



City of San Jose

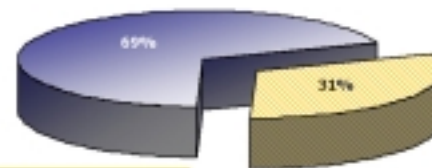
# Office of the INDEPENDENT POLICE AUDITOR

*A Report to San Jose City Council*

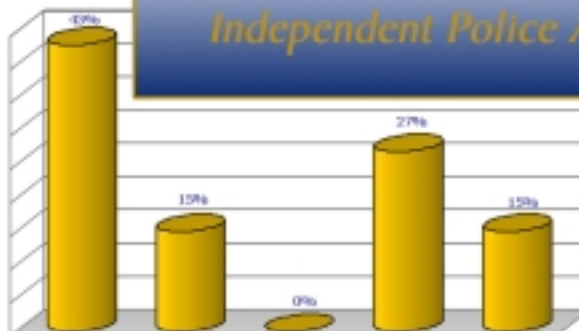
2003

## MID-YEAR REPORT

January 1, 2003  
to  
June 30, 2003



**Teresa Guerrero-Daley**  
*Independent Police Auditor*



# I- INTRODUCTION

## A- FUNCTIONS OF THE IPA

**O**n September 13, 2003, the Office of the Independent Police Auditor (IPA), celebrated its tenth anniversary. The IPA continues to focus on its mission of providing independent review of the citizen complaint process in an effort to increase accountability, public awareness and satisfaction with services provided by the San Jose Police Department (SJPD).

The Office of the Independent Police Auditor (IPA) has four primary functions:

1. Monitor and audit the investigations of citizen complaints conducted by the SJPD;
2. Promote public awareness of a person's right to file a complaint;
3. Serve as an alternate office where people may file a complaint; and
4. Make policy recommendations.

## B- REPORTING REQUIREMENTS

In 2001, the San Jose City Council directed the IPA to produce mid-year reports in addition to annual reports. This report covers the activity of the first six months of the 2003 calendar year and complies with the reporting requirements outlined in the San Jose Municipal Code Section 8.04.010. This section mandates that the IPA submit reports to the City Council that 1) include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the action taken; 2) analyze trends and patterns; and 3) make recommendations.

## C- CONTENTS OF THIS REPORT

This report includes discussion and recommendations regarding officer-involved shootings and provides a brief update in two areas: case statistics and updates on prior recommendations. The information covered in this report will be contained in more detail in the comprehensive year-end report encompassing all the activity of the IPA for the 2003 calendar year.



## MISSION of the Independent Police Auditor

# MISSION

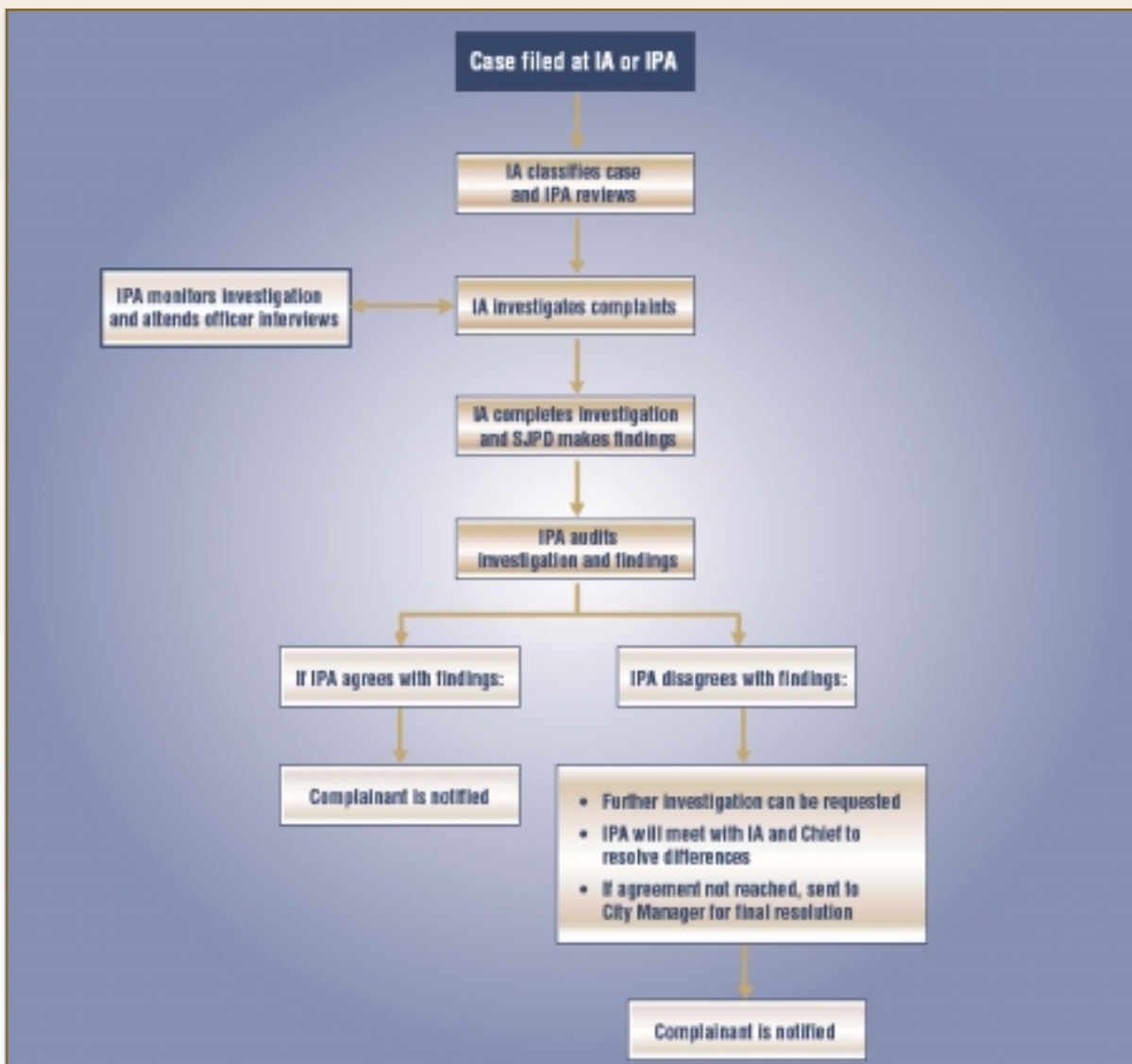
*The Independent Police Auditor's mission is to provide an independent review and to promote public awareness of the citizen complaint process; thereby, increasing greater police accountability by the San Jose Police Department.*

The Office of the Independent Police Auditor (IPA) and the San José Police Department Internal Affairs Unit (IA) are separate offices available to the public for filing complaints against officers of the San José Police Department (SJPD).

This section provides the number of cases received from January 1, 2003 through June 30, 2003 and a breakdown of the allegations by the types of cases filed, the degree of injury, the sustained rate and findings.

### A- HOW THE COMPLAINT PROCESS WORKS

A complaint is an act of expressed dissatisfaction, which relates to SJPD operations, personnel conduct or unlawful acts. A complaint involves an administrative process where discipline may be imposed by the SJPD and should not be confused with criminal charges that may be filed by the District Attorney. The following flowchart provides the main steps involved in the complaint process after a person contacts either the IPA or the Internal Affairs Unit to file a complaint.



### B- CASE CLASSIFICATION

All cases are documented and classified by the Internal Affairs (IA) to determine whether or not an investigation is necessary. Classifying each case enables the IPA and IA to: (1) streamline the investigation process so that cases that do not require a full investigation are resolved sooner while complex cases requiring more investigation are given enough time to investigate; (2) track Formal, Command Review, and Procedural complaints by officer as part of an “Early Warning” system that identifies those officers qualifying for Intervention Counseling; (3) comply with motions for discovery in criminal and civil proceedings; and (4) identify patterns or trends that may lead to recommendations to improve existing policies or procedures. The seven classifications are:

**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 citizen alleging misconduct on the part of a member of the SJPD

**b. Department-Initiated (DI):** Complaint alleges a serious violation of Department policy or a violation of law by an officer. The Office of the Chief of Police initiates these Formal complaints.

**2. Command Review (CR):** A complaint that involves allegations of minor transgressions on the part of a subject officer which may be handled informally by bringing the matter to the attention of the officer’s chain of command. At the end of the investigation, the assigned finding is “Command Review.”

**3. Procedural (PR):** 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.”

**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.

**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 and return the Boland Admonishment form. State law requires that the complainant sign a Boland Admonishment form in order to initiate the investigative process.

**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 fully investigated.

**7. Citizen Contact (CC):** refers to an informational type of contact from the public.

### C- BREAKDOWN OF CASES

Type of Cases	IPA Intake	IA Intake	Total Cases
Formal : Citizen-Initiated Complaints	13	24	37
Formal : Department-Initiated Complaints	0	13	13
Command Review Complaints	5	11	16
Procedural Complaints	7	9	16
Policy Complaints	0	0	0
<b>Subtotal</b>	<b>25</b>	<b>57</b>	<b>82</b>
No Boland and Withdrawn Cases	13	1	14
Inquiry (Cases immediately resolved)	20	26	46
Citizen Contacts (Informational)	11	7	18
Pre-Classified (Cases awaiting classification)	2	4	6
<b>Total Cases Received in 2003 Mid-Year</b>	<b>71</b>	<b>95</b>	<b>166</b>

Illustration II compares the total cases received during the first six months of years 2002 and 2003 and it compares the number of cases that each office received. As the figures indicate, the number of total cases received this year is significantly lower than last year at this time. However, the comparison also reveals that the number of cases filed at the IPA increased in 2003 over 2002.

### D - COMPLAINTS ALLEGING UNNECESSARY FORCE

Unnecessary Force	2002 Mid-Year	2003 Mid-Year	% Change (+/-)
Class I	4	3	-25%
Class II	23	15	-35%
<b>Total UF Complaints</b>	<b>27</b>	<b>18</b>	<b>-33%</b>

#### Illustration III: Complaints with Unnecessary Force Allegations

Complaints alleging unnecessary force (UF) are divided into two categories: Class I and Class II. A Class I complaint involves allegations of serious bodily injuries requiring immediate medical care. All others are Class II complaints, which include alleged injuries ranging from moderate to non-visible injuries. Of the 166 cases filed, 18 complaints alleged unnecessary force (UF). The lower number of UF complaints this year is consistent with the lower number of overall cases received this year.

#### Illustration I: Types of Cases

Between January 1 and June 30, 2003, the IA and IPA offices received a combined total of 166 cases. Illustration I shows the breakdown of these cases by classifications and by the office that received the complaint. The most frequent cases received were inquiries. The IPA received 20 inquiry cases and IA received 26. Of the 50 Formal Complaints filed, 37 were citizen-initiated and 13 were department-initiated.

Cases Filed at IPA or IA	2002 Mid-Year	2003 Mid-Year
IPA Cases	54	71
IA Cases	203	95
<b>Total Cases Received</b>	<b>257</b>	<b>166</b>
<b>Percentage of IPA Received</b>	<b>21%</b>	<b>43%</b>

#### Illustration II: IPA and IA Intake

Illustration IV reports the severity, or range of injury resulting from the alleged use of force in complaints that had been audited, as of June 30, 2003. Complaints involving moderate to major degrees of injury continue to be a relatively small percentage. It should be noted that this chart reflects statistics from complaints that were audited in the first six months of 2003 and the possibility exists that these complaints were filed prior to 2003.

Range of Injury	Number	Percentage
Minor	17	43%
Moderate	6	15%
Major	0	0%
Non-visible	11	27%
Unknown	6	15%
<b>Total</b>	<b>40</b>	<b>100%</b>

#### Illustration IV: Degree of Injury



## II- MID-YEAR STATISTICS

### E- SUSTAINED RATE

Illustration V compares the sustained rate for the first six months of years 2002 and 2003. During the first six months of 2003, IA completed the investigation of 55 Citizen-Initiated (CI) complaints and 22 Department-Initiated (DI) complaints. Of these investigated complaints, nine Citizen-Initiated and 20 Department-Initiated were sustained (refer to Illustration V). The sustained rate for CI complaints increased from 10% reported in the 2002 mid-year report to 16% in the 2003 report. Similarly, the sustained rate for DI complaints increased from 61% in the 2002 mid-year report to 91% this year. The overall sustained rate for both CI and DI complaints increased from 28% in 2002 to 38% in 2003.

Formal Complaints	Cases Closed	Cases Sustained	Sustained Rate
Citizen Initiated (CI) and Citizen Nexus	55	9	16%
Department Initiated (DI)	22	20	91%
<b>Total Formal Complaint</b>	<b>77</b>	<b>29</b>	<b>38%</b>

**Illustration V: Formal Cases Sustained**

### F - IPA REQUESTS for FURTHER ACTION

The IPA requested further action from IA in 32 cases, or 31%, of the Formal cases it reviewed. This is an increase over the 17% recorded in 2002. Requests varied from reopening an investigation to providing the IPA with additional information or documentation.

Formal Complaints	Cases Audited				%Change (+/-)
	Mid-Year 2002		Mid-Year 2003		
	Number	%	Number	%	
Further Action Requested	18	17%	32	31%	+83%
No Further Action Requested	91	83%	72	69%	-17%
<b>Total Cases Audited</b>	<b>109</b>	<b>100%</b>	<b>104</b>	<b>100%</b>	

**Illustration VI: Request for Further Action Comparison**

### G - DID the IPA AGREE with the FINDING of the COMPLAINT?

Agreed/Disagreed with Findings	Cases Audited
Agreed	100
Disagreed	4
<b>Total Cases Audited</b>	<b>104</b>

**Illustration VII: Finding of the Complaint**

This section reflects the number of cases in which the IPA agreed or disagreed with the resolution of a complaint. The IPA disagreed with the finding of the investigation in four of the 104 Formal cases audited between January 1 and June 30, 2003.

Even though the IPA may disagree with the finding of a case for a number of reasons, in most cases, the weight given to the credibility of the complainant or witnesses continues to be the main source of disagreement.

## H- CASES where the IPA DISAGREED with the FINDING

Case  
1  
One

The complainant alleged that during a car stop officers used excessive force by throwing him on the ground and striking him with a flashlight or a baton. He stated there was no justification for the officers to impose physical force on him as he was being cooperative and did not resist the officers. The complainant's passenger was a witness to the incident and supported the complainant's statement. The subject officers stated that the complainant and the witness were intoxicated. They reported that the complainant was uncooperative, struggled with the officers and resisted arrest.

In this case the IPA disagreed with the finding of "Exonerated" reached by the IA and recommended that a more appropriate finding would be "Not Sustained." Upon careful examination of the case, the IPA came to this conclusion because the evidence did not clearly prove or disprove the allegations.

Case  
2  
Two

The complainant alleged that officers entered her home illegally and conducted an illegal search. The IA investigation found that the officers' actions were "Within Procedure." The IPA disagreed with this finding because in its opinion the facts in this case supported the conclusion that the officers exceeded the scope of the consent to search the complainant's home. In addition, the IPA disagreed that the elements required to legally enter the home under exigent circumstances or hot pursuit theories, were present when the entry was made.

After review and further investigation, the IPA disagreed with this finding and informed the City Manager. The City Manager affirmed the finding and decision made by the Police Department.

## II- MID-YEAR STATISTICS

### Case 3 Three

During the investigation of a traffic collision, the complainant alleges that the investigating officer used a rude tone of voice and interrupted her in a rude manner as she was speaking. The complainant's spouse was present during this time and also stated that the officer used a rude tone of voice. The IA investigation, which only included a review of the accident report of this incident, determined that the complainant's allegations were "Unfounded" because the rude conduct did not involve profanity and was only perceived as being rude.

The IPA disagreed with this finding because in order for a complaint to be Unfounded, the investigation would have to conclusively prove that the allegation of rude conduct did not occur. It is the position of the IPA that rudeness can be exhibited in several other ways, including the use of acerbic or sarcastic language, rude facial expressions and/or other body language that can be inappropriate for the situation at hand. The IPA's disagreement was recorded and submitted to the IA Commander but was not forwarded to the City Manager.

### Case 4 Four

The complainant alleged that while driving his car he was stopped because of his race. He alleged that he was doing nothing wrong and therefore, the officer had no reason to stop his vehicle. The officer allegedly said that he was only going to give the complainant a warning, but after the complainant insisted on speaking to the officer's supervisor, he was cited by the officer for making an unsafe lane change because he failed to signal. The complainant contested the citation and was found not guilty by the court.

The IPA disagreed with the IA finding based on an analysis of citations issued by the subject officer before and after s/he cited this complainant. A review of the citations issued by the subject officer revealed that this was the only citation issued for failing to signal when changing lanes. Providing that a vehicle stop was racially motivated is difficult and the IPA looked for a pattern of similar traffic stops by the subject officer. There was no pattern of racial profiling found by this officer however, the absence of any citations issued by this officer for changing lanes contributes to the perception that the officer issued the citation in retaliation for the complainant's demands to speak to a supervisor. This type of enforcement action may be viewed as an abuse of discretion which, damages the confidence the public has in the judgement of SJPD officers.



## III- RECOMMENDATIONS

### RECOMMENDATIONS to IMPROVE the REVIEW of “Officer-Involved Shootings”

#### A. INTRODUCTION

Concern and public outcry at times result when the police use lethal force. Because of the dangerous nature of police work, police officers are authorized to take a life in what can be a split second decision. It is therefore, reasonable that these incidents receive the highest level of scrutiny.

The San Jose Police Department (SJPD) should be commended for making significant strides towards minimizing the need to use lethal force. In its **2002 Year End Report**, the Independent Police Auditor (IPA) recognized that efforts made by the SJPD contributed to a steady decline of officer-involved shootings over a four-year period, culminating in the fact that there were no such shootings in 2002.

The efforts taken by the SJPD were in response to the IPA recommendations made in 1999 and include:

1) creation of the Officer-Involved Shooting Review Panel; 2) increasing the availability and use of less lethal weapons and other force options; 3) building a state of the art training center where officers gain real-life experience on when to shoot and not to shoot; 4) increasing the number of officers trained in recognizing and handling incidents involving people with mental disabilities; and 5) re-emphasized supervisor and command staff involvement in incidents where lethal force may be necessary.

In the first six months of 2003, the efforts by the SJPD to minimize the use of lethal force have continued to result in many other cases where the suspect(s) was successfully subdued and/or disarmed without the need to use lethal force. However, as has been demonstrated by the occurrence of two officer-involved shootings during the first six months of 2003, there is a

continuing need to carefully and thoroughly examine each officer-involved shooting to ensure that the officer’s use of lethal force was justifiable and necessary.

Therefore, this chapter will examine the following:

1) how the oversight role of the IPA in police shootings has changed during the past ten years; 2) the current process used by the IPA to review police shootings; 3) how it differs from a citizen complaint review; and 4) the challenges this difference poses. Recommendations to improve existing oversight mechanisms in reviewing police shootings are also included. It should be noted that these recommendations did not derive from the review of any one single case but from information and knowledge gained from the review of officer-involved shootings between 1993 and 2002.

#### B. THE INVESTIGATION and REVIEW of POLICE SHOOTINGS

The investigation of a police shooting or in-custody death is a complex process that includes internal and external oversight from different agencies. This process can be grouped in two primary categories: criminal and administrative review. The following is a brief description of the chronology of a criminal investigation of an officer-involved shooting.

Shortly after an officer-involved shooting occurs, members of the Homicide Unit of the San Jose Police Department respond to the scene to investigate the shooting. Members from the Internal Affairs Unit (IA) and investigators from the District Attorney’s Office (DA) also respond to the scene to monitor the investigation. The homicide investigators are responsible for conducting the investigation. This includes interviews of the witness and subject officer(s), which are monitored by IA and DA

### III- RECOMMENDATIONS

investigators. While several investigators respond to the scene, they have different focuses. The focus of the homicide and DA investigators is to determine if the shooting was a justifiable homicide. However, the focus of the Internal Affairs investigators is to determine if any policies or procedures were violated.

Once the investigation is completed, it is submitted to the District Attorney, and it is then presented to the Santa Clara County Grand Jury. The Grand Jury hears witnesses, reviews evidence, receives the testimony of involved officers, and may also direct that additional investigation be completed to determine if criminal charges will be filed against the shooting officer. If the Grand Jury does not indict the officer(s), criminal charges will not be filed by the District Attorney's Office, but if an indictment is filed, the officer will face criminal charges. In the meantime, the Internal Affairs investigation is paused until the criminal case is adjudicated.

Following the disposition of the criminal case, the Internal Affairs process resumes. IA investigators will review the criminal investigation to determine if the shooting by the officer was within policy. IA will then conduct any additional investigation if needed. The case will then be sent to the Chief of Police for a finding. If the shooting was in violation of a policy or procedure, discipline may be imposed. Such discipline could range from counseling and training to suspension or termination if warranted.

If a complaint is on file, the case will be sent to the IPA for review. The IPA will audit the investigation, which can include requesting additional investigation, and conducting second interviews of civilian and police witnesses. If the IPA disagrees with the Chief's finding, the IPA notifies the City Manager. If there is no complaint filed, the case will be reviewed only as part of the Officer-Involved Shooting Review Panel. An explanation of how this panel works will be discussed in detail in the following section.

#### C. BACKGROUND on THE IPA's 1999 RECOMMENDATION

In 1999, the Independent Police Auditor (IPA) recommended that the San Jose City Council expand the IPA's authority to include oversight of all police shootings. This was necessary because prior to this time a complaint had to be filed in order for the IPA to have jurisdiction to review police shootings; furthermore, research revealed that most police shootings did not generate a complaint.

On July 15, 1999, Chief Lansdowne authored an informational memorandum to the Mayor and City Council recommending that the Council direct the City Attorney to draft an ordinance amending the Municipal Code to add the IPA's participation in a panel that would be created to review officer-involved shootings.

On August 3, 1999, the City Council amended the San Jose Municipal Code to include section 8.04.010 (b). This section states that, "***The police auditor shall participate in the police department's review of officer-involved shootings.***" Following the Municipal Code amendment, the SJPD created a review panel that would include representation from the IPA, City Attorney, and the SJPD. This panel was called the "Officer-Involved Shooting Review Panel" (OISRP).

#### D. THE WORK of the "OFFICER-INVOLVED SHOOTING REVIEW PANEL"

The scope of the Officer-Involved Shooting Review Panel is limited to identifying training needs and policy and tactical violations or failures. The SJPD's stated desired outcome in creating this panel was to provide an assurance that a candid review would take place and that there would be continued improvement in situations where officers needed to use deadly force. The panel consists of the Chief of Police, 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, the Commander of the Internal Affairs Unit, the Commander of the Homicide Unit, and the investigators who conducted the criminal investigation.

While members of the panel were identified, written guidelines, mandates of the panel, processes for reporting outcomes, and confidentiality legalities were never identified. Therefore, an in-depth or critical review by the panel, necessary to evaluate police shootings resulting in the injury or death of a citizen, have been limited in most cases.

In order to understand some of the existing obstacles, it is necessary to explain the current process. A time and date is scheduled for the panel to meet. The meeting takes place in the Chief's conference room. The Homicide detectives who conducted the investigation present an overview of the investigative facts to the panel. The homicide file is not brought to these meetings therefore, specific questions raised that were not part of the presentation are difficult to answer and they may not become part of the discussion. While the homicide investigators do an excellent job in presenting an overview of the shooting, it is difficult for them to cover every angle and to predict what issues the members of the panel will raise. Members of the panel are not provided with a working copy of the homicide investigation to read in preparation of the shooting review panel convening. Although the IPA routinely goes to the Homicide Unit to read the investigation in preparation of attending the shooting review panel, it is unknown if other members of the panel read the investigation before hand or if they rely only on the briefing. As a result, participants have varying degrees of familiarity with the facts. Another observation is that the facts presented by the criminal investigators are from the perspective of a criminal investigation and not from the perspective of possible violations of policy or procedures. Following the presentation, the Chief of Police usually initiates the discussion followed by questions from the panel. The discussion among the panel members appears guarded and tempered and does not cover whether the shooting officer should or should not have fired his/her gun. The reasons are because focusing on the conduct of the shooting officer

is outside the scope of the review by the panel and because the discussion in this setting is not confidential. If discussion of the officer's conduct can lead to discipline, the discussion must be in compliance with Penal Code section 832.7, which requires confidentiality of police officers' personnel records. Therefore, the review by the shooting review panel is limited to discerning training needs, and an evaluation of tactical and command decisions at the scene of the shooting. Since there is no documentation of the discussion, when the questions end, the session ends with no clear understanding of what policies, procedures, or tactical decisions, if any, were identified as needing changes or improvement.

This criticism should not imply that the SJPD is not actively making improvements that result from discussion by the shooting review panel. However, the effectiveness, thoroughness, and impartiality of the shooting review panel are difficult to discern or measure. When comparing the review of police shootings by the Shooting Review panel to the monitoring and auditing of a typical complaint, the latter is much more thorough and profound. Having the shooting review panel as the sole means of examining police shootings where no complaints are filed needs to be reconsidered.

#### **E. COMPARISON of POLICE SHOOTINGS and COMPLAINTS**

Currently, there is a significant difference in how a complaint and a police shooting are reviewed by the Independent Police Auditor (IPA). Complaints not involving police shootings are monitored throughout the investigative stage. Once the investigation is completed by Internal Affairs (IA), it is sent to the IPA where it is audited for thoroughness, objectivity, and fairness. Police shootings on the other hand, don't come under review of the IPA during the investigative stage, and in some instances, only limited access to the completed investigation is provided. These differences

## III- RECOMMENDATIONS

in how police shooting and non-shooting complaints are handled have caused confusion and uncertainty internally between the SJPd and the IPA and externally with the public.

For example, in reviewing a complaint alleging excessive force, the IPA can monitor the investigation as soon as the complaint is filed. The IPA attends the interviews of witness and subject officers and provides questions for the IA investigator to ask. After the investigation is completed but before the complainant and subject officers are notified of the outcome, the completed investigation is sent to the IPA. The IPA carefully examines the investigation to determine if it was thorough, objective, and fair. If the investigation is found to be lacking in these areas, the IPA may request additional investigation. If the IPA disagrees with the finding of a case and is not able to resolve it with the IA investigator and/or the Chief of Police, the IPA may bring it to the attention of the City Manager. In the review of a police shooting by the shooting review panel none of these steps are possible.

Officer-involved shootings are the most serious use of force by a SJPd officer. As such, oversight of these cases should be more rigorous than oversight of cases that do not involve serious injuries or the loss of life. There are many important steps that take place in the monitoring and auditing of a routine complaint that can be incorporated in the audit of officer-involved shootings. A review of complaints in the past ten years, reveal that the examination of complaints, many which don't allege any force, are more extensive than the review of police shootings.

### *Recommendations*

While there were no police shootings in 2002, there have been two in the first six months of 2003. One police shooting was fatal. The review of the fatal shooting that happened in May 2003 is currently under review while the other is still pending. An analysis of the current process for reviewing police shootings indicates that some changes are warranted. The following is a list of recommendations from the IPA that would address areas needing improvement.

#### **1. DESIGNATE A LIAISON FOR THE FAMILY**

When the police use deadly force, the family suffering the loss needs a central place where they can call and obtain information without having to experience unnecessary delays or obstacles. While information that would compromise the criminal investigation should not be released, there is information that for humanitarian reasons should be provided to the family, such as the medical condition of the injured party, the hospital where the person was taken, timely notification in cases of death, and a description of the agencies and their role in the review of a police shooting. This liaison should also serve as the contact person for the family to ask questions and facilitate information from the various agencies involved in the aftermath of a police shooting.

The IPA is reintroducing this recommendation which was made in 1995 and has only been partially implemented by the SJPd. It is recommended that a written policy be drafted and implemented that designates personnel whose primary focus is to serve as the liaison to the family of an officer-involved shooting.

### *Recommendations*

#### 2. IPA SHOULD BE PART OF THE ROLL-OUT TEAM

There are several reasons why the IPA should start its review of police shootings soon after it occurs rather than what is the current practice of waiting three to five months. Having the IPA present at the scene as an observer would add credibility to the integrity of the investigation. Because the IPA is a non-law enforcement entity, its presence at the scene would increase public confidence in the outcome of the police investigation. Being present at the scene will provide the IPA a first hand view of what the shooting scene was like which is critical in conducting a comprehensive review and audit of the investigation.

This is a common practice in cities such as San Francisco, Sacramento, Los Angeles and Los Angeles County. Members of their civilian oversight offices respond to the scene and monitor the investigation. For example, in Sacramento the Director of the Office of Police Accountability (OPA) is placed on the Critical Incident call-up list and is notified when critical incidents like a police shooting occurs.<sup>1</sup> The Director responds to the scene and is part of

the walk through along with the Internal Affairs and District Attorney's representatives which allows for viewing much of the evidence in its original state. According to Mr. Don Casimere, the Director of the OPA, his participation as a member of the Call-up list has been very positive and without opposition from the police or the District Attorney's office. On several occasions, Mr. Casimere has been asked by the command staff of the Sacramento police department to speak to family members at the scene of a police shooting about the fairness and thoroughness of the investigative process.

The possibility that the IPA could become a witness and be called to testify is unlikely according to the directors of the cities listed above and therefore, is not a valid reason for excluding the IPA's presence. Another concern expressed by the SJPD and the District Attorney is that the crime scene may be contaminated or evidence compromised. With training, guidance, and by shadowing the representatives from the other two monitoring agencies, IA and DA, this should not pose a problem either. It is recommended that the IPA be part of the roll-out team to the scene of officer-involved shootings.

<sup>1</sup> City of Sacramento, Office of Police Accountability Procedures, Chapter 3, Section B, Subsection 4. "The Director shall be placed on the Critical Incident call-up list, and will be notified when Critical Incidents occur. The Director will have the option of responding to any and all such incidents. The Director shall have the authority to monitor interviews of subject officers, witness officers, and citizens immediately after such incidents.



### *Recommendations*

#### 3. IMPROVE DISSEMINATION OF INFORMATION TO THE PUBLIC

Below are four recommendations addressing ways to improve the contents and manner of disseminating information to the public by the San Jose Police Department following a police shooting.

**A .** It is essential that the SJPD have written material accessible to the public that describes the process, the agencies involved, their roles, and general information about officer-involved shootings. This type of information is necessary to inform the public, police officers, and elected officials.

**B .** The SJPD should anticipate that following a police shooting, there may be public concern and reaction therefore, venues where the public can receive and provide input should be facilitated.

**C .** Information released to the public about the investigation of police shootings by the SJPD should be accurate and clear. A misnomer often heard is that multiple agencies routinely investigate every police shooting when in reality, investigations are not independent and primarily rely on the initial homicide investigation. Monitoring and conducting an investigation are often described as one and the same. SJPD Internal Affairs investigators monitor the investigation conducted by the Homicide Unit. The District Attorney's

investigators monitor and seldom if ever conduct independent investigations of police shootings. The IPA does not conduct independent investigations, it only reviews the homicide investigation. The focus of these agencies is different and therefore, not redundant as some people are lead to believe. The homicide investigators, the District Attorney, and the Grand Jury focus on violations of criminal laws, while Internal Affairs investigators and the IPA focus on policy and procedure violations.

**D .** A common complaint expressed by the public is that following an officer-involved shooting, the police justify or rationalize the need to use deadly force before the investigation is completed. The concern is that these statements may steer the investigators in the direction of exonerating the officer(s), taint the investigation, and/or influence its outcome. Equally as disconcerting to the families is negative information about the injured or deceased person that is released by the police that has no probative value in determining if the shooting was necessary. The release of this type of information can anger the community and give the perception that the police only release facts that justify their actions. The police should refrain from making statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured person in a negative light.

**E .** Lastly, the SJPD should prepare public reports on a regular basis detailing any policy, procedures, training, or other measures that were generated by the Officer-involved Shooting Review Panel. These reports would serve to memorialize the work of the panel, would provide information to the public about these sensitive cases, and would demonstrate a commitment by the SJPD to an inclusive and transparent review process.



## *Recommendations*

#### **4. REVIEW OF POLICE SHOOTINGS SHOULD BE AS THOROUGH AS COMPLAINTS**

Currently, there is a significant difference in how complaints and police shootings are reviewed. Complaints are monitored throughout the investigative stage. Then after the investigation is completed by Internal Affairs, it is sent to the IPA where it is audited for thoroughness, objectivity, and fairness. On the other hand, police shootings where a complaint is not filed, are reviewed only through a shooting review panel. Oversight of all police shootings need to be more rigorous than oversight of cases that do not involve the loss of life. There are many important steps that take place in the monitoring and auditing of a complaint that should be incorporated in the review of officer-involved shootings in order to make the review of police shootings more thorough, objective, and fair. Oversight of police shootings should mirror oversight of citizen complaints.

#### **5. THE IPA SHOULD BE GRANTED CONTRACT AUTHORITY TO ASSURE ACCESS TO INDEPENDENT EXPERT CONSULTANTS**

Currently, the IPA cannot avail itself of independent expert services because it does not have contract authority. The San Jose Municipal Code provides contract authority to the City Manager, City Attorney, City Clerk, and the City Auditor. Since the IPA does not have

contract authority, services of a consultant would either need to be hired through the City Attorney's Office, or the Municipal Code would have to be amended to authorize the IPA to enter into consulting agreements.

In complex cases, especially in officer-involved shootings or other complaints involving injuries, the IPA should have access to experts in specified fields. This type of expertise is needed in such areas as use of force techniques, cause and origin of injuries, police best practices, and forensics used in police investigations. While the IPA has in-house staff with some knowledge there are special cases that require consultation with experts in various fields. Without this option, the IPA has to solely rely on the expertise of the SJPD for answers to technical questions or concerns.

The IPA reviews confidential police personnel files therefore, the details of an investigation cannot be shared or disclosed outside a confidential consulting agreement. Therefore, in order to get expert opinions that are specific to a case, disclosure of the investigative file is necessary. This type of service is routinely utilized by other cities who contract the investigation of police shootings to external consultants without running afoul of the confidentiality restrictions of Penal Code Section 832.7. It is recommended that the Municipal Code be amended to include the IPA in the list of council appointees authorized to enter into contractual agreements.

## III- UPDATES ON PRIOR RECOMMENDATIONS

### BACKGROUND

In the 2002 Year End Report the IPA made recommendations to the San Jose Police Department regarding the *Early Warning System (EWS)* and *complaints against high-ranking officers of the San Jose Police Department*.

The Independent Police Auditor's Office (IPA) has maintained a proactive stance in tracking and researching police conduct, practices and procedures with the mission of ensuring that the San Jose Police Department (SJPD) provide the public with the highest level of courteous and professional services possible. The IPA accomplishes this mission by providing independent review and promoting public awareness of the citizen complaint process, thereby increasing police accountability. The IPA also reviews and analyzes patterns and trends in citizen complaints and allegations to identify potential improvements in SJPD practices and procedures.

The *EWS* is designed to identify behavior of San Jose police officers that has the potential of becoming a liability to the citizens of San Jose and the general public. The identification and intervention of this type of behavior is critical to the prevention of such liability. The *EWS* makes corrective intervention possible in order to prevent serious problems from materializing as the result of police conduct or actions.

Police administrators in general agree that an *Early Warning System* is essential and aids in the proper management of police personnel. Despite concerns among some police officers that the *EWS* could impact proactive policing efforts, decrease self initiated contacts and compromise officer safety, a study conducted by the IPA revealed the contrary. The

study indicates that the *EWS* does not decrease self-initiated contacts and that the intervention counseling associated with it does not have a negative impact on subject officers. It also revealed that the *EWS* actually decreased the number of subsequent complaints being reported against police officers that were involved in the study.

Recent indictments of top command staff of the San Francisco Police Department provoked more careful consideration of what the IPA had felt was a very sensitive and important concern regarding how *citizen complaints against high-ranking officers* of the San Jose Police Department would be investigated. High-ranking officers are police officials within the ranks of Assistant Chief and Chief of Police. The IPA recommended that a policy be developed to address the conflicts of interests inherent in these types of investigations.

While *citizen complaints against high-ranking officers* are uncommon, they do happen and pose potentially devastating consequences if the public perceives that preferential consideration was awarded to the subject officer due to their rank or position. The public rightfully expects a fair and unbiased examination of their complaints against police officers regardless of their rank. The question of who will investigate high-ranking officers of the San Jose Police Department needs to be answered to gain the trust and confidence of the public. The IPA's recommendation to develop a policy that answers these questions was another proactive means to ensure police accountability, regardless of rank.

### Recommendations and Updates

#### A- EARLY WARNING SYSTEM (EWS)

**1. The Chief of Police should continue to provide Intervention Counseling for subject officers meeting a set criterion.**

***Update:* Recommendation adopted and implemented**

The San Jose Police Department has agreed to continue the **EWS** as it has since the early 1980's. The Chief of Police concurs with the IPA on the effectiveness of this program and will continue to require that all officers meeting the criteria to participate in Intervention Counseling.

**2. The Chief of Police should implement procedures to insure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.**

***Update:* Recommendation adopted and implemented**

The San Jose Police Department Internal Affairs Unit (IA) has begun to provide an overview of the Intervention Counseling program to all participants prior to the actual session. IA will continue to provide training on the intervention program to all patrol personnel and other

officers returning to patrol assignments as part of their annual training requirements. IA will also continue to provide this training at the police academy and citizen's academy.

**3. The Chief of Police should direct the command staff to factor an officer's work assignment and level of proactive policing as part of the discussion held during the Intervention Counseling session.**

***Update:* Recommendation adopted and implemented**

The Chief of Police agreed with this recommendation and will continue to consider an officer's current assignment and their proactive policing efforts when conducting the Intervention Counseling session.

**4. The Chief of Police should direct the command staff to incorporate discussion about the allegations and findings of the officer's complaint history to determine if a pattern exists.**

***Update:* Recommendation adopted and implemented**

The Chief of Police agreed to continue to have command staff discuss the type and finding of an officer's complaints during the actual counseling session. However, the SJPD noted that while the type and finding of each complaint are significant, the requisite number of complaints received by an officer should be the determining factor on whether an officer must attend the counseling session.

### Recommendations and Updates

5. The Chief of Police up-grade the SJPD's *EWS* to include other indicators such as civil claims and lawsuits.

**Update: Recommendation not adopted**

The Chief of Police did not agree with this recommendation. The SJPD views the current version of the *EWS* as a proven means of effectively reducing the number of citizen complaints being reported. It is a non-disciplinary process with the sole purpose of providing counseling and working with officers to improve individual performance. The Chief stated that the Department currently has an internal system, separate from the *EWS*, that tracks civil claims and lawsuits, which is a part of the discipline process and the two systems should not be commingled.

### C- COMPLAINTS AGAINST HIGH-RANKING OFFICERS

The Chief of Police in conjunction with the City Manager should develop a written policy that addresses the procedure to follow when serious misconduct allegations are filed against top ranking SJPD officers. This policy should include clear guidelines that specify what constitutes a serious allegation, the process by which to notify the City Manager, the procedure to address conflicts that could arise during the handling of such complaints, and the process for notification of the Independent Police Auditor to monitor and audit these complaints.

**Update: Recommendation adopted**

The City Manager and the Police Department agreed with this recommendation. These procedures will reflect the City's standard practice in disciplinary procedures in all departments, under which the City Manager is responsible for determining how to investigate any allegations of misconduct. The procedures will outline the following steps:

- Allegations of misconduct against high-ranking officials in the Police Department must be communicated to the City Manager.
- The City Manager will determine the proper approach to investigate the allegations, examining issues such as potential conflicts and resources needed.
- Investigations may be conducted by:
  - The City Manager's Office of Employee Relations.
  - The City Manager and/or a staff member he assigns.
  - An external investigator.

