filing of complaints. Most often this group files a complaint against European American officers (59%) and Hispanic/Latino officers (23%) of the time. Looking at Illustration F, complainants from every ethnicity filed more complaints against European American officers, than any other ethnicity. This is to be expected because European American officers make up 60% of the

department. Even though this is the largest ethnicity group employed by the SJPd, they generate the fewest number of complaints in proportion to the number of officers.

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BACKGROUND OF COMPLAINANT BY COUNCIL DISTRICT

The Office of the Independent Police Auditor (IPA) utilizes a Voluntary Questionnaire to request information about the statistical background of the complainants. The purpose of the Voluntary Questionnaire is to gather personal data from the complainant. This information is used to monitor community trends by ethnicity and helps to design IPA services around community needs and expectations. The Voluntary Questionnaire has been in place since 1995 and has been used to track and compare complainant data year to year.

Illustration A: Gender of the Complainant by Council District.

The complainant is asked to respond to seven questions: occupation, educational level, ethnicity, primary language, gender, age range, and how the complainant was referred to either the IPA or the Internal Affairs Unit. In an effort to maximize the collection of data, an effort is made to ask questions about the voluntary questionnaire at the front end of a complainant interview. Because each complaint may have more than one complainant, the total number of questionnaires may be greater than the number of complaints received. In subsequent diagrams, Council Districts are used to indicate the location where an incident occurred and the personal data of the complainant filing the complaint. The unknown/outside City Limits means that the location of the incident could not be identified or did not occur within an acknowledged Council District.

GENDER OF THE COMPLAINANT

Illustration A identifies by Council District, the gender of the complainant for the period of January 1 through December 31, 2000. During the 2000 calendar year there was a total of 423 complainants that filed a complaint. As

noted in Illustration A, there were more male complainants (62%) than female complainants (38%) that filed a complaint. This is a 5% increase in the number of female complainants over the year prior.

ETHNICITY OF THE COMPLAINANT

The ethnicity of the complainant is shown in Appendix L. The data collected is by Council District for the period of January 1 through December 31, 2000. As noted in this appendix, Council Districts 3, 5 & 7 generate the majority of the complaints filed. Hispanics/Latino filed the most complaints, 160 complaints (38%), a 6% increase over the prior year. European Americans filed 106 complaints (25%) an 8% increase and African Americans filed 55 complaints (13%) a 3% increase over prior year complaints filed.

Because new 2000 Census figures have not been released, as of the writing of this section, 1990 U.S. Census figures were used for this report. Using the old Census figures, the percentage for Hispanic/Latino filing a complaint remains within the represented group living in San José. As in previous

years, the percentage for the European Americans (25%) filing a complaint remains low, even though they make up 43% of the population living in San José. The percentage for African Americans (13%) is high in comparison to the African Americans (4.5%) representation in San José. It should be noted that 52 complainants (12%) decline to answer the Voluntary Questionnaire, making it difficult to determine if an ethnic group listed above may have had more police contacts that resulted in a complaint.

AGE OF THE COMPLAINANT

The age of the complainant is shown in Appendix M. The chart shows the age of the complainants by Council Districts for the period of January 1 through December 31, 2000. As in previous years, complainants between the age of 31–59 and 18–30, filed the majority of complaints. This past year, there was an interesting rise in the number of complainants over 60 years of age that filed complaints. In 1999, this age group filed only 2% or 9 complaints, while this past year they filed 9% or 36 complaints. Staff believes this rise may be attributed to

IPA community outreach efforts that have typically been attended by more senior community members.

EDUCATION LEVEL OF THE COMPLAINANT

Illustration B lists the educational level of complainants by Council Districts for the period of January 1 through December 31, 2000. In this illustration, almost half (41%) of the complainants have received an education beyond the twelfth grade. It's interesting to note that of the total number of complainants filing a complaint, 41% have attended college, with 9% of the total number having attended college for more than four years. The above figures tend to dispel the assumption that most complainants come from the uneducated sector of the community.

COMPLAINANT'S OCCUPATION

The occupation of the complainants is shown in Appendix N. The chart shows the occupation of a complainant for the period of January 1 through December 31, 2000. As noted in the chart most of the complainants are working laborer (24%) such as driver, janitor, etc.;

Illustration B: Education Level of Complainants by Council District

working professional (8%) such as attorney, manager, etc.; working technical (5%) such as engineer, technician, etc.; or student (9%). It should be noted that 69 or 16% of the complainants decline to answer this portion of the Voluntary Questionnaire.

The Office of the Independent Police Auditor (IPA) realized several significant accomplishments over the past year. The relocation of the office, from its previous location at 4 North Second Street, Suite 650 was finalized on August 5, 2000, when the IPA took possession of its new office space, next door in the lower level at 2 North Second Street, Suite 93. The new location affords the IPA with many new amenities, including space for the two additional staff members and an accessible location for the many citizens that use the services of the IPA.

The new location keeps the IPA in a central downtown location that is close to several forms of public transportation and in a location where historically the greatest percentage of citizens that tend to utilize the services of the IPA reside, work, or play. The new office space compliments a professional IPA staff and provides a professional environment for the residents of San José to access the critical services provided by the IPA.

As a part of the 1999 Year End Report, the IPA recommended several service enhancements to help strengthen the complaint process to meet citizen

expectations. As a result of its recommendation to enhance service delivery through personalized contact, on August 8, 2000, a Complaint Investigator and an Office Specialist were hired and began their tenure with the IPA. The Complaint Investigator comes to the IPA with a well-rounded background in private corporate security, while the Office Specialist comes to the IPA with experience in the private sector as an Administrative Assistant. With the addition of two new positions, the IPA continues to move forward and is better able to meet the stringent demands expected by the community it serves.

The IPA also recommended adding subpoena power for the San José Police Department Internal Affairs Unit, to assist in compelling civilian witnesses to divulge information critical to an investigation, release, and/or provide physical evidence such as medical records that may be integral to an investigation. The City Council adopted this recommendation and authorized subpoena power to the Internal Affairs Unit. The IPA's requests to subpoena evidence or witnesses will be processed and handled by IA.

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CONCLUSION

The IPA also proposed a “Voluntary Mediation Program” and the development of specialized training courses to enhance the communication skills of the officers assigned to meet and greet the public. The recommendations for developing a “Mediation Program” and “Specialized Communications Training Courses” were adopted by the Chief of Police and the City Council. A “Voluntary Mediation Program” will be implemented in the 2001 calendar year. The communication courses designed to address the communication issue have been developed and constitute a three hour block of training and will be taught as part of the annual Advanced Officer (AO) training¹ during the 2001 calendar year.

and create a vertical review process that brings together city departments that directly or indirectly address police misconduct .

A major goal for the 2001 calendar year is for the IPA to take a proactive approach to civilian oversight of police practices. This proactive approach will include exploring innovative ways to reduce the frequency of complaints alleged to have violated policies stemming from prior IPA recommendations, identify police conduct that is resulting in complaints and/or law suits,

¹ Advanced Officer Training is a requirement for police officers to retain certification through the Police Officers Standards and Training (POST). The State of California through POST requires police officers to receive 24 hours of AO training every two years.

APPENDIX A

COMMUNITY PRESENTATIONS & EVENTS

January

- *Presentation to City Council Candidates
 - *BAPON, Novato, CA
 - *Immigrant Needs Study

February

- *District 3 Neighborhood Summit
- *Presentation to the Riverside, CA City Council

March

- *The NAACP Western Regional Alliance Against Police Brutality Town Hall Meeting
- *Lincoln Law School Criminal Law Panel Discussion
- *Sunrise Valley Neighborhood Association – Dist. 2

April

- *Presentation of the 1999 Year End Report to the City Council and the Public
 - *Catholic Charities Wellness Program Parent Graduation – Dist. 7
 - *BAPON, San José
 - *Police Academy

May

- *Monterey County Grand Jury
- *National Council on La Raza

June

- *Clean Slate – Dist. 3
- *Hank Lopez Community Center – Dist. 5
- *Human Relations Commission of Santa Clara County
 - *First Annual Youth Conference at the Washington United Youth Center – Dist. 3

- *FTO Recruit In-House Academy

- *Northside Neighborhood Association
 - Resource Fair – Dist. 3

- *PRNS Senior Staff Meeting

- *Solari Community Center Resource Fair – Dist. 7

- *Washington United Youth Center -Teen Moms Program – Dist. 3

- *Washington United Youth Center -Young Women's Empowerment Program – Dist. 3

- *Washington United Youth Center Community Chit Chat – Dist. 3

- *Presentation for Los Angeles Police Department Rampart Review Panel

July

- *City Team Ministries - House of Grace – Dist. 3
- *Catholic Charities Wellness Village – Dist. 7

August

- *Victim Witness Assistance Center – Dist. 3
- *MACSA - The Male Involvement Group – Dist. 5
- *MACSA – The Male Involvement Group – Dist. 5
- *MACSA - The Male Involvement Group – Dist. 5
 - *Victim Witness Assistance Center – Dist. 3
 - *Catholic Charities Family Day at Solari Community Center – Dist. 7

September

- *City of San José Housing Department
- *Alice Woody's Day in the Park – Dist. 8
- *Santa Clara County Network for a Hate-Free Community
- *San José Police Department's Advancing Community Policing Grant
 - *District 3 Community Celebration
 - *NACOLE Conference

October

- *Leyva Neighborhood Association – Dist. 8
- *United Neighborhood of Santa Clara County Resource Fair
- *Washington United Youth Center Young Women's
Empowerment Group – Dist. 3
- *Washington United Youth Center Presentation
For Moms – Dist. 3
- *Washington United Youth Center Parenting
Class Presentation – Dist. 3
- *Washington United Youth Center Community Chit Chat – Dist. 3
 - *IPAAC Meeting
 - *Presentation in El Paso, Texas

November

- *Clean Slate Graduation – Dist. 3
- *MACSA – Street Reach – Dist. 5
- *MACSA – Middle School Kids – Dist. 5
- *Indo-Chinese Resettlement and Cultural Center – Dist. 3

December

- *IPA/Internal Affairs Unit Training
- *IPA/IPAAC Open House
- *San José/Evergreen Community College Police
Department – Dist. 8
- *MACSA – Presentation to Staff – Dist. 5
- *Edenvale Neighborhood Association – Dist. 2
- *Symposium on Community - Police Relations - CAHRO

APPENDIX B

REFERRAL SITES BY COUNCIL DISTRICT

DISTRICT 2

Southside Youth & Senior Program
5585 Cottle Road

DISTRICT 3

Asian Law Alliance
184 East Jackson Street

Catholic Charities
645 Wool Creek Drive

City Team Ministries - House of Grace
445 Wooster Avenue

Clean Slate
99 Notre Dame

Gardner Community Center
520 West Virginia

IndoChinese Resettlement and Cultural Center
399 W. San Carlos Street

Japanese American Community Center
588 N. Fourth Street

Mexican Consulate
540 North First Street

NAACP
304 N. Sixth Street

Next Door
1181 N. Fourth Street

Santa Clara County Victim Witness Assistance Center
777 N. First Street, Suite #220

Santa Clara County Victim Witness Assistance Center
777 N. First Street, Suite #320

South Bay Islamic Center
325 North Third Street

Washington United Youth Center
921 S. First Street

DISTRICT 4

City Team Ministries
Men's Recovery – Rescue Mission & Family Outreach
1297 N. 13th.

City Team Ministries-Youth Outreach
2302 Zanker Road

DISTRICT 5

Arbuckle Neighborhood Action Center
1050 McCreery Avenue, Suite #1

East San José Community Law Center
1765 Alum Rock

MACSA
130 North Jackson Avenue

MACSA - Youth Center
660 Sinclair Drive

DISTRICT 6

Billy DeFrank Center
175 Stockton Avenue

Korean American Community Services
1800 Fruitdale Avenue

Sherman Oaks Community Center
1800 A Fruitdale Avenue

The Burbank & Midtown Community Center
105 N. Bascom Avenue, Suite #104

DISTRICT 7

Alma Center
136 West Alma Avenue

Solari Community Center
3590 Cas Drive

DISTRICT 8

San José Police Substation
1155 S. King Road

San José/Evergreen Community Police Department
3095 Yerba Buena Road

DISTRICT 10

San José Police Substation
947 Blossom Hill Road

OUTSIDE OF THE CITY OF SAN JOSE

Council on American Islamic Relations
3000 Scott Blvd., #104, Santa Clara

APPENDIX C

CLASSIFICATION OF CASES

A complaint is an act of expressed dissatisfaction which relates to Department operations, personnel conduct or unlawful acts. A complaint involves an administrative process where discipline may be imposed by the SJPD and must not be confused with criminal charges which are filed by the District Attorney's office.

There are seven classifications of cases:

1. **Formal Complaint:** After the initial investigation by the Intake Officer, the Department determines that the facts of the allegations are such, that should they be proven, the allegation would amount to a violation of the law or of the Department policies, procedures, rules or regulations.
 - a. **Civilian-Initiated (CI) Complaint** initiated by a citizen¹ alleging misconduct on the part of a member of the SJPD.
 - b. **Department-Initiated (DI) Complaint** 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.
2. **Informal (IN) Complaint** involve allegations of minor transgressions on the part of a subject officer² which may be handled informally by bringing the matter to the attention of the officer's chain of command at the complainant's request.³ At the end of the investigation, the assigned finding is "Supervisor Review." This is typically a 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 Internal Affairs Unit is then obligated to investigate this complaint as such. The complainant has ultimate control as to whether to treat the complaint as Formal or Informal.
3. **Procedural (PR) Complaint** is 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."

¹ A citizen is denoted as an individual, not reflective of U.S. citizenship. Any member of the public may file a complaint. The complaint however, must be one that is directly affected by the wrongdoing of the officer involved or one who witnessed the incident.

² Subject officer refers to the officer of whom the complaint is about.

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

(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 Internal Affairs officer discovers that the complainant is on parole and has a search clause. The case will be closed with a finding of “No Misconduct.”

4. **Policy (PO) Complaint** pertains 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.
5. **No Boland (NB)** is a case that is closed within 30 days from the date the case was received due to the complainant failing to sign the Boland Admonishment. State law requires that the complainant sign a Boland Admonishment form in order to have the complaint fully investigated.
6. **Inquiry (IN)** refers to a case that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen’s satisfaction can be reclassified and be fully investigated.
7. **Citizen Contact (CC)** refers to an informational type of contact from the public.

APPENDIX D

BOLAND ADMONISHMENT

SAN JOSE POLICE DEPARTMENT

INTERNAL AFFAIRS UNIT
BOLAND ADMONISHMENT

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

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

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

I have read and understood the above statement.

X

Signature of Complainant

X

Date

Print Name Here

IA Complaint No. (if known)

Date Complaint Initiated at IPA

SJPD Case Number or Cite # (if known)

APPENDIX E

TYPE OF FORCE USED

Type of Alleged UF	Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999		Jan. - Dec. 2000	
	Number	%	Number	%	Number	%	Number	%
Baton	27	13%	25	13%	17	8%	10	7%
Canines	0	0%	4	2%	0	0%	0	0%
Car (officer)	14	6%	9	5%	10	5%	10	7%
Car (complainant)	2	1%	2	1%	3	1%	1	1%
Chemical Agent	12	6%	10	5%	10	5%	3	2%
Gun (officer)	3	1%	5	3%	1	0%	1	1%
Gun (complainant)	0	0%	3	2%	0	0%	0	0%
Feet	25	12%	20	10%	19	9%	15	10%
Ground	19	9%	16	8%	21	10%	9	6%
Hands	78	36%	66	34%	85	40%	64	44%
Handcuffs (tight)	12	6%	13	7%	9	4%	7	5%
Knee	9	4%	12	6%	12	6%	6	4%
Object	2	1%	2	1%	1	0%	4	3%
Other	11	5%	6	3%	13	6%	7	5%
Unknown	2	1%	1	1%	11	5%	7	5%
Total	216	100%	194	100%	212	100%	144	100%

APPENDIX F

BODY AREA AFFLICTED BY FORCE

Area Afflicted by Alleged UF	Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999		Jan. - Dec. 2000	
	Number	%	Number	%	Number	%	Number	%
Head	41	30%	34	30%	27	20%	20	22%
Torso	18	13%	14	12%	17	13%	16	18%
Limbs	50	36%	35	31%	45	34%	35	38%
MBP	21	15%	27	24%	30	22%	11	12%
Unknown	7	5%	4	4%	15	11%	9	10%
Total	137	100%	114	100%	134	100%	91	100%

APPENDIX G

DEGREE OF INJURY

Degree of Injury	Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999		Jan. - Dec. 2000	
	Number	%	Number	%	Number	%	Number	%
Major	19	18%	15	17%	15	13%	12	14%
Moderate	24	22%	18	20%	5	4%	5	6%
Minor	48	44%	40	45%	55	48%	47	56%
Non-Visible	9	8%	10	11%	24	21%	7	8%
Unknown	8	7%	5	6%	15	13%	13	15%
Total	108	100%	88	100%	114	100%	84	100%

APPENDIX H

UNNECESSARY FORCE

The San José Police Department (SJPD) has guidelines, policies and procedures for the officers on the subject of the use of force¹, what is considered objectively reasonable force², what and when the escalation of force³ occurred, and reporting requirements of the use of force⁴ from the officers. The officer's supervisor or command staff do investigate the force used by the officers; however, the investigations are a case by case basis only. The Office of the Independent Police Auditor (IPA) reviews the investigations of these cases and looks for patterns and trends arising from all these investigations. The objective is to look for problem areas and recommend preventive plans for the Department. Therefore, in an effort to analyze the Use of Force investigations, the Use of Force complaints are divided into two categories: Class I and Class II. Class I cases involve those complaints in which the complainant required emergency medical attention for their injuries. Class II cases include those complaints in which the complainant did not require immediate medical care.

- 1 The San José Police Department Duty Manual, L1500, for the Use of Force is as follows: At times, officers are confronted with situations where control is required to effect arrests or protect the public safety. Attempts will be made to achieve control through advice, warnings, and persuasion. However, in situations where resistance, a threat to life, or a threat of physical force against officers or others is encountered and verbal persuasion has not been effective, is not feasible, or would appear to be ineffective, an officer may use objectively reasonable force. In the event deadly force is utilized, a thorough investigation will be conducted. All use of force will be thoroughly documented, reviewed by supervisory or command staff, and investigated when necessary.
- 2 The San José Police Department Duty Manual, L1501.1, for Objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force. Objectively reasonable force is not judged with hindsight, and will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. This policy guideline applies to all uses of force, including deadly force.
- 3 The San José Police Department Duty Manual, L1501.5, for Escalation of force: The general escalation of force to effect an arrest, prevent an escape, or overcome resistance is as follows: Voice; Hands; Chemical agent; Taser, electronic restraining device (ERD), electronic restraint transportation belt (ERTB), if available; Baton, canines, Yawara stick, if available; Carotid restraint; Less lethal projectiles, if available; Deadly force. Each situation is unique. The Department relies on the officer's judgment to employ an objectively reasonable level of force under each unique circumstance. Each incident in which force is used must meet the conditions specified in the Department. There is no requirement that Department members utilize each level before progressing to a higher level, as long as each level of force utilized is objectively reasonable under the circumstances.
- 4 The San José Police Department Duty Manual, L1524, for Reporting Use of other than deadly force: When using O.C. Spray, the ERD, the Taser, the baton, Yawara stick, "Carotid Restraint," canines, less lethal projectiles, or any other physical force in those instances that threaten the safety of an officer or other person, or to subdue an arrest combative individuals, the details of such use will be reported on a "Crime Report" (Form 200-2). Details will include: (1) Type of force used; (2) Reason for the use of force; (3) Extent of injury to the suspect; and (4) Other pertinent information the officer wishes to include. If the incident preceding the use of force would normally be reported on a "Crime Report," the details of the use of such force may be included in that report.

Each Use of Force complaint may allege more than one type of force and body area afflicted by the alleged use of force. However, only one count for degree of injury resulting from the alleged type of force used. The degree of injury ranged from minor to major, and included categories for “none” or “unknown” degrees of injury. For example, a citizen alleged when the officer effected the arrest, the officer pushed him/her to the ground before placing on a pair of tight handcuffs. The number accounted for the type of force used would be two: one for the use of hands and one for the use of handcuffs. The body area afflicted would be the limbs for the tight handcuffs and if bruising of the shoulder occurred from the impact of the fall to the ground, the torso area would be counted also as body area afflicted by the alleged force used. The degree of injury would be minor from the descriptive word of bruising; however, if the tight handcuffs caused laceration and required medical attention, the degree of injury would be counted as moderate.

The categories for type of force are

- **baton** was used to subdue a combative suspect by striking or hitting;
- **canines** was used to stop a fleeing complainant by biting;
- **car** such as slammed by the police car on the complainant's legs, pushed against the hood of the complainant's car, or thrown against a truck;
- **chemical agent** such as maced in the face;
- **gun** such as pointed at head or temple;
- **feet** such as leg sweeps or kicking the complainant;
- **ground** includes allegations of being pushed to the ground or being hit/slammed against the ground;
- **hands** were used in grabbing, pushing, pulling, or slapping the complainant;
- **tight handcuffs** causing pain or injury to the wrists of the complainant;
- **knee** such as kneed in the stomach or kneed in the back;
- **object** includes the officer's use of a flashlight;
- **other** includes the officer's use of a fence, garage door, wall, or table; and/or
- **unknown** because the case is an open investigation and the type of force used is unclear at the present time.

The body area afflicted by the use of force are

- **head** include hairs, eyes, nose, mouth, ears, or neck area;
- **torso** include the back, the stomach, the shoulder, or the hip;
- **limbs** include hands, arms and legs;
- **multiple body parts (MBP)** are injury to the head, the torso and the limbs;
- **unknown** because the case is an open investigation and the body area afflicted by the use of force is unclear at the present time.

APPENDIX J

MISCONDUCT ALLEGATIONS

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

Discrimination/Harassment (DH) allegation is used to classify all types of discrimination or harassment either racial, sexual, etc.

Excessive Police Service (ES) allegation arises where a citizen feels unjustifiably harassed by a police officer or by multiple police officers on more than one occasion.

Failure To Take Action (FA) allegation involves no police service given to the citizen.

Improper Procedure (IP) allegation involves a violation of City policy or of a regulation in the San José Police Department Duty Manual.

Missing/Damaged Property (MDP) allegation arises when property is missing or damage.

Rude Conduct (RC) allegation is abusive behavior or language, threats, profanity, and poor attitude while on duty.

Unlawful Arrest (UA) allegation is an arrest that is not lawfully conducted.

Unofficerlike Conduct (UC) allegation deals specifically with off-duty behavior. The conduct, which is the subject of Unofficerlike Conduct complaints often relates to violation of laws, drug or alcohol use, misuse of City property, gratuities, bribes and abuse of authority.

Unnecessary Force (UF) allegation is the level of force used on the citizen is excessive or improper.

Unlawful Search (US) allegation is a search that is not lawfully conducted.

APPENDIX K

DEFINITION OF DISCIPLINE IMPOSED

A discipline is an action taken to correct the conduct or performance of an officer who fails to meet established standards. It may mean removal of an officer from the San José Police Department (SJPD) whose misconduct or continued poor performance makes termination the only recourse. Discipline may be **informal** - conducted by first level supervisors without formal due process requirements. Informal discipline includes: Training, Informal Counseling, Documented Oral Counseling, and Letter of Reprimand. Discipline may be **formal** - authorized by the appointing authority with specific due process requirements, including advance notice, opportunity to respond and formal appeal procedures. The appointing authority for the SJPD is the Chief of Police.¹ Formal disciplinary action is indicated in cases of serious misconduct or where a pattern of poor performance is not corrected by other methods. Formal discipline includes: Suspension, Salary Step Reduction, Demotion, Transfer, and Termination. A notice of suspension, demotion, or termination shall be included in an officer's personnel file.² All disciplinary actions may be taken by the Chief of Police subject to the provisions of the Charter of the City of San Jose, rules of the Civil Service Commission and, when necessary, the approval of the City Manager.³

TRAINING: Training is used on an officer who demonstrates problems of knowledge, judgment or common sense. Misconduct investigations which result in a finding of "Exonerated" or "Not Sustained" will not relieve the supervisors or commanders from the responsibility of counseling or training the officer whose conduct or performance is unacceptable to the Department.⁴

INFORMAL COUNSELING: Counseling is an informal one-on-one discussion with an officer. Counseling is used for several purposes. It may be designed to develop the officer's skills and abilities and understanding of the job. Counseling may clarify standards and rules, evaluate the officer's strengths and weaknesses, seek information, or solve problems. It may also be the immediate corrective reaction when misconduct or poor performance is observed.

DOCUMENTED ORAL COUNSELING (D.O.C.): Documented Oral Counseling is a verbal notification that performance or behavior needs improvement, and a warning of potential future discipline if improvement is not forthcoming. Documented Oral Counseling⁵ occurs when a supervisor makes a written record documenting an oral counseling session with an officer, specifying performance or behavior needs improvement with goals or timetable for improvement

1 See San José Police Department Duty Manual Section C1617.

2 See San José Police Department Duty Manual Section C1613.10.

3 See San José Police Department Duty Manual Section C 1613.

4 See San José Police Department Duty Manual Section C 1637.

documented. A memo documenting oral counseling does not become part of an officer's personnel file. If a documented oral counseling is the disposition of an Internal Affairs investigation, it will be part of that file and will be retained in accordance with Records Retention guidelines.

LETTER OF REPRIMAND (L.O.R.): A Letter of Reprimand⁶ is a formal discipline and is included in an officer's personnel file. A Letter of Reprimand is a written notice to an officer that their behavior or performance is unacceptable and further disciplinary action will be taken unless improvement occurs.

SUSPENSION: When officers are suspended, they are given a designated number of hours during which they are prohibited from working. These hours are non-compensated. The suspension is included in an officer's personnel file.

SALARY STEP REDUCTION: A decrease in salary of one step (5%) or more for a specified period of time until a certain event occurs.

DEMOTION: The officer is removed from one classification and appointed to another lower classification with a lower salary range as discipline for misconduct. When officers are demoted, the demotion is included in an officer's personnel file.

TRANSFER: When the officer is transferred to another unit and/or bureau, the transfer is included in an officer's personnel file.

TERMINATION: When officers are terminated for a serious or ongoing misconduct, their employment as members of the San José Police Department is formally ended. The dismissal shall be included in an officer's personnel file.

5 See San José Police Department Duty Manual Section C 1613.1.

6 See San José Police Department Duty Manual Section C1613.5.

APPENDIX L

ETHNICITY OF THE COMPLAINANT

Council Districts	African American	Asian American	European American	Filipino American	Hispanic Latino	Native American	Vietnamese	Other	Decline
DISTRICT 1	1	3	3	0	0	0	0	2	0
DISTRICT 2	6	1	6	0	6	1	1	3	3
DISTRICT 3	16	1	31	0	57	3	2	2	9
DISTRICT 4	3	2	3	0	5	0	2	0	3
DISTRICT 5	4	2	8	1	35	2	1	1	9
DISTRICT 6	6	0	19	1	16	0	1	0	6
DISTRICT 7	9	0	9	0	16	0	2	1	4
DISTRICT 8	5	1	4	1	10	1	3	1	6
DISTRICT 9	2	2	8	1	8	0	0	0	6
DISTRICT 10	2	0	9	1	2	1	0	1	2
Unknown/Outside City Limits	1	1	6	0	5	0	0	1	4
Total Complainants	55	13	106	5	160	8	12	12	52
%	13%	3%	25%	1%	38%	2%	3%	3%	12%
% of San Jose Population	4.5%	21%	43%	0%	31%	0%	.5%	0%	0%

APPENDIX M

AGE OF THE COMPLAINANT

Council Districts	Under 18	18-30	31-59	60+	Decline
DISTRICT 1	1	1	5	2	0
DISTRICT 2	2	9	13	0	3
DISTRICT 3	1	47	57	7	10
DISTRICT 4	0	3	9	2	4
DISTRICT 5	4	18	27	5	8
DISTRICT 6	0	10	26	7	6
DISTRICT 7	0	7	27	3	4
DISTRICT 8	2	3	14	6	7
DISTRICT 9	2	5	10	1	6
DISTRICT 10	0	6	8	2	2
Unknown/Outside City Limits	2	3	12	1	3
Total Complainants	14	112	208	36	53
%	3%	26%	49%	9%	13%

APPENDIX N

COMPLAINANT'S OCCUPATION

Occupation		%
Administration	46	11%
City or Govt. Employee	6	1%
Decline	69	16%
Disabled	13	3%
Homemaker	11	3%
Laborer	100	24%
Professional	33	8%
Retired	26	6%
Self-employed	14	3%
Services	29	7%
Student	36	9%
Technical	20	5%
Unemployed	20	5%
Total Complainants	423	100%

APPENDIX O

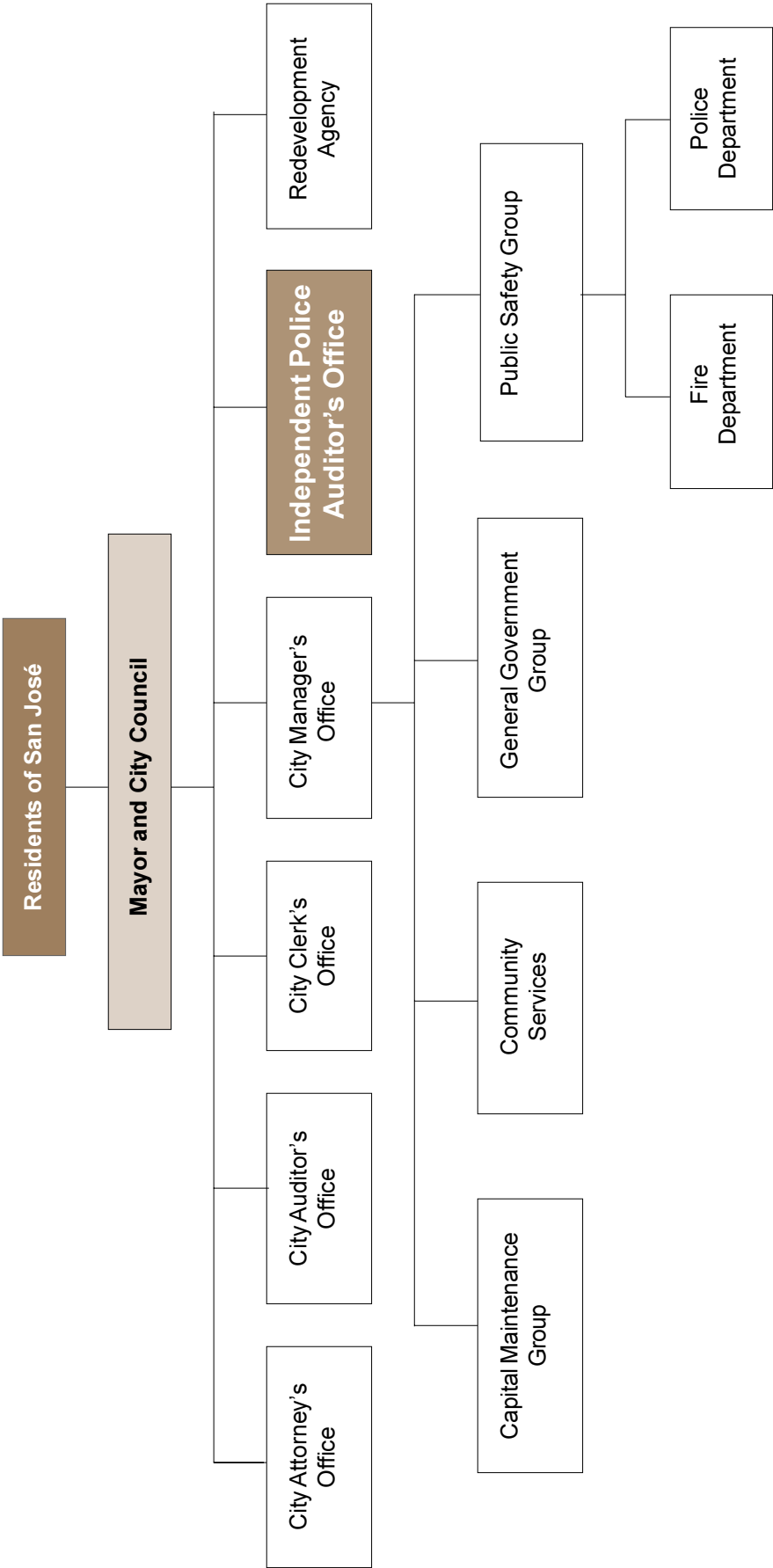
DEFINITION OF FINDINGS

A Formal complaint is a serious misconduct on the part of a member of the San José Police Department (SJPD). The complaint alleged a serious violation of the City policy, the Department policy or the law by an officer. A Formal complaint may be citizen-initiated (CI) or department-initiated (DI), which is a complaint initiated by the Chief of Police. The findings¹ available for a Formal complaint are:

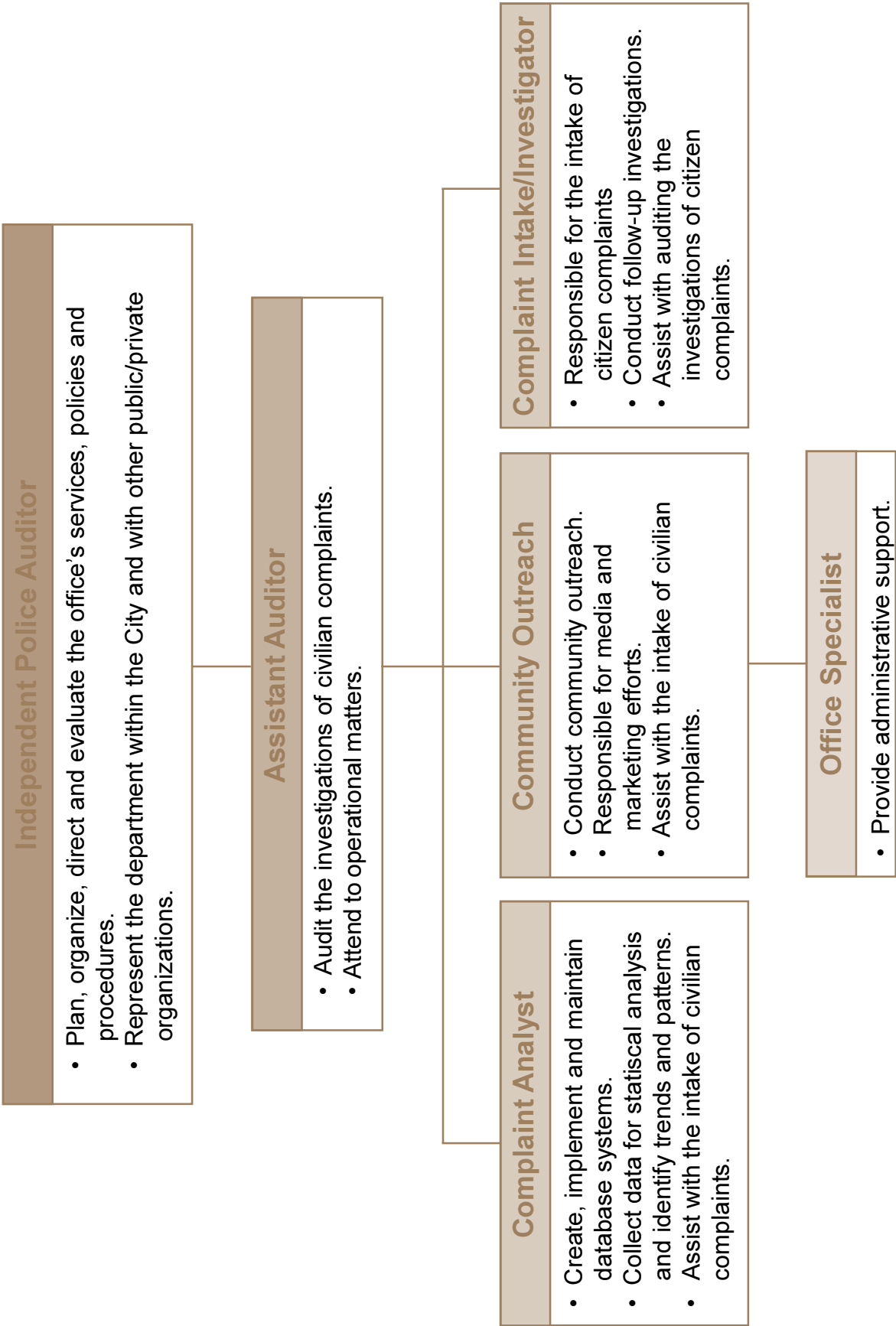
1. **Sustained:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
2. **Not Sustained:** The investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove the allegation.
3. **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. The investigation revealed that another agency was involved and the complaint or complainant has been referred to that agency. The complainant wishes to withdraw the complaint. The complainant is no longer available for clarification(s). Additional 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.

¹ See San José Police Department Duty Manual Section C 1513.20.

APPENDIX P
SAN JOSE CITY ORGANIZATION



APPENDIX Q
OFFICE OF THE INDEPENDENT POLICE AUDITOR



APPENDIX R

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

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

ISSUES RAISED IN	RECOMMENDATIONS	DISPOSITION	RESOLUTION PERIOD
1994 Year End Report	Enact policy for collecting physical evidence in use of force cases and immediate investigation by supervisor.	Adopted	1995 Year End Report
	Write complainant's statement in addition to recording and provide copy to complainant.	Adopted	1994 Year End Report
	Handle Informal Complaints through counseling by Field Supervisor and contact with complainant (where desired).	Adopted	1994 Year End Report
	Revise letters sent to complainants to include information about the IPA's role.	Adopted	1994 Year End Report
1995 Midyear Report	Maintain a central log of contacts from potential complainants.	Adopted	1995 Year End Report
	Obtain additional office space for IA.	Adopted	1997 Year End Report
	Require the Police Department to refer complainants to either IA or IPA.	Adopted	1995 Year End Report
	Implement policy to standardize format for officer's interviews.	Adopted	1995 Year End Report
	Create policy to require closer scrutiny of strip searches for misdemeanor arrests.	Adopted	1995 Year End Report
	Revise Off-Duty Employment Practices.	Adopted	1997 Year End Report
1996 Midyear Report	Connect IPA to City of San José's internet network.	Adopted	1997 Year End Report
	Conduct intake investigation of complaints lacking a signed Boland Admonishment.	Adopted	1996 Midyear Report
	Retain name of officer where Boland Admonishment is not signed (but need not place in personnel file).	Not Adopted	
	Require complaint classification to appropriately reflect the nature of the complaint.	Adopted	1996 Midyear Report
	Implementation and design a new computer database system to link IA to IPA.	Adopted	1996 Midyear Report
1996 Year End Report	Implement process for responding to citizen's request for officer identification	Adopted	1997 Year End Report
	Establish Class I and Class II of use of force categories.	Adopted	1996 Year End Report

ISSUES RAISED IN	RECOMMENDATIONS	DISPOSITION	RESOLUTION PERIOD
1996 Year End Report	Complete Class I Use of Force investigations within 180 days.	Adopted	1996 Year End Report
	Complete all investigations of citizen complaints within 365 days.	Adopted	1996 Year End Report
	Establish IPA's authority to audit relevant DI cases with a nexus to a citizen.	Adopted	1997 Year End Report
1997 Year End Report	Establish a procedure to require officers to identify themselves to civilians in writing.	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 IA 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 reliable tracking system should be set for every bureau and department involved with the complaint process.	Adopted	1998 Year End Report
1998 Year End Report	Authorize the IPA to review all officer-involved shootings.	Adopted	1999 Year End Report
1999 Year End Report	Increase the IPA staff, to increase communication and personal contact with individual complaints.	Adopted	2000 Year End Report
	Recommended that the City Council grant the IA subpoena power to compel the attendance of civilian witnesses and to compel the production of documentary or physical evidence.	Adopted	2000 Year End Report

ISSUES RAISED IN	RECOMMENDATIONS	DISPOSITION	RESOLUTION PERIOD
1999 Year End Report	Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes follow up investigations.	Pending	2000 Year End Report
	It is recommended that the SJPD explore the feasibility of implementing a voluntary mediation program within the next six months.	Adopted	2000 Year End Report
	It is recommended that the SJPD design a training course focused specifically on improving day to day verbal communications when dealing with the public.	Adopted	2000 Year End Report
	It is recommended that in cases where the police erred, i.e. the wrong home was searched, an explanation and/or apology should be given as soon as possible, preferably at the onset.	Adopted	2000 Year End Report
	It is recommended that motorists should be told the reason for the enforcement action such as stop, search, and detention as soon as possible and preferable at the onset.	Adopted	2000 Year End Report
	It is recommended that the SJPD formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody . This is in effort to assist family and/or provide them with necessary but non-confidential information.	Pending	2000 Year End Report

APPENDIX S

SHOOTING REVIEW PANEL MEMOS



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: William M. Lansdowne

SUBJECT: SHOOTING REVIEW PANEL
2000 YEAR-END REPORT

DATE: March 29, 2001

Approved

Date

INFORMATION

BACKGROUND

The Office of the Independent Police Auditor, Teresa Guerrero-Daley, during her 1999 Annual Report to the City Council, made a recommendation to expand the duties of the Police Auditor to allow the Office of the Independent Police Auditor to review all officer involved shootings. In response to that recommendation, the San Jose Police Department initiated the Officer Involved Shooting Review Panel. This Panel constitutes another layer of review of officer involved shootings, in addition to the District Attorney's Office, Grand Jury, and the Internal Affairs Unit.

The Department's primary objective is to make every reasonable effort to train and equip officers to manage field situations so that criminal suspects, the mentally ill, and persons in emotional crisis can be taken into custody as safely as possible, while minimizing the risk of injury to officers and residents.

This is the second annual report of the Officer Involved Shooting Review Panel's 2000 year-end review.

ANALYSIS

The Shooting Review Panel provides an additional level of evaluation and review of officer involved shootings. The Panel is convened to review each incident of an officer involved shooting. This process discerns patterns in incidents and/or officer behavior that may have contributed to the need to exercise the

use of deadly force. This analysis is invaluable in identifying training needs, as well as recognizing departmental policies and procedures that may require revision or review. The desired outcome of this process is the assurance of a candid review and continued improvement of our officers' response to situations that may give rise to the need to exercise the use of deadly force.

From January 1 to December 31, 2000 there were a total of five (5) officer involved shootings (see Attachment A). The Panel review of each incident is scheduled only after District Attorney and/or Grand Jury Review. The Police Department complies with the District Attorney's Office and the Grand Jury's schedule for Panel review.

Each panel consists of the Chief of Police, the Independent Police Auditor, Assistant Chief of Police, Deputy Chief from the Bureau of Investigations, and representatives from the City Attorney's Office, Police Training Division, the Bureau of Field Operations, and the Commander of the Internal Affairs Unit. The Commander of the Homicide Unit and the criminal investigators assigned to the shooting are also present for purposes of presenting the investigative facts to the panel.

This report will outline the findings of the Shooting Review Panel for 2000 and will document the Department's continuing efforts to minimize injuries to residents, criminal suspects, and officers, while providing public safety services to the community. This report will also explain the review process each officer involved shooting is subject to prior to Panel review.

Investigation and Review

When a San Jose Police Officer is directly involved in a shooting incident that results in death or injury to any person within City jurisdiction, the incident is initially investigated by the Department's Homicide Unit. At the time the Homicide Unit conducts the investigation, representatives from both the District Attorney's Office and the Office of the Chief, Internal Affairs Unit, monitor the investigation. The completed case is forwarded to the District Attorney's Office for legal review. In the event a shooting occurs outside the City, the law enforcement agency within that jurisdiction is responsible for the investigation. Protocol often varies from county to county.

In the case of shootings within Santa Clara County and involving a fatality, the District Attorney presents the case to the Santa Clara County Grand Jury. The Grand Jury is comprised of 19 members of the community from Santa Clara County, nominated by the Judges of the Superior Court. The Grand Jury hears witnesses, reviews evidence, and receives the testimony of involved officers. The Grand Jury may also direct that additional investigation be completed. The Grand Jury determines if the evidence presented and the actions taken were within the law, or if there is cause for indictment of the involved officer(s). If an indictment or a "True Bill" is returned by the Grand Jury, the District Attorney's Office would commence criminal proceedings. If the Grand Jury determines the incident was within law, the investigation is closed and is returned to the Department for internal review. Typically, if a shooting incident results in injury only, the investigation would not be reviewed by the Grand Jury, but would be reviewed by the District Attorney's Office for any law violations.

Following a review by the District Attorney or Grand Jury determining the shooting was lawful, the Office of the Chief, Internal Affairs, conducts an internal review of the incident and documents the circumstances of the shooting. The Office of the Chief will determine if the shooting was within Department policy and

procedure. If determined to be outside of policy, appropriate administrative action will occur. Following review by the Office of the Chief, the Shooting Review Panel is convened for purposes of determining whether there is a need to modify or improve existing policies or procedures, training, or equipment. The Homicide Unit presents their investigation, at which time panel members are free to ask questions and discuss circumstances surrounding the shooting incident.

At the time of this report, the panel has convened on four of the five shootings that occurred in the year 2000. These officer involved shootings were reviewed by the Panel following review by the Santa Clara County District Attorney's Office and/or the Grand Jury. The Grand Jury and the District Attorney's Office determined that the four shooting incidents reviewed were lawful.

In the 1999 Year-End Shooting Review Panel Report, the findings and recommendations focused on expanded training, to include a higher level of command response, and the continued evaluation of less lethal weapons and technology to meet the needs of the community.

This report provides information on the continuing progress of programs initiated last year resulting from those recommendations. The San Jose Police Department is committed to ongoing research, development, and training to ensure that suspects, the mentally ill and/or persons in emotional crisis are taken into custody in a safe and lawful manner. Some of these efforts include:

Expanded Training

The San Jose Police Department has made a number of advances with regards to training, supervisor and command involvement, less lethal weapons and force options. The Department will continue these ongoing efforts to explore better ways to safely resolve violent situations.

In the year 2000, the Department has re-emphasized the command officers' role in Critical Incident Management. As a result of this effort, the Department now requires all ranks up to the level of Deputy Chief to attend the same 20 hours of training provided to other sworn personnel. This will reinforce command awareness of ongoing and rapidly changing tactics and techniques in field situations and retain critical incident management skills. Previously, attendance was limited to designated command positions. The current training cycle includes:

- § First Aid and CPR Recertification
- § Traumatic Wounds
- § Weapons of Mass Destruction
- § Domestic Violence Protocol Advocacy Programs
- § Verbal Communication Skills

The current training cycle includes a new, two-hour Verbal Communications course, which reinforces Academy and other associated training. The curriculum was developed by interviewing the Independent Police Auditor and the Commander of the Internal Affairs Unit to identify current behavioral trends resulting in complaints about officers from community members. The course included a review of the information captured by our Vehicle Stop Demographic Study and reinforced the Department's focus on the importance of a customer service attitude.

All sworn personnel assigned to the Patrol Division Beat Patrol Services have been scheduled to attend an additional eight-hours of Driver Simulator/Force Option Simulator training. Employees are provided with an ethical decision-making model and have the opportunity to practice the identification of ethical issues, alternative courses of action, shareholder recognition, and outcomes. This course reiterates the Department's value of the sanctity of human life, and the responsibility of our officers to perform their duties within and in support of the United States Constitution.

Personnel have the opportunity to practice techniques as a team, using Simunitions¹ and the Force Options Simulator². This reality-based scenario training provides teams with advanced training for tactical and decision-making regarding force options. It also emphasizes the use of less lethal weapons when appropriate, deployment strategies, understanding/availability of alternatives, de-escalation, as well as the leadership role of the sergeant in field conditions. Officers and supervisors are required to explain the force option selected during the exercise and justify their decisions as being within Department policy and law. As of March 1, 2001, over 500 officers, supervisors, and command officers will have completed this training. The remaining members of the Department will attend during FY 2001-02.

Less Lethal Weapons

The Department continues to aggressively evaluate new less lethal weapons and technology that meet the needs of our community. During the past twelve months, the Department has purchased twelve of the 40MM Less Lethal Delivery Systems (L-8's); equipped the mobile command vehicles with an additional four, and has secured grant funding for an additional ten systems. The original 52-officer cadre trained and certified to deploy the system has been expanded to 96 officers. In addition, the AirMunitions compressed air training system has been evaluated and its pending purchase will reduce training costs associated with this tool by almost one-half.

The Department has also approved a twelve-month pilot project/evaluation of two Less-Lethal Taser Systems (Tasertron and Taser International). A total of 40 tasers will be deployed and approximately 100 officers will be trained to use the systems. Two of the tasers have been outfitted with "extendable wands" to allow the weapon to be more easily used in a custodial environment such as Pre-Processing or a crowded area such as the Main Lobby. All ten supervisors assigned to these two locations have been trained and two tasers assigned to these specific areas. Similar systems are being evaluated for possible deployment at the San Jose Airport.

Special Operations personnel, such as the Mobile Emergency Response Group and Equipment (MERGE) day and night teams, have access to the less lethal SAGE gun, which is a larger version of a stunbag gun with multiple rounds. The Department has purchased and is in the process of training Patrol personnel on the use of a less lethal firearm similar to the SAGE. This weapon fires a 40 mm foam-tipped projectile with improved accuracy. It provides a reduced probability of serious injury and was selected due to its ability to be utilized in both long range environments and in much closer proximity to the individual, maximizing the probability of incapacitation with less likelihood of serious injury to the individual. During the past six months the Department has successfully used this weapon during circumstances that could have resulted in the use of deadly force.

Crisis Intervention Team

The Crisis Intervention Team (CIT) was created in March 1999 with the intent of training personnel who are first responders—dispatchers and officers—to better deal with calls for service where a subject may be mentally ill, in psychological or emotional crisis, or the subject of a hostage/barricade situation.

CIT members are required to attend 40 hours of initial training and 10 hours of annual update training. The Department objective is to have 150 trained CIT members assigned to the Patrol Division at any one time. To date, 123 officers, 31 call takers/dispatchers, and 30 outside agency officers have graduated from the CIT Academy.

Since inception, the CIT has intervened in many cases where a potentially dangerous situation was resolved, based in part on the training and efforts made by CIT personnel. In calendar year 2000, CIT trained officers responded to a total of 448 calls, 79 of which involved weapons.

CONCLUSION

The Shooting Review Panel is a valuable component as an additional level of evaluation and review of officer involved shootings. The Shooting Review Panel represents a commitment to the community to more openly review the details of the Department's officer involved shootings.

William M. Lansdowne
Chief of Police

WML:CE

Cc: Del Borgsdorf, City Manager

¹ Role-playing using real weapons and equipment with non-lethal marking cartridges.

² Interactive role playing with real weapons using laser targeting systems on various filmed scenarios, utilizing all force options available.

Appendix S - continues

DATE/TIME	DETAILS	NOTATIONS
2/6/00, Sunday 8:30 PM	The suspect's mother called police, reporting that her son was having mental problems and was depressed. During the incident, the suspect cut the telephone wire and TV cable. When officers arrived, the suspect confronted them with a spear-type weapon. Each officer fired one round at the suspect, who sustained two non-fatal gunshot wounds to the upper torso.	Reviewed by the Santa Clara County District Attorney's Office. "Determined Lawful"
6/30/00, Friday 12:50 PM	Officers responded to a call of a suspicious person and vehicle. Officers made contact with the suspect, who produced a handgun during a pat down search and fired at the officers. Officers returned fire, striking the suspect, who expired from his injuries on 7/2/00.	Reviewed by the Santa Clara County Grand Jury. "No True Bill"
9/20/00, Wednesday 6:27 PM	Officers responded to a 911 call of a man who had brandished a gun at a citizen in a park. Upon arrival the officer attempted to stop the suspect who fled. A foot chase ensued, the suspect pointed a gun at the officer. The officer fired two shots at the suspect who received two non-fatal bullet wounds to the leg.	Reviewed by the Santa Clara County District Attorney's Office. "Determined Lawful"
11/7/00, Tuesday 9:26 PM	This event began on 11/7/00 when a suspect/barricade event was initiated. The event carried over to the next day, 11/8/00. The suspect assaulted his wife and refused to let her out of the residence. MERGE Unit and Hostage Negotiations personnel responded. The suspect exited the residence after several hours and opened fire with a shotgun. A MERGE sniper returned fire, killing the suspect.	Reviewed by the Santa Clara County Grand Jury. "No True Bill"
12/18/00, Monday 1:05 PM	The suspect called 911 and reported he had murdered his girlfriend and intended to murder everyone outside of his mobile home. Officers responded to the mobile home park and located the suspect, who charged at the officers while wielding an axe and a large knife. Officers fired less-lethal stun bags with no effect. The suspect continued his charge and officers fired, killing the suspect. A suicide note was found inside the mobile home, written by the suspect.	Pending Grand Jury review.

Shooting Review Panel Memo by Chief of Police to Mayor and City Council.



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