



IPA 2003 Report



A COMPREHENSIVE TEN YEAR OVERVIEW

Teresa Guerrero-Daley
Independent Police Auditor

A REPORT TO THE SAN JOSE CITY COUNCIL

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Office of the Independent Police Auditor

TERESA GUERRERO-DALEY
Independent Police Auditor

May 7, 2004

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

Enclosed is the Independent Police Auditor's 2003 Report submitted for your approval. This report captures a ten-year comprehensive analysis of the activities, progress, recommendations, and statistics of the Office of the Independent Police Auditor. The report describes the impact of past recommendations, information on the evolution of administrative and policy procedures, and contributions to the community from the office's outreach efforts.

I will be providing an overview of this report at the City Council meeting scheduled for May 18, 2004. On this same date, Chief Rob Davis will be providing a response to this report.

I welcome your comments and am available to meet with you to respond to questions and/or offer further explanations.

I would like to thank and acknowledge your continued support, the work of my staff, and the Independent Police Auditor Advisory Committee for their contributions to the development of this report. I would also like to recognize and commend the San José Police Department for providing our office with all the requested information necessary to prepare this report and for their ongoing cooperation.

Respectfully submitted,

Teresa Guerrero-Daley
Independent Police Auditor

Independent Police Auditor & Staff

Teresa Guerrero-Daley, Police Auditor - 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 an investigator and a Drug Enforcement Agent for the U.S. Department of Justice. Mrs. Guerrero-Daley is the Chair of the Board of Trustees at Lincoln Law School and the President of the La Raza Lawyers of Santa Clara County. Mrs. Guerrero-Daley is a recipient of a Women of Achievement Award, for exemplary leadership in public service, and a “Breaking the Glass Ceiling Award” from the National Center for Women in Policing. Mrs. Guerrero-Daley is a Judge-Elect of the Santa Clara County Superior Court.

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 José 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, a non-profit legal service agency. Mr. Wing obtained his Juris Doctor from Santa Clara University after obtaining a Bachelor’s degree in Criminology from the University of California, Berkeley.

Alfred J. Morales, Citizen Complaint Examiner - Mr. Morales is a retired police sergeant with over 26 years of service in the Bay Area. He is also certified instructor at the South Bay Regional Public Safety Consortium, Police Academy. Mr. Morales retired from the United States Army Reserve Components as a First Sergeant with 24 years of combined active and reserve service. Mr. Morales attended Saint Mary’s College from where he achieved a Baccalaureate Degree in Management. Mr. Morales has spent all of his adult life in public service.

Xochitl E. Yañez, Public & Community Relations - Ms. Yañez’s primary role is to promote public awareness citywide about the Office of the Independent Police Auditor by conducting presentations, attending community events, and developing partnerships with the community at large. Ms. Yañez holds a Bachelor in Economics with a minor in Spanish from the University of Texas at San Antonio, and a Masters in Public Administration as a National Urban/Rural Fellow from Baruch College of Public Affairs in New York City.

Vivian D. Do, Data Analyst - Ms. Do joined the IPA from the private sector where she was experienced in Information Technology. Ms. Do enjoys the working environment at the IPA where she can focus her technical skills on computer and technology related needs, such as data analysis; database management and desktop publishing. Her skills are an integral part of the process of producing the IPA annual reports. Ms. Do received a Bachelor of Science degree from San José State University, California.



Independent Police Auditor & Staff



Photo from left to right: Alfred J. Morales, Marifel Juan, Xochitl E. Yanez, Teresa Guerrero-Daley, Steve Wing, & Vivian D. Do Photograph courtesy of Kit Kwan

Marifel C. Juan, Office Specialist - When you call the Office of IPA, it is Ms. Juan's attentive and engaging voice you will hear. She has varied experience assisting the IPA staff and the public. Ms. Juan is currently attending Evergreen College and will soon be transferring to San José 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 (IPAAC)

Mission

The Mission of this group is to assist the Office of the Independent Police Auditor to provide independent review of the police complaint process, to promote public awareness of a person's right to file a complaint, and to increase police accountability to the public by the San José Police Department.

Purpose and Objectives

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

The objectives are to:

1. Promote the mission of the Independent Police Auditor and inform the Independent Police Auditor of the specific needs/problems in the 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.

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 set forth in San José Municipal Section 8.04.020.

Advisory Committee Members

CURRENT MEMBERSHIP

Yoyi Aglipay, Filipino-American Heritage Appreciation Project, Inc. (1999-2003)

Tony Alexander, Silicon Valley African American Democratic Coalition (1999-2003)

Ahmad Al-Helew, South Bay Islamic Association (2001-2003)

Rose Amador, Center for Training & Careers, Inc. (2001-2003)

Robert Bailey, San José Human Rights Commission (2002-2003)

Rick Callender, NAACP (2001-2003)

Bob Dhillon, United Neighborhood of Santa Clara County (1999-2003)

Minh Steven Dovan, Attorney (1999-2003)

Larry Estrada, Santa Clara County La Raza Lawyers (2000-2003)

Victor Garza, La Raza Roundtable (1999-2003)

Josue Garcia, Santa Clara & San Benito Counties Building Trades Council (2003)

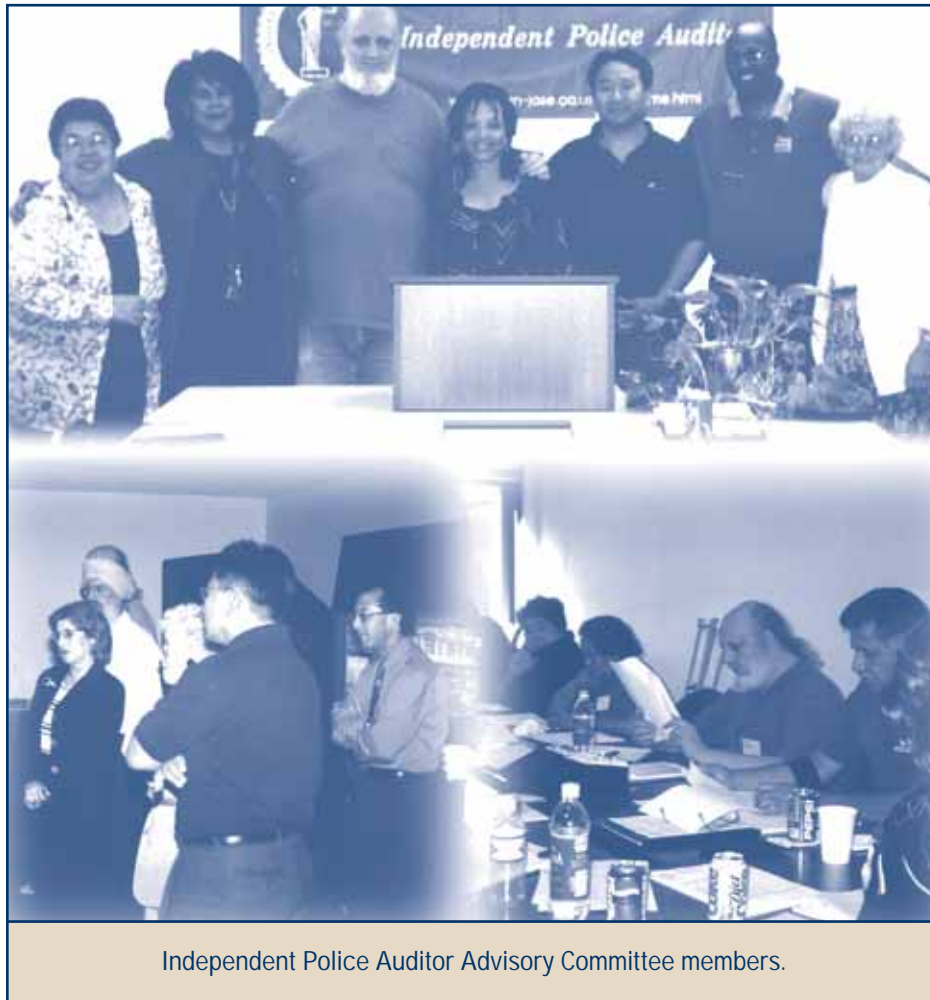
Aminah Ayoola Jahi, Alliance of African Community Organization (1999-2003)

Kenneth Lee, Korea IT Network (1999-2003)

Craig Mann, Governing Board Member, East Side Union HSD (1999-2001, 2003)

Sundust Martinez, Indigenous Peoples Council, Yaqui/Papgo Nations (2003)

Acknowledgement



Independent Police Auditor Advisory Committee members.

Gary L. Wood, Coalition for Justice and Accountability (2000-2003)

William Yeager, Master Composters of Santa Clara County (2001-2003)

PAST MEMBERS

Abdussalam Chouia, Council on American Islamic Relations (1999)

Ed Davila, Santa Clara County Bar Association (1999-2000)

Paul Feci, San José Human Rights Commission (2000-2001)

Dolores Garcia (2000)

Roy Gilbert-Higginson, Billy DeFrank Lesbian & Gay Community Center (2001-2002)

Sofia Mendoza, Community Child Care Council (1999-2003)

Helal Omeira, Council on American Islamic Relations (2001-2003)

Merylee Shelton, San José City College (1999-2003)

Wiggys Sivertsen, San José State University (1999-2003)

Patrick Soricone, Billy DeFrank Lesbian & Gay Community Center (2003)

Alfredo Villaseñor, Community Child Care Council (2001-2003)

Madison P. Nguyen, Vietnamese American Center (2001-2002)

Keith Rendone, Billy DeFrank Lesbian & Gay Community Center (1999)

Sam Som, County of Santa Clara Probation Department (1999)

Jennifer Tait, Friends Outside National Organization (2001)

Gertrude Welch, Criminal Justice Committee of the Hate Free Community Network (1999-2002)

Table of Contents

EXECUTIVE SUMMARY 8

Chapter 1 INTRODUCTION 10

Establishing Police Oversight In San José	11
Early Community Organizers	11
Establishing the Independent Police Auditor	11
Permanent Status for the Independent Police Auditor	12
Contents of 2003 Report	13
Impact of the Independent Police Auditor Recommendations	13
Oversight of the Complaint Process	13
Community Outreach	13

Chapter 2 IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS 14

Use of Force Complaints – Monitoring, Auditing, and Analysis	17
Review of Officer-Involved Shootings	19
Officer-Involved Shooting Review Panel	20
Less-Lethal Weapons	21
Training	21
Crisis Intervention Team (CIT)	22
Statistics and Recommendations	22
Timelines	24
Citizen Requests for Officer Identification	26
Concluding Observations	27

Chapter 3 OVERSIGHT OF THE COMPLAINT PROCESS 28

Filing a Citizen Complaint	29
Rescinded Complaints	29
Improvements in the Complaint Process	30
Intake Statistics	31
Monitoring Ongoing Investigations	32
Complaint Classification	32
Officer Interviews	32
Progression of Investigations	33
Auditing of Citizen Complaints	33
Further Investigation Requested	34
Agreed/Disagreed Cases	34
Concluding Observations	34

Table of Contents

Discipline	35
Who are the Complainants?	35
Complainant Demographics	35
Satisfaction Level with the Services Received at the Independent Police Auditor?	37
Satisfaction Level with the Services Received at Internal Affairs?	37
Who are the Subject Officers?	38
Subject Officer Demographics	38
Years of Experience	38
Subject Officers' Satisfaction Level with the Investigative Process	40
Concluding Observations	40

Chapter 4	COMMUNITY OUTREACH	42
	The City's Introduction to the Independent Police Auditor	43
	Spreading the News about the Independent Police Auditor	44
	Targeted and Systemic Outreach	45
	Independent Police Auditor Advisory Committee (IPAAC)	45
	Referral Sites	45
	Independent Police Auditor Informational Forums	47
	Youth Outreach	48
	The Independent Police Auditor's Domestic and International Contribution	48
	What Do the Numbers Say?	49
	Concluding Observations	49

CONCLUSION	50
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Appendix A	Classification of Complaints	51
Appendix B	Misconduct Allegations	52
Appendix C	Disposition of Complaints	52
Appendix D	City of San José Structure	54
Appendix E	Office of the Independent Police Auditor Structure	54
Appendix F	Independent Police Auditor Recommendations	55

IPA 2003 Report

A Comprehensive Ten Year Overview

This report commemorates the tenth year anniversary of the Office of the Independent Police Auditor. It captures a comprehensive review of the inception, evolution, and accomplishments of the office. The report discusses the impact the Independent Police Auditor has made in the citizen complaint process and the evolutionary changes in the practices of the Internal Affairs Unit and in other units of the San José Police Department. The implications of the policy recommendations that the Independent Police Auditor has made to the San José Police Department are described, using four separate recommendations as examples. It also explains the monitoring and auditing role of the Office of the Independent Police Auditor. In addition, this report includes the contributions the Independent Police Auditor has made to local and nationwide communities through its outreach efforts.

The source of the information in this report came from statistical data from the Independent Police Auditor, the San José Police Department, interviews with community citizens, surveys, civilian oversight agencies, past Independent Police Auditor year-end reports, and the Independent Police Auditor staff.

The major findings that emerged from this report include:

Impact of the Independent Police Auditor Recommendations

Some policy recommendations made by the Independent Police Auditor have dealt strictly with the internal process and procedures utilized by both the Independent Police Auditor and the Internal Affairs Unit to ensure that day-to-day operations and communication between the two agencies are clear and efficient. Other recommendations have concerned broad San José Police Department policies that have affected the manner in which all police officers must conduct themselves. This chapter chronicles four recommendations as examples of how recommendations are developed and what efforts are necessary to successfully implement them over a course of several years. Furthermore, once the recommendation is adopted, the Independent Police Auditor monitors the implementation of the recommendations and determines whether the desired impact of improving the department operations was achieved or not. The monitoring and even assisting the police department with the implementation of the recommendations have become part of the Independent Police Auditor's major work activities throughout the year. The sample recommendations in this report discuss issues ranging from administrative procedures to excessive force and officer-involved shootings.

IPA 2003 Report

A Comprehensive Ten Year Overview

Oversight of the Complaint Process

This Chapter chronicles the evolution of the current methods employed by Internal Affairs and the Independent Police Auditor in resolving citizen complaints. This evolution has been incremental and has led to systemic and sustained improvements in the manner in which complaints are received, documented, tracked, investigated, and reported. The Independent Police Auditor provides an independent review of the complaint intake and investigative process by monitoring and auditing complaints from inception to conclusion. This section discusses how the Independent Police Auditor monitors and audits the investigation of citizen complaints to ensure a proper, timely, objective, and thorough investigation by Internal Affairs investigators.

Community Outreach

The community outreach function of the Independent Police Auditor has been the primary vehicle by which citizens are informed, community needs and concerns are heard, visible presence has been maintained, and accessibility to all has been ensured. In the past ten years, the Independent Police Auditor has overcome obstacles, resistance and criticism, and has made significant inroads in gaining trust, respect, and support from the public, elected officials, and the San José Police Department. Overall, community outreach played an integral role in opening channels of communications to address police misconduct issues and ensure that police concerns did not turn into severe problems. The Office of the Independent Police Auditor has received local, national, and international attention for its contributions.

In ten years of operation, the Office of the Independent Police Auditor has evolved from an office that was established on a trial basis amidst great controversy to an office that is respected as an effective form of civilian oversight of law enforcement. The mere existence of the Independent Police Auditor likely contributes to the deterrence of police misconduct, improvement in police services, and greater accountability. The experience of the Independent Police Auditor has shown that civilian oversight of law enforcement should be viewed as an essential and long-term process. The success that the Independent Police Auditor has been able to achieve can be attributed to support from the community at large; the Mayor and City Council who have safeguarded the Independent Police Auditor's independence and have supported the work of the office; and the cooperation and partnership in problem solving it has forged with the San José Police Department. Therefore, it can be said that effective civilian police oversight can be achieved when key influences, (community, elected officials, police) work in harmony and towards mutual goals.

Chapter One

INTRODUCTION

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.

I. ESTABLISHING POLICE OVERSIGHT IN SAN JOSE

The field of civilian oversight of law enforcement is relatively new in the United States and has evolved from grass roots volunteer based efforts to sanctioned city departments operated by professional paid staff. This section will detail the chain of events that led to the establishment of police oversight in the City of San José and will chronicle the creation and evolution of the Office of the Independent Police Auditor (IPA). The year 2003 marked the tenth year of operation for the IPA. While ten years of existence is a very short time for most established professions, ten years is a significant time for a civilian oversight body not only to survive but also to realize exponential growth. Most civilian oversight offices nationwide have either experienced significant setbacks, have been restructured, or have been abolished. Some of the leading reasons for these actions can be traced to budget cuts that have rendered the agencies ineffective, uncompromising line in the sand stands between the police and the oversight agency, lack of political will to support civilian oversight, and/or an apathetic community. A prevailing cooperative atmosphere enabled the IPA to work through many similar challenges.

"MAYOR SUSAN HAMMER HAS NAMED A SAN JOSE WOMAN WHO PRACTICES CRIMINAL LAW IN REDWOOD CITY TO BE SAN JOSE'S INDEPENDENT POLICE AUDITOR... IN RESPONSE TO CONCERNS ABOUT POLICE MISCONDUCT."

San José Mercury News,
September 1993

A. Early Community Organizers

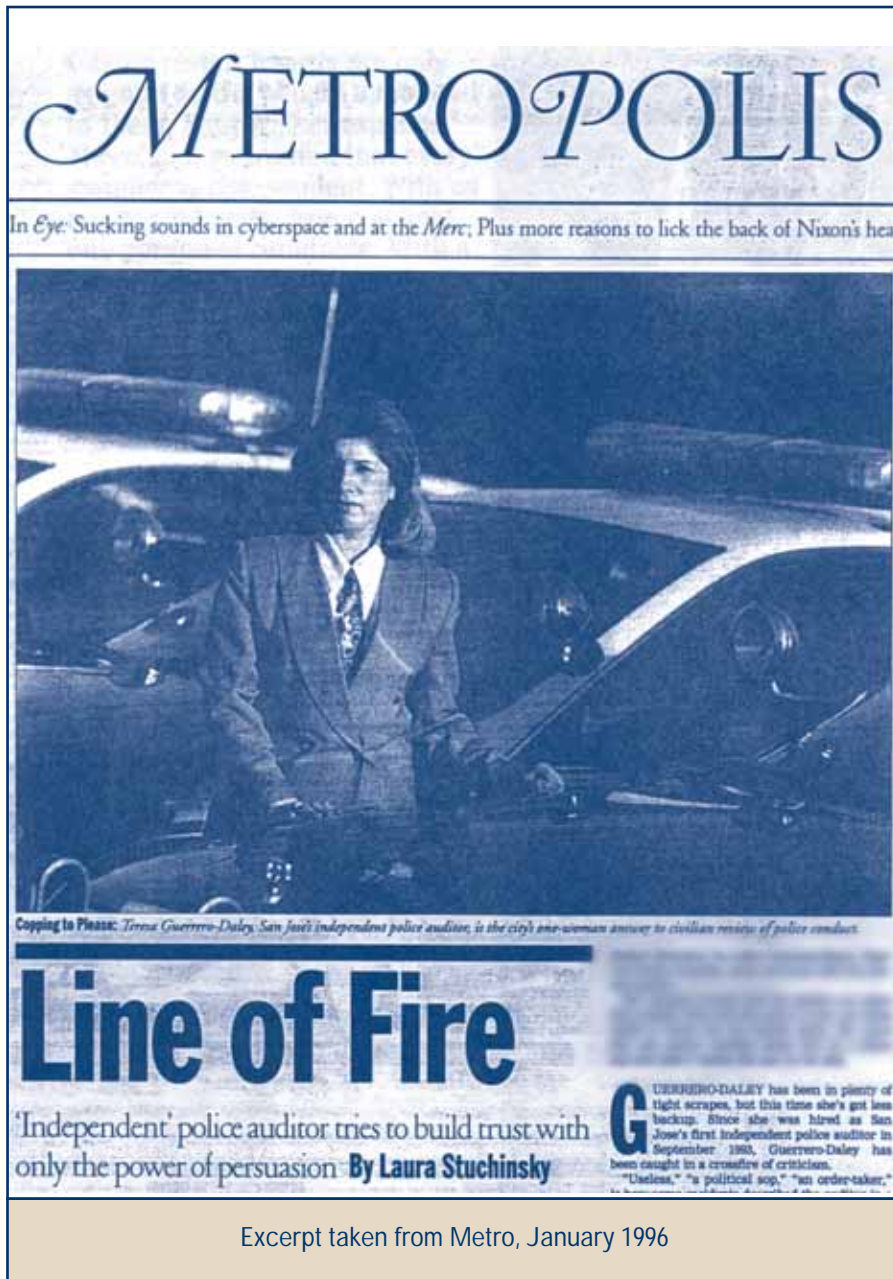
It is important to document the history that led to the creation of the IPA in order to put in perspective the advances and improvements that have been made in the last ten years. In 1992, shortly after the Rodney King verdict and subsequent rioting in Los Angeles, several incidents took place that led the San José City Council to establish civilian oversight for the San José Police Department (SJPD). Grass roots, civil rights, and professional organizations came together for one

purpose - to demand the creation of a civilian review board that would provide oversight of the SJPD. While there were earlier efforts in the sixties, seventies and eighties, primarily by activist groups, to raise an awareness of the existing conflicts between minority communities and the SJPD, it wasn't until after the Rodney King riots that this movement gained wide support and momentum. The key organizations that led the movement to implement civilian oversight were the Santa Clara County Bar Association, the American Civil Liberties Union of Northern California, the San José Human Rights Commission, the Santa Clara County Human Relations Commission, the Direct Action Alliance and several grass roots organizations. These organizations submitted several proposals to the San José City Council requesting the establishment of a civilian review board; however, the City Council was not convinced that a review board was the best choice for San José.

Tension continued to build and on October 20, 1992, several hundred people stormed the Council chambers forcing the Mayor and City Council to retreat and suspend proceedings. At that meeting the Chief of Police had gone on record saying that he would resign if the Council established a civilian review board. The City Council ultimately decided on a Police Auditor model. This decision did not gain favor with the proponents of civilian review boards or with the rank-and-file officers.

B. Establishing the Independent Police Auditor

The City of San José conducted a study to determine the best form of civilian police oversight for San José and the final recommendation was a hybrid of the programs in existence in Seattle, Washington, Albuquerque, New Mexico, and Portland, Oregon. The IPA was viewed by many



oversight did not embrace the police auditor concept and did not view it as a legitimate form of police oversight. Though the IPA was established amidst great controversy and with little external support, the Mayor and City Council were unwavering in their resolution to implement the IPA model for one year and thereafter evaluate its effectiveness and permanency. On September 13, 1993, the IPA opened for business. The broad recognition, as a leader in civilian oversight, that the IPA has since received is proof that the City Council made a wise choice for San José.

C. Permanent Status for the Independent Police Auditor

In its third year of operation, a blue ribbon commission was empanelled to evaluate the effectiveness of the IPA. The commission's findings gave the IPA high marks in its efforts to meet its objectives and also pointed to weaknesses such as lack of staff, resources, and funds. By the end of 1996, much of the controversy and opposition that plagued the decision to establish the IPA

as a compromise between no police oversight, as proposed by the SJPD, and a civilian review board. The criticism centered on three key issues, the IPA was not given power to investigate, subpoena witnesses, or impose discipline. Furthermore, because the police auditor model was a new concept, it was difficult for people to understand how it would function. Even practitioners in civilian

had vanished. That same year, the City Council moved to place a charter amendment on the November ballot to make the IPA a City chartered office. The measure known as Measure E, passed decisively in every City Council district and was a major affirmation that the residents of San José supported the IPA. The passage of this measure squelched arguments from opponents that sought

to abolish the IPA and from those groups and individuals still advocating for a civilian review board. On July 1, 1997, the IPA began to operate as a chartered office, staffed with permanent City employees.

II. CONTENTS OF 2003 REPORT

This report will cover the IPA's primary functions: 1) Intake of citizen complaints, monitor and audit complaint investigations, 2) submit policy recommendations, and 3) conduct community outreach. Each of these functions will be expounded on through a chronology of the developments that have taken place over the last ten years and through examples of how police services have been improved.

A. Impact of the Independent Police Auditor Recommendations

One of the most important and distinguishing characteristics between a police auditor model and a review board or commission is the police auditor's ability to effectuate systemic changes through policy recommendations. While an examination of each case takes place, greater emphasis is placed on spotting patterns and trends in the complaint audits, pinpointing the origin of the conduct that gave rise to the complaint, and in recommending policy and procedural changes to abate the offending conduct. Thereafter, subsequent complaints allegedly violating these recommendations are tracked in an effort to evaluate the adherence to these new policies, the effectiveness of the new policies in changing police behavior, and to determine whether these new policies and procedures resulted in long term positive change. Four policy recommendations were selected as examples to demonstrate the process the IPA follows in selecting areas for analysis leading to recommendations and the impact they had on changing police behavior and improving the quality of police services.

B. Oversight of the Complaint Process

This section provides an overview of how the process of filing a complaint has changed from an adversarial process to one where complainants are viewed as a client and a stakeholder in the evaluation of police services. In addition, a statistical comparison of the type and number of complaints filed in the last ten years is provided. Also included in this section, is an explanation of the monitoring phase of an ongoing investigation and an analysis of the audits conducted of completed investigations by the IPA staff.

C. Community Outreach

Community outreach is one of the primary functions mandated by the San José Municipal Code to the Office of the Independent Police Auditor. Because most of the work of the IPA pertains to San José police officer's personnel records, the IPA is limited in what information it can disclose to the public. Current law only authorizes the release of very limited information to the complainants by the IPA such as the finding of the complaint. The IPA cannot disclose the type of discipline that may have been imposed. Therefore, the IPA sought other means to communicate with the public in order to increase trust in the citizen complaint process and in the IPA's ability to provide effective oversight. With the addition of staff, the IPA shifted from merely responding to community requests to being proactive in its quest to inform the public of its existence, mission, role, and in developing key relationships with community leaders in San José's diverse communities. The IPA also improved the quality of its publications and expanded their distribution. There was also an increase in the number of people the IPA reached yearly. The IPA's outreach program has become a model for other cities to follow and has been key in overcoming conflict, controversy, and dissension, which arises from citizen and police contacts.

Chapter Two

THE RECOMMENDATIONS
SUBMITTED BY THE IPA TO THE
SJPD HAVE MADE A
SIGNIFICANT IMPACT ON THE
QUALITY OF SERVICES PROVIDED
TO THE PUBLIC BY THE SAN JOSE
POLICE DEPARTMENT.

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

The San José City Council created the Independent Police Auditor (IPA) to accomplish the overall goal of enhancing public confidence and credibility in the outcome of the investigation of citizen complaints filed against members of the San José Police Department (SJPD). To accomplish this goal, the Council provided that the IPA should have the following duties and responsibilities:

- Monitor and audit SJPD investigations of complaints filed against police officers to determine if the investigation was complete, thorough, objective and fair.
- Serve as an alternative location for any person to file a complaint against a San José police officer.
- Conduct public outreach to educate the community about the process and procedures of the investigation of complaints against police officers and the role of the IPA.
- Prepare and present reports to the City Council that analyze trends and patterns; include a statistical analysis; and document the number of complaints, the type of complaints, and the number of complaints sustained.
- Make recommendations to enhance and improve SJPD policies and procedures.

IPA'S RECOMMENDATION PROCESS



CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS



In 1996 the IPA reported that several complaints received were against off-duty officers wearing police uniform. This resulted in the IPA's recommendation to the SJPD to revise their policy regarding off-duty employment for officers.

Image taken from Metro, April 1996

One of the most significant duties that has the greatest impact on improving police services, is the IPA's authority to make recommendations for the purpose of enhancing and improving SJPD policies and procedures. Since its creation in 1993, the IPA has made 95 recommendations concerning SJPD policies or procedures, 78 of which have been adopted by the SJPD. Most of the recommendations were developed in response to issues that were identified either during the process of auditing complaint investigations or from the statistical analysis conducted by the IPA. Identifying patterns and trends serves as the basis for making recommendations to improve SJPD operations.

The diagram depicting the recommendation process indicates that problem issues are identified either because a significant number of complaints alleging similar misconduct are identified or by complaints involving allegations so serious that an issue can be raised by just one or two similar complaints.

The process of developing recommendations requires that the IPA conduct research from various sources. The information obtained is analyzed and specific recommendations are developed to address identified problems. The research for many of the recommendations has required the cooperation of the SJPD and over the past ten years the development of a professional and cooperative relationship between the IPA and the SJPD has been instrumental in the adoption of most of the IPA's recommendations by the SJPD.

However, even with the SJPD's adoption of the IPA's recommendations and acceptance of the IPA's report by the City Council, the task does not end there. Once adopted, the task shifts to monitoring the implementation of the recommendations and determining whether the desired impact of improving SJPD operations was achieved or not. Monitoring the implementation of the IPA's recommendations and even assisting the SJPD with implementation has become one of the IPA's major work activities throughout the year.

Tracking all prior and pending recommendations made by the IPA has become a vital component of the overall operation of the IPA. The IPA views this process as a crucial measurement of the impact it is having on accomplishing the original goal of increasing public confidence in the SJPD's investigation of citizen complaints against police officers and improving SJPD operations in general. Tracking the implementation of the IPA's recommendations has also proved critical because some of the recommended changes, while adopted by the SJPD, have proved to be difficult to fully implement, requiring that the IPA remain persistent in its monitoring efforts.

Some recommendations have dealt strictly with the internal process and procedures utilized by both the IPA and the Internal Affairs Unit (IA) to ensure that day-to-day operations and communication between the two agencies are clear and efficient. Other recommendations have concerned

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

broad SJPD policies that have affected the manner in which all police officers must conduct themselves. This chapter will chronicle four recommendation areas as examples of how recommendations are developed and what efforts are necessary to successfully implement them over a course of several years.

I. USE OF FORCE COMPLAINTS – MONITORING, AUDITING AND ANALYSIS

Since alleged unnecessary or excessive use of force, including the use of lethal force, by law enforcement officers has always been the public’s primary concern when considering cases of police misconduct, review of these complaints and ways to reduce the number of unnecessary force complaints has been one of the primary focuses of the IPA. The consequences of use of force cases was recognized in the enabling ordinance establishing the IPA and adopted by the City Council on June 29, 1993 therefore, it required that the IPA review all complaints alleging excessive or unnecessary force. For all other types of complaints, the IPA was only required to review a minimum of 20% of such cases.

As the direct result of analyzing data extracted from the audit of unnecessary force (UF) complaints during the past 10 years, the IPA has identified trends and patterns that have, in turn, pointed out areas needing improvement by the SJPD. The IPA conducted an analysis of the UF complaints and researched the issues raised. The IPA developed recommendations for changes to SJPD policies and procedures that have been presented in the IPA’s reports to the City Council. After acceptance by the Council and adoption by the SJPD, the IPA monitors the implementation of the recommendations by the SJPD and in some instances, has collaborated with the SJPD to implement some recommendations. These changes have made significant contributions to the overall goal of reducing the number of UF complaints filed by citizens against San José police officers.

The charts below show that the total number of UF complaints in the last 10 years has dropped from a high of 114 in 1999 to a low of 49 in 2003. The number of UF allegations (there can be multiple UF allegations per complaint) has had a corresponding drop from a high of 199 in 1994 to a low of 83 in 2003.

UNNECESSARY FORCE COMPLAINTS			
Period	UF 1 Complaints	UF 2 Complaints	Total UF Complaints
1993	N/A	N/A	N/A
1994	N/A	N/A	N/A
1995	N/A	N/A	81
1996	N/A	N/A	79
1997	N/A	N/A	102
1998	19	69	88
1999	22	92	114
2000	16	68	84
2001	6	46	52
2002	9	45	54
2003	7	42	49

UNNECESSARY FORCE ALLEGATIONS			
Period	UF 1 Allegations	UF 2 Allegations	Total UF Allegations
1993	N/A	N/A	168
1994	N/A	N/A	199
1995	N/A	N/A	142
1996	N/A	N/A	119
1997	44	111	155
1998	37	119	156
1999	36	147	183
2000	27	102	129
2001	16	76	92
2002	11	77	88
2003	23	60	83

* UF complaints and allegations were not divided into Class I and Class II until 1998.

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

In addition to auditing every unnecessary force complaint, the IPA has also tracked different information developed from the complaint audits for the purpose of identifying any trends or patterns. This information has also been reported annually in the IPA's Year End Reports. The information tracked has included:

- The number and seriousness of UF complaints (either Class I or Class II).
- The type of force alleged.
- The degree of injury alleged.
- The location of force application (the area of the body receiving the force).
- The timeliness of completing UF complaint investigations.

The IPA's objective is to identify any trends or patterns that may indicate that the SJPD should consider changing a particular practice or procedure to reduce the possibility that an encounter between an officer and a citizen will result in injuries to either the citizen or the officer. Another goal of the IPA has been to work collaboratively with the SJPD to reduce the number of complaints to as few as possible. Since its inception, the IPA has made many such recommendations, including:

- Establishing a policy requiring that a Supervisor conduct an investigation and collect all relevant evidence for all incidents where the use of force by an officer results in any person needing to receive emergency medical care.
- Classifying UF complaints as either Class I (allegations that the complainant suffered serious injuries requiring immediate medical attention) or Class II (all other UF complaints).



This is the new area where a blood specimen is taken from uncooperative suspects. A recommendation that was adopted by the SJPD in 1998.

- Setting a 180-day goal in which to complete an investigation of Class I UF complaints.
- Creating better procedures when forcibly extracting blood from an uncooperative suspect using accepted medical practices and without using unnecessary force.
- Increasing the availability and use of less lethal weapons.
- Increasing the number of officers trained in crisis intervention.

The implementation of these efforts, other procedural changes and improvements in training during the past several years have all contributed to the gradual reduction in the number of UF complaints in the last ten years. As mentioned previously, there were only 49 UF complaints in 2003. This number is impressive when you consider there are almost 500,000 contacts a year between members of the public and San José police officers. Equally important is the degree of injury associated with an unnecessary force complaint. As shown in the previous chart, since 1996 when the IPA

DEGREE of INJURY (In Percentage)	1996 %	1997 %	1998 %	1999 %	2000 %	2001 %	2002 %	2003 %
Minor	41	44	45	48	55	58	75	57
Moderate	18	22	20	4	6	13	18	16
Major	10	18	17	13	15	2	0	0
Non-visible	30	8	11	21	9	17	7	19
Unknown	1	7	6	13	16	10	0	8

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

began tracking this information, a significant majority of UF complainants alleged that they had received only minor injuries (i.e. minor abrasions and bruises) or had no visible injuries. Conversely, the percentage of complainants claiming they received major and moderate injuries has been small. The number of major injuries reached a high of 19 in 1997 and a low of zero in 2003. This may be an indication that when officers have to use force, they are doing so more prudently.

II. REVIEW OF OFFICER-INVOLVED SHOOTINGS

Since officer-involved shootings and the use of lethal force can result in the taking of a life by a San José Police Officer, these cases should receive the most scrutiny and they tend to generate the greatest public outcry. For these same reasons, the IPA initially reviewed officer-involved shootings in its *1998 Year End Report*. When a person is injured or killed as a result of being shot by a police officer, there is always great concern and many questions arise about whether the use of lethal force was necessary.

At the outset of its review of the process for investigating officer-involved shootings, the IPA determined that part of the public's concern was based on a lack of knowledge about the investigative and review process that took place following an officer-involved shooting. Therefore, the IPA's 1998 Report included a description of this process that indicated that following an officer-involved shooting resulting in injury or death to a person, a criminal investigation by San José homicide detectives was initiated automatically. Representatives of the District Attorney's office monitored the investigation that focuses on whether or not the officer's actions present any possible criminal liability. At the same time, a representative from the Internal Affairs Unit of the SJPd monitors the investigation to determine if the officer's conduct

violated department policy. After the criminal investigation is completed, IA will review the investigation because even if the shooting is found to be without criminal liability for the officer, there still could possibly be a violation of department policy.

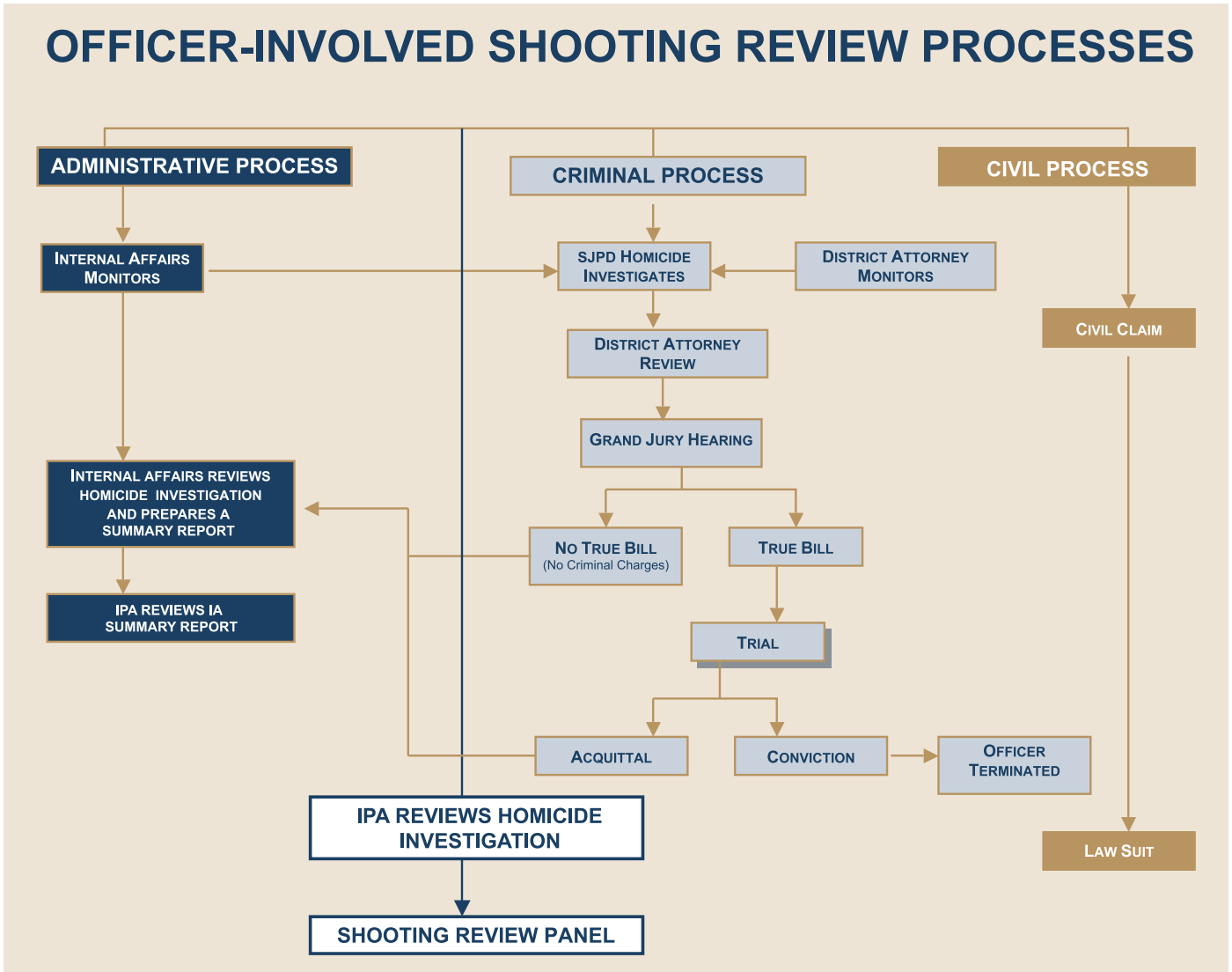
The flow chart on the following page provides a graphic display of the three types of processes utilized to review and resolve officer-involved shooting incidents. As the chart indicates, each has a separate focus.

Since officer-involved shootings are the most serious type of force used by police officers, many in the community assumed that the IPA was also monitoring and auditing these investigations. However, their assumption was incorrect. The IPA's 1998 Report explained that the IPA's jurisdiction was limited to reviewing those investigations that were initiated as a result of the filing of a citizen complaint and most officer-involved shooting incidents did not result in the filing of a complaint. A citizen misconduct complaint was usually not filed because the injured party or the family of the deceased, more commonly would file a civil action against the City and their attorneys often counseled them not to talk with anyone until after their civil cases were adjudicated.

The IPA reviewed how other major cities with civilian oversight of their police departments handled the review of officer-involved shootings and found that several, including, San Francisco, Los Angeles, San Diego, Tucson and Albuquerque, did not rely on the filing of a citizen complaint to examine and/or conduct a separate investigation of the shooting. The IPA also argued that since an officer involved shooting impacted the entire community, review by the IPA would help to increase the community's confidence in the investigation of these cases.

For these reasons, the IPA recommended in its *1998 Year End Report* that the IPA should review

OFFICER-INVOLVED SHOOTING REVIEW PROCESSES



the administrative investigation of all officer-involved shootings where a person was wounded or killed whether or not a complaint was filed.

A. Officer-Involved Shooting Review Panel

In response to this recommendation, the Chief of Police created the Officer-Involved Shooting Review Panel. This panel includes the Chief of Police, Deputy Chief for the Bureau of Field Operations, the Police Auditor, the Training Unit Commander, a representative from the City Attorney’s Office and other police command staff. This panel reviews all officer-involved shootings resulting in injury or death for the purpose of

determining whether any departmental policies or practices need revision and to determine if any training needs exist. However, this panel does not meet to review the case until after both the criminal and administrative investigations have been completed which generally results in a situation where many months have passed since the actual incident.

During the years that followed the IPA’s first recommendation concerning officer-involved shootings, the IPA has continued to monitor and track these cases providing in each of its Year End Reports an analysis and additional

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

recommendations that could help to reduce the potential for an officer to use lethal force.

B. Less-Lethal Weapons

In its *2000 Year End Report*, the IPA recommended that the SJPD continue to identify alternate, less-lethal weapons and make them more readily accessible. The SJPD has responded by improving and expanding the availability of less lethal weapons for its officers. This progress has included the following:

- Stunbag Shotguns (12 available in 1994; there are now 45 available and all officers are trained in their use).
- 40 MM multi-launchers (14 were purchased in 1999 – there are now 22 of these weapons and 126 single shot launchers with over 100 officers trained in their use).
- Tasers (in 1994 only Patrol Sergeants were trained and certified to carry the stun gun or

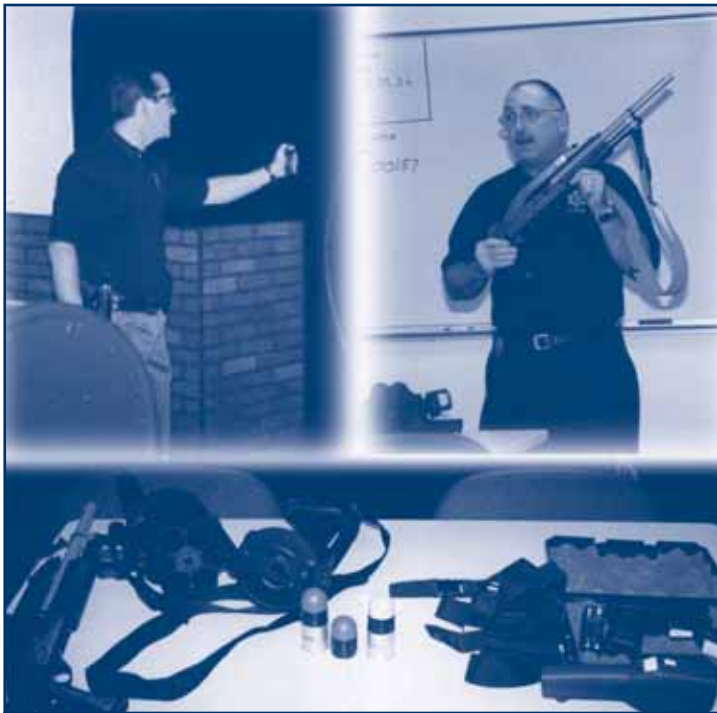


Defensive driver training is taught in a *state of the art simulator*.

electronic restraint device. In 2000, the SJPD tested two new types of tasers purchasing 20 of each type. In 2002, 162 additional tasers were obtained. By 2003, sufficient officers have been trained so that there is at least one member of every patrol team with a “taser” officer.

C. Training

Since 1998, the IPA has consistently encouraged the SJPD to expand and increase specialized training of its officers to better handle dangerous situations in which they may have to use lethal force. In 1999 the SJPD expanded their training facilities to include a computer controlled Force Option Simulator training system. This training provides interactive computerized situations that require officers to respond in real time to life and death scenarios. As part of the Perishable Skills Training Program requirement, every officer must take this 4-hour training every other year. Since 1999, the following numbers of officers have received this training:



Less-lethal weapons used by the SJPD.

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

FY 1999-2000	All officers through the rank of Lieutenant
FY 2000-2001	688 officers
FY 2001-2002	580 officers
FY 2002-2003	558 officers
FY 2003-2004 (as of 12/31/03)	264 officers

(The number of officers receiving the training varies due to modified duty, military leave, disability or some other leave status.)

D. Crisis Intervention Team (CIT)

The IPA continued to recommend that more officers receive specialized training to become members of the CIT because of the high percentage of officer-involved shooting cases that have involved persons with mental disabilities and/or people experiencing an emotional crisis. CIT training provides officers with a 40-hour training course on how best to diffuse a situation involving a person experiencing a mental or emotional crisis. The IPA also supported the department policy to attempt to dispatch a CIT officer whenever it appeared that a call for service may involve a person with mental disabilities or emotional problems. Since 1999, 227 San José officers and 55 San José dispatchers have taken the 40-hour CIT training.

E. Statistics and Recommendations

The chart on the following page provides a ten-year history of officer-involved shootings:

The IPA reported last year in its *2002 Year End Report* that all of these measures may have contributed to the steady decline of officer-involved shootings from eight (8) in 1999 to none in 2002. However, as impressive as it was to have no person killed or injured as the result of an officer-involved shooting in 2002, the IPA still noted that no amount of training or equipment can

guarantee that officers will be able to avoid the use of deadly force in response to a dangerous situation. This inevitability became a reality in 2003, as there were four officer-involved shootings, two of which resulted in the death of a person. One case in particular generated a significant degree of community outcry, questioning the need to use lethal force.

In its *2003 Mid-Year Report*, the IPA undertook an analysis and evaluation of the effectiveness of the Officer-Involved Shooting Review Panel. The IPA also compared the extent of its oversight of officer-involved shooting cases with its monitoring and auditing of less serious use of force complaints. In addition, as it did in its 1998 Report, the IPA also compared its process to the procedures and policies used by civilian oversight agencies in other comparable jurisdictions. As a result of this analysis, the IPA made the following recommendations:

1. A written policy should be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting. It should be noted that this recommendation was previously made, however, the SJPD had not adopted it.
2. The San José Police Department should improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.
3. The SJPD should prepare an annual report of the Officer-Involved Shooting Review Panel detailing any policy, procedures, training or other measures that were generated during its deliberations.

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

OFFICER-INVOLVED SHOOTING CASES (1993-2003)

Period	Number of Citizens Shot	Ethnicity	Mental Illness History	Citizen Shot Armed?	Type of Weapon	Citizen Shoot at Officer?	Prior Criminal Records?	CIT at Scene?	Citizen's Injuries	Degree of Force within Policy?
1993	Case 1	Hispanic	No	Yes	Knife	N/A	N/A	N/A	Wounded	N/A
	Case 2	Black	No	Yes	Shotgun	N/A	N/A	N/A	Fatal	N/A
	Case 3	White	No	Yes	Scissors	N/A	N/A	N/A	Fatal	N/A
	Case 4	Hispanic	No	Yes	Knife	N/A	N/A	N/A	Fatal	N/A
	Case 5	Black	No	Yes	Pistol	N/A	N/A	N/A	Fatal	N/A
	Case 6	White	No	Yes	Pistol	Yes	N/A	N/A	Fatal	N/A
1994	Case 1	Black	No	Yes	Knife & Gasoline	N/A	N/A	N/A	Fatal	N/A
	Case 2	White	No	Yes	Shovel	N/A	N/A	N/A	Wounded	N/A
	Case 3	White	No	Yes	Rifle	Yes	N/A	N/A	Wounded	N/A
	Case 4	White	No	Yes	Knives	N/A	N/A	N/A	Fatal	N/A
	Case 5	Black	No	Yes	Rifles	No	N/A	N/A	Wounded	N/A
	Case 6	Hispanic	No	Yes	Knife	N/A	N/A	N/A	Fatal	N/A
	Case 7	Black	No	Yes	Knife	N/A	N/A	N/A	Wounded	N/A
	Case 8	Asian	No	Yes	Knife	N/A	N/A	N/A	Wounded	N/A
	Case 9	White	No	Yes	Pistol	N/A	Yes	N/A	Fatal	N/A
1995	Case 1	White	No	Yes	Pistol	N/A	N/A	N/A	Wounded	N/A
	Case 2	Hispanic	No	Yes	Knife	N/A	N/A	N/A	Fatal	N/A
	Case 3	Hispanic	No	N/A	None	N/A	N/A	N/A	Wounded	N/A
	Case 4	White	No	Yes	Metal Pipe	N/A	N/A	N/A	Wounded	N/A
1996	Case 1	Hispanic	No	Yes	Pistol	Yes	N/A	N/A	Fatal	N/A
	Case 2	Hispanic	No	Yes	Knife	N/A	N/A	N/A	Wounded	N/A
	Case 3	Hispanic	No	Yes	Baton	N/A	N/A	N/A	Wounded	N/A
	Case 4	Hispanic	No	Yes	Knife	N/A	N/A	N/A	Wounded	N/A
1997	Case 1	White	No	N/A	None	No	N/A	N/A	Wounded	N/A
	Case 2	Hispanic	Yes	Yes	Pellet Gun & Knife	N/A	N/A	N/A	Wounded	N/A
	Case 3	White	No	N/A	None	No	N/A	N/A	Wounded	N/A
	Case 4	White	No	Yes	Rifle	N/A	N/A	N/A	Wounded	N/A
	Case 5	White	Yes	Yes	Pistol	N/A	N/A	N/A	Fatal	N/A
	Case 6	White	Yes	Yes	Pistol	N/A	N/A	N/A	Wounded	N/A
	Case 7	Hispanic	No	Yes	Pistol	Yes	N/A	N/A	Fatal	N/A
	Case 8	Hispanic	No	Yes	Iron Bar	N/A	N/A	N/A	Fatal	N/A
1998	Case 1	Hispanic	No	Yes	Rock	N/A	N/A	N/A	Wounded	N/A
	Case 2	Hispanic	No	Yes	Pistol	Yes	N/A	N/A	Wounded	N/A
1999	Case 1	Hispanic	No	Yes	Pistol	Yes	Yes	No	Fatal	Yes
	Case 2	Asian	Yes	Yes	Pistol	Yes	No	No	Fatal	Yes
	Case 3	White	No	No	None	No	Yes	No	Wounded	Yes
	Case 4	Hispanic	Yes	Yes	Pistol	Yes	No	No	Fatal	Yes
	Case 5	Hispanic	Yes	Yes	Knife	N/A	No	No	Fatal	Yes
	Case 6	White	Yes	Yes	Pistol	Yes	No	yes	Fatal	Yes
	Case 7	Black	No	No	None	No	Yes	No	Fatal	Yes
	Case 8	Hispanic	Yes	Yes	Knife	N/A	No	yes	Fatal	Yes
2000	Case 1	Hispanic	No	Yes	Pistol	No	Yes	No	Wounded	Yes
	Case 2	Hispanic	Yes	Yes	Axe & Knife	N/A	Yes	No	Fatal	Yes
	Case 3	Vietnamese	Yes	Yes	Spear	N/A	Yes	No	Wounded	Yes
	Case 4	Chinese	No	Yes	Pistol	Yes	No	No	Fatal	Yes
	Case 5	White	Unknown	Yes	Shotgun	Yes	Yes	Yes	Fatal	Yes
2001	Case 1	Middle Eastern	Unknown	Yes	Knife	N/A	Yes	No	Wounded	Yes
	Case 2	White	No	Yes	Pistol	Yes	Yes	No	Wounded	Yes
	Case 3	White	Yes	Yes	Rifle & Pistol	No	Yes	Yes	Fatal	Yes
	Case 4	White	Yes	Yes	Hammer & Knife	N/A	Yes	No	Fatal	Yes
2002	None	None	None	None	None	None	None	None	None	None
2003	Case 1	Hispanic	No	Unknown	Vehicle	N/A	Yes	N/A	Fatal	Yes
	Case 2	Hispanic	No	Yes	Pistol	No	Yes	Yes	Wounded	Yes
	Case 3	White	No	Yes	Pistol	No	No	N/A	Wounded	Yes
	Case 4	Vietnamese	Yes	Yes	Sharp Kitchen Implement	N/A	No	No	Fatal	Yes

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

4. The SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.
5. The IPA should be part of the rollout team to the scene of an officer-involved shooting.
6. The IPA's review of officer-involved shootings should be as thorough as its review of other complaints and should mirror the oversight of citizen complaints.
7. The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.

The SJPD agreed to implement the first four of these recommendations, but disagreed with the remaining recommendations. On December 2, 2003, the City Council directed the IPA and SJPD to further discuss the recommendations that were the subject of disagreement once a permanent Chief of Police was hired and to report back to the Council at a future meeting.

III. TIMELINES

One of the IPA's first recommendations adopted by the SJPD that continues to be as important today for enhancing the credibility of the citizen complaint process concerns the length of time it takes for IA to initiate an investigation of a complaint after it has been received and, more importantly, the time it takes to complete the investigation. During its first year of operation, the IPA found that approximately 25% of formal complaints alleging misconduct took longer than one year to complete and a few cases as long as three years. This timeframe was calculated from the date the complaint was filed to the time when a finding was made and the complaint was closed. The IPA also found that in addition to the closed cases,

there were many pending (open) complaint investigations that had been open for more than a year. Obviously, these investigations would also take more than one year to close.

The IPA determined that the reason for not completing the investigations in a timely manner was due in part to delays in the beginning of the process, as some complaints were not even classified for several months after their initial intake. That initial step delayed the beginning of the investigation. A complaint must first be classified before it is assigned to an investigator, therefore, witnesses were not interviewed for several months after the complaint was filed.

The problem this creates was identified by the IPA in its *Third Quarterly Report - April 1, 1994 To June 30, 1994*, where it said, "Several problems arise when Internal Affairs requires a prolonged period of time to complete an investigation: memories wane, witnesses disappear, and the issues lose their urgency to the extent that some complainants do not want to pursue the matter any longer."

The IPA recognized that the reliability and credibility of all witnesses, including the complainant, police officers and other independent witnesses, can become more of an issue the longer it takes for them to be interviewed as part of the complaint investigation. The IPA also stated, "the importance of completing these investigations in a timely manner is simply for credibility reasons. When Internal Affairs does not complete the investigation or interviews the witnesses within a few months, the impression left to the complainants is that the San José Police Department is trying to hide the complaint or letting the issue become stale so the complaint will lose its urgency."

To alleviate these time problems, in the *Third Quarterly Report - April 1, 1994 To June 30, 1994*, the IPA recommended the following timelines for the investigation of formal misconduct complaints:

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

30 days	Classification of all complaints.
120 days	Complete investigation of 75% of all complaints.
300 days	Complete investigation of all complaints.

The SJPD adopted these timelines and implemented them in 1995. However, after making progress toward meeting these goals in 1995 and 1996, the goals were changed in order to better ensure that the most serious use of force complaints were investigated in a timely manner. The application of the old goals also proved to be difficult to calculate.

Further refinements to the timeline goals were recommended in the IPA's *1996 Year End Report*. To ensure that the most serious use of force cases received priority, the IPA recommended that two categories of use of force complaints be implemented in 1997. Cases classified as a "Class I" use of force complaint were defined as allegations where the complainant required emergency medical care for a serious bodily injury. "Class II" use of force complaints would include all other types of use of force complaints. The new recommended goals were:

30 days	Classification of all complaints.
180 days	Complete investigation of all Class I use of force complaints.
365 days	Complete investigation of all other complaints.

The IPA continued to monitor IA's progress toward meeting the timeline goals in 1997 and to look for ways to improve IA's ability to meet these goals. After conducting a special study of 41 sustained complaints, the IPA found that the investigation and final disposition for sustained complaints, on average, took much longer to complete than complaints that were not sustained. The longer completion time for sustained complaints

was caused by the need for review by the officer's Chain of Command, the Chief of Police, the Employee Relations office and the City Attorney's office prior to completion of the investigation and imposition of any discipline. Complaints were often delayed in these City departments and determining where a specific complaint was held was difficult. A tracking mechanism was developed in order to determine how long a complaint was held and by what City department.

To make the timeline goals even more critical, a new state law became effective in 1998. This law required, in most cases, that in order for discipline to be imposed on a police officer as a result of a misconduct complaint, the investigation had to be completed within one year of the public agency's discovery of the misconduct. In order to meet this new state law, the IPA recommended that the timeline for completing all misconduct complaints by IA be shortened from 365 days to 300 days to ensure sufficient time for review by all other required parties before one year expired.

The IPA also recognized when it first reviewed IA's progress in meeting the timeline goals that the delays in completing investigations in a timelier manner were due in part to having an insufficient number of investigators assigned to IA. This recognition led to the IPA's recommendation to increase the number of investigators assigned to IA. The IPA found that the IPA investigators were working diligently to process and investigate complaints, but that even with efficiency improvements, there simply were not enough IA investigators to keep up with the caseload. The SJPD responded to these recommendations by increasing the number of Sergeant investigators assigned to IA. The number of Sergeant investigators assigned to IA increased from six (6) in 1993 to eight (8) by 1995. The two additional investigators helped IA to make significant progress in meeting the timeline goals. By completing the investigation and disposition of citizen complaints in a timelier manner, the confidence level of both complainants and subject officers in the citizen complaint process has improved substantially.

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

The tables that follow show the progress that has been made in meeting the various timelines from 1995 through 2003.

GOAL: Classify all Complaints within 30 Days

Period	Total Cases Received	Total Cases Achieved Goal	Percentage Achieved Goal
1993	N/A	N/A	N/A
1994	N/A	N/A	N/A
1995	456	392	86%
1996	607	526	87%
1997	446	403	90%
1998	364	341	94%
1999	383	361	94%
2000	374	355	95%
2001	253	241	95%
2002	216	196	91%
2003	167	149	89%

GOAL: Complete Investigation
UF Class I Complaints within 180 Days

Period	Total Cases Closed	Total Cases Achieved Goal	Percentage Achieved Goal
1993	N/A	N/A	N/A
1994	N/A	N/A	N/A
1995	N/A	N/A	N/A
1996	9	2	22%
1997	23	8	35%
1998	38	21	55%
1999	15	13	87%
2000	9	6	67%
2001	8	6	75%
2002	4	3	75%
2003	8	6	75%

GOAL: Complete Investigation
of All other Complaints within 300 Days

Period	Total Cases Closed	Total Cases Achieved Goal	Percentage Achieved Goal
1993	N/A	N/A	N/A
1994	N/A	N/A	N/A
1995	470	399	85%
1996	570	520	91%
1997	489	420	86%
1998	454	398	88%
1999	327	319	98%
2000	402	382	95%
2001	264	255	96%
2002	208	200	96%
2003	152	145	95%



Citizen requests for officer identification.

IV. CITIZEN REQUEST FOR OFFICER IDENTIFICATION

This issue was first raised in the *1996 IPA Year End Report* after audits of complaint investigations indicated that this type of allegation was occurring with some frequency. During the years of 1994, 1995 and 1996 there were 42 complaints containing an allegation that an officer did not comply with the SJPD's existing policy that stated, "Consistent with officer safety and protection of the public, Department members, while acting in an official capacity, will supply their name, rank and position, and similar identifying information in a professional manner to any person who may inquire." (SJPD Duty Manual section C1301.35) While this allegation may not be as serious as other misconduct allegations, the IPA's analysis determined that a significant number of these cases escalated from a citizen asking for the officer's name, to a verbal confrontation, and to an arrest requiring the use of force. Therefore, the number of officer identification complaints, coupled with the likelihood that this type of police and citizen interaction could lead to a more serious outcome, became the indicators that lead to an in-depth analysis of this issue by the IPA. This recommendation was selected for this report to illustrate how difficult it can be to change behavior; the years of effort it takes to monitor the implementation of a new policy; the need to analyze similar subsequent complaints; making additional new recommendations; and reassessing the implementation of any new recommendations.

CHAPTER TWO | IMPACT OF THE INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

Since providing an officer's name and badge number to a citizen upon request is consistent with providing good customer services and will more likely de-escalate a conflict situation between the officer and the citizen, the IPA recommended to the SJPD that it require police officers to follow policy and provide citizens with identification upon request.

In the years following, the IPA continued to track the number of complaints containing allegations that officers failed to properly provide their identification. It should be noted that this type of allegation was difficult to track because often times it was detected during the audit and not as a primary allegation. In addition, many complainants did not raise this allegation as an issue because they were not aware of the SJPD policy requiring that officers identify themselves. Lastly, IA investigators were not listing these violations as allegations even if the complainant mentioned it in their statements. In 1997, this policy was amended to require officers to write their name and badge numbers on a piece of paper instead of satisfying this requirement by verbally stating their name or referring the complainant to an issued citation or arrest report. In 1998, this policy was improved again with the development and use by the SJPD of an "incident card" which included the name and badge number of the officer, in addition to other information that identified the incident.

Even with the changes in the SJPD policy requiring that officers provide identification, the number of complaints involving these allegations did not decrease immediately. In fact, the IPA's monitoring determined that after recording seven (7) of these cases in 1999, there was an increase to 18 in 2000 and 19 in 2001. The IPA's analysis indicated that a significant number of these complaints had not been formally investigated by the Internal Affairs Unit and instead were being handled by referring the complaint to the subject officer's supervisor for an informal resolution. This process did not appear to be effective. Therefore, the IPA recommended that this type of allegation be

investigated formally whether it was the sole or a collateral allegation of the complaint. The IPA also recommended that the SJPD look for other ways to reinforce the importance of this policy. In the IPA Year End Reports for both 2000 and 2001, the IPA argued that because of the significant benefit that the SJPD could derive from what amounted to very little effort on the part of its officers, complaints that officers did not provide proper identification should simply not occur.

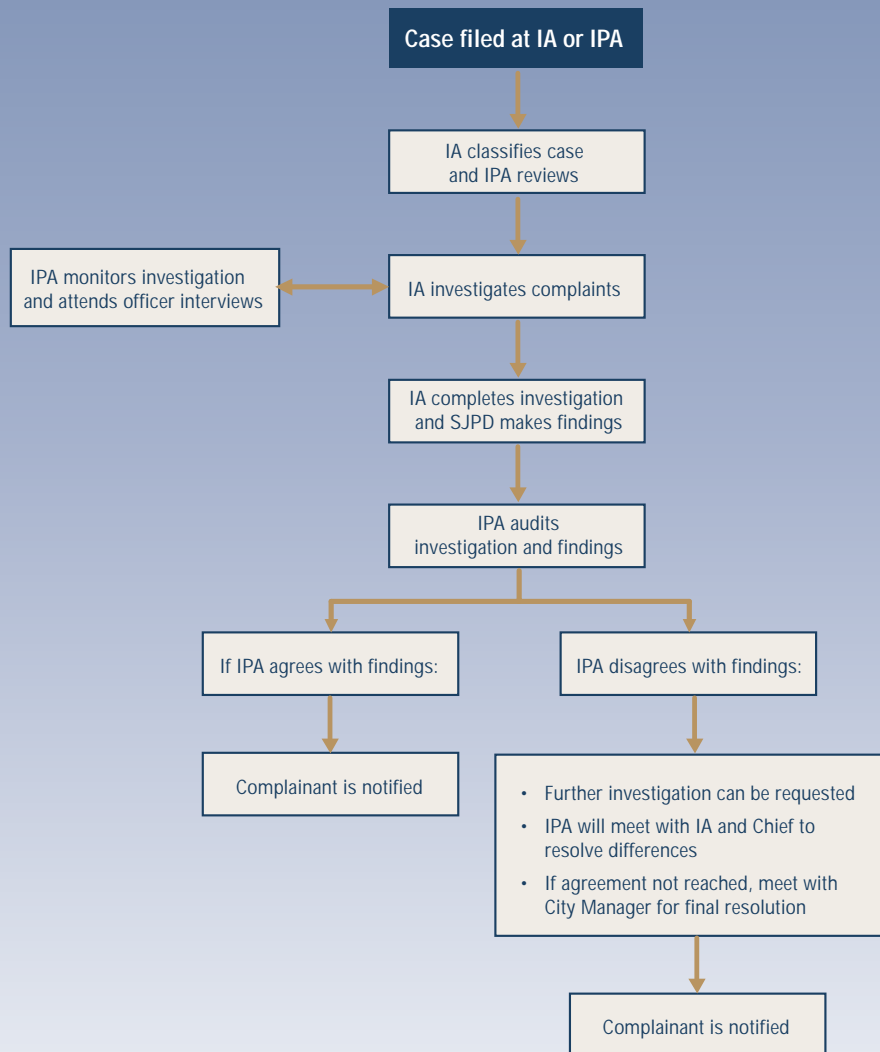
The IPA's continued monitoring of this complaint allegation and encouragement to the SJPD to remind officers to follow the officer identification policy finally began to have positive results. In 2002, there was a reduction to 13 officer identification complaint allegations and only six were reported in 2003.

V. CONCLUDING OBSERVATIONS

The many recommendations that the IPA has made in the last ten years have led to policy, procedural, and systemic improvements at the SJPD. The IPA has accomplished these improvements by identifying, tracking, analyzing, and making recommendations to address areas of dissatisfaction with police services brought forward by members of the public in the form of citizen complaints. These functions are at the core of the IPA's mission because change would likely not happen without an external mechanism in place and the necessary staff to insure that recommendations become implemented, that the implementation is evaluated, and ultimately that they result in sustainable behavioral changes.

The symbiotic relationship that the IPA has developed with the SJPD has been the catalyst in producing measurable results in key areas. Such areas include the reduction of use of force incidents and even when force was used, a reduction in the degree of force used has been achieved and maintained for several years.

Chapter Three



Prior to the establishment of the Office of the Independent Police Auditor (IPA), citizen complaints against San José Police officers were exclusively reported to officers assigned to the San José Police Department Internal Affairs Unit (IA). Today, IA continues to be responsible for receiving citizen complaints, investigating the allegations, and determining the existence of sustainable allegations. However, in 1993 the City established the Office of the Independent Police Auditor to provide independent review of citizen complaint investigations to ensure timely, objective, and thorough investigations by IA investigators. Additionally, the IPA was established to serve as an alternate forum for citizens to file complaints.

This Chapter chronicles the evolution of the current methods employed by IA and IPA in resolving citizen complaints. This evolution has been incremental and has led to systemic and sustained improvements in the manner in which complaints are received, documented, tracked, investigated, and reported. The IPA follows very specific San José Municipal Code mandates¹. The life span of a complaint undergoes three phases that include the complaint intake process, the monitoring of the investigation, and the auditing of the investigation.

- **Complaint Intake Process**- consists of detailed interviews of the complainant(s) and accurate documentation of the circumstances surrounding the complaint. If the complaint was received at IA, the IPA examines the intake process and gathers feedback from the complainants through customer satisfaction surveys.
- **Monitoring**- the tracking and observing of the IA investigator’s work throughout the investigation to ensure that it is conducted in a fair and objective manner.
- **Auditing**- is the critical examination and analysis of the completed investigation to

ensure that it was conducted thoroughly, objectively, timely and that the evidence supports the conclusion or findings reached by the IA investigator or the Chief of Police.

I. FILING A CITIZEN COMPLAINT

Citizens may report their complaints of suspected police misconduct to the IPA or IA via mail, telephone, e-mail, or in person. The flow chart on the proceeding page provides the main steps involved in the complaint process after a person contacts either the IPA or the IA to file a complaint.

The intake officer interviews the complainant about the nature of the complaint. With the complainant’s consent, interviews are tape-recorded to ensure accurate documentation of the information provided by the complainant.

Intake officers then explain the citizen complaint process and have complainants complete and sign several documents. If the interview was conducted over the phone the documents are mailed. After all questions have been answered the complaint is documented and prepared to send to IA for investigation.

A. Rescinded Complaints

There are two ways a case may be rescinded. The first is by the complainant’s request and the second is by failure of the complainant to return a signed Boland Admonishment² form. The Boland Admonishment is required by a law that was enacted and became effective January 1, 1996. This state mandate is an advisory to anyone filing a complaint of misconduct against any peace officer knowing it to be false is subject to being charged with a misdemeanor crime and prosecuted. While there is no requirement to investigate “No Boland” cases, the IPA and IA have agreed to

¹San José Municipal Code Section 8.04.010, ²California Penal Code Section 148.6

examine each case individually to determine if the complaint warrants an investigation regardless of the lack of a signed Boland Admonishment form. These cases are opened as a department initiated complaint under the authority of the Chief of Police. “No Boland” cases that do not warrant an investigation are closed within 30 days of the initial complaint intake.

The IPA and IA intake personnel are required to explain the Boland Admonishment to all complainants. Explaining the Boland Admonishment has proven to be a delicate issue because of the seemingly intimidating nature of the advisory. The IPA implemented a process of following up with cases that were closed without an investigation because the complainant(s) did not sign the Boland Admonishment form. This process

involves sending a letter explaining the importance and consequence of not signing the requisite form and the letter includes a Boland Admonishment form with a self-addressed

stamped envelope. This gives the complainant another opportunity to sign and return the form. The letter explains that if the Boland Admonishment is returned, the IPA can reactivate the investigation.

The IPA started tracking the number of cases withdrawn in 1999. The number of withdrawn cases increased the year after the IPA began tracking them. It increased from 34 in 1999 to 46 in 2000. Thereafter, rescinded cases decreased in 2001 and in 2003.

**TOTAL RESCINDED COMPLAINTS
(No Boland & Withdrawn Complaints)**

1999	34
2000	46
2001	30
2002	43
2003	29

B. Improvements in the Complaint Process

1. Communication with Complainants

The public’s perception of the SJPD’s Internal Affairs Unit has changed in the past ten years. In the beginning, citizens frequently complained



Complainant signing boland admonishment.

about the manner in which they were treated at the IA Unit while reporting their complaints. Complainants expressed that their veracity was challenged or that IA intake officers expressed no interest in examining their allegations objectively.

The IPA submitted recommendations to the SJPD in the 1993 Quarterly Reports to address the manner in which IA officers were receiving complaints, and how they communicated with complainants. The following recommendations were made and adopted by the SJPD.

- Establish procedures that address potential bias within the Internal Affairs Unit.
- Enact policy to ensure objectivity of the intake process.
- Train IA investigators to allow the complainant to give an uninterrupted account of their complaint, to not rationalize the subject officer’s conduct, to be empathetic, to use active listening skills, to thoroughly explain the process, and to provide ongoing written updates about the status of their complaint.
- Improve IA investigators’ communication skills so that citizens are left with the impression that their complaints will be taken seriously and investigated thoroughly and objectively.

While citizens today occasionally comment that they are not comfortable filing a complaint at IA, communications with complainants at IA have positively improved in the past ten years. Complainant satisfaction surveys will be discussed later in this chapter. Good communication skills was one of the initial areas addressed by the IPA because it is the first impression that complaints have of the services rendered at the IPA and/or at IA.

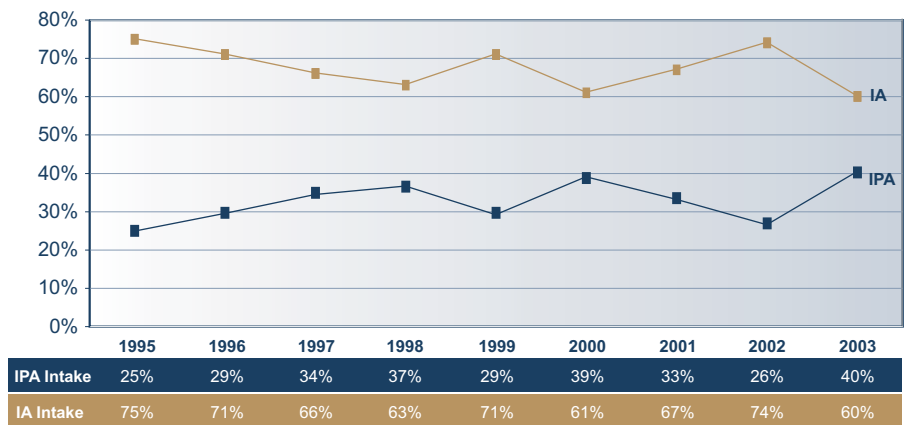
2. Under-reported Complaints

The first public report published by the IPA disclosed problems in the manner that complaints were received, documented, and resolved. At that time, two sets of records were kept, one documenting those complaints that were classified as misconduct complaints and another containing a variety of complaints, most alleging less serious allegations. The latter type of complaints numbered over one thousand and consisted of log-entries and notes from the investigators. The log-entries and notes were very brief and did not contain the necessary details about the circumstances surrounding the complaint. They also failed to identify the names of the IA officers who received and documented the citizen complaint, the name of the subject officer(s), and the disposition of the complaint. This led to an under-reporting of the total number of complaints that had been filed at IA. The insufficient documentation of complaints created a situation that made it extremely difficult if not impossible for the IPA to audit the complaints and to make an assessment to determine if they were properly classified and investigated.

The IPA identified these problems and made recommendations to the SJPD to improve the intake, tracking, and reporting of citizen complaints in its first report. The SJPD adopted and implemented the recommendations.

A few years later, the SJPD and the IPA developed a joint computer database system designed to provide IA and IPA personnel access to information on real time to better record and manage the administration of complaints. Complaint intakes became legible, comprehensible, and detailed. The database system allowed IA and IPA personnel to answer inquiries from complainants about their complaints more effectively.

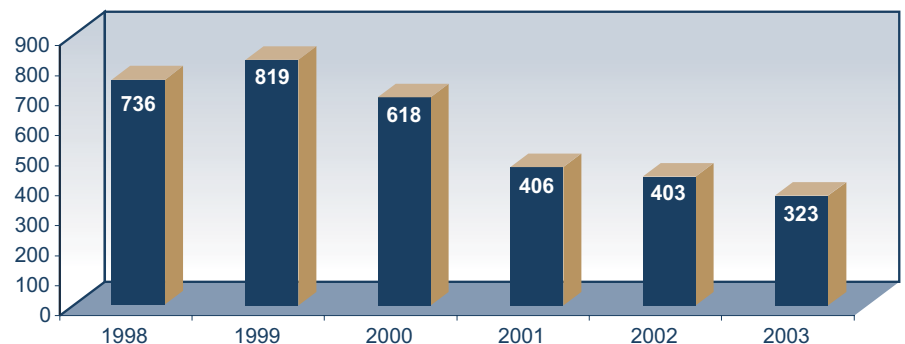
INTAKES RECEIVED at IPA vs. IA From 1995 to 2003



C. Intake Statistics

The IPA tracks the total number of complaints filed for the year and also tracks where they were filed. The chart below does not provide information for the years before 1998 because a change in the definition of what constituted a complaint became effective that year making comparisons between the years before and after incompatible.

SIX YEAR VIEW of TOTAL COMPLAINTS



The following statistics include all types of complaints filed. The data indicates a decreasing trend in the total number of complaints. The highest number reported was in 1999 with 819 complaints; 2003 reported the lowest at 323.

The line graph compares the number of intakes received by each office. This data does not include department-initiated complaints. The two years the IPA experienced a decrease in the number of intakes was in 1999 and in 2002. The numbers reflect the two years the IPA experienced instability in staff and location. In 1999 the IPA moved locations. Prior to the move, the IPA made several community announcements and increased its outreach efforts to inform the public of the new location, but unforeseen problems involving the forwarding of mail and telephone services contributed to the lack of continuity between the old and new locations.

In 2002 the community outreach position remained vacant for more than nine months. That year the IPA experienced the second decrease in intakes. The level of outreach was minimized during the nine months. Nonetheless after the position was filled and outreach efforts increased, the IPA experienced a 14% increase. In 2003 the IPA received 40% of all complaint intakes while the IA received the remaining 60%.

II. MONITORING ONGOING INVESTIGATIONS

Monitoring ongoing investigations is a vital function for the IPA to ensure that all complaints are being investigated thoroughly, objectively and timely. After the complaint intake is entered into the joint IA/IPA database, an IA investigator is assigned to investigate the alleged police misconduct. That investigator is also responsible for

insuring that the IPA receives copies of police reports and other documentation in each complaint. The monitoring process involves several steps that include: review of the documentation, attending officer interviews, requesting follow up investigations when needed, and maintaining contact with the complainants.

TYPE of COMPLAINTS	1998	1999	2000	2001	2002	2003
Formal : Citizen-Initiated Complaints	146	199	171	106	97	86
Formal : Department-Initiated Complaints	67	30	49	37	44	28
Informal /Command Review Complaints	55	61	57	49	41	39
Procedural Complaints	66	41	80	57	49	27
Policy Complaints	25	18	17	9	1	1
No Boland/ Withdrawn	0	34	46	30	43	29
Inquiry	377	436	198	118	128	113
Total Complaints Filed	736	819	618	406	403	323

A. Complaint Classification

After a complaint is received, IA determines what level of investigation is necessary by classifying the complaint as either “Formal,” “Command Review,” “Policy,” “Procedural,” “No Boland/Withdrawn,” or “Inquiry.” Formal complaints receive the most extensive investigation while Inquiry complaints are immediately resolved to the satisfaction of the complainant without requiring a more extensive investigation. In addition, Inquiry complaints are not included for consideration in the Intervention Counseling program. Additional information and definitions of each complaint classification are provided in Appendix F. The chart above provides a breakdown of the type of complaints received from 1998 to 2003.

B. Officer Interviews

The IPA attends officer interviews, which is an important component to the monitoring of investigations. The number of interviews the IPA has attended in the beginning was low because notification of officer interviews was problematic. In the beginning IA investigators did not include the

IPA in the scheduling of officer interviews; therefore, interviews were conducted without notifying the IPA. Additionally, the IPA had only one person authorized to attend subject officer interviews. The IPA's ability to delegate this duty to a staff member was challenged by the San José Police Officer's Association but through an arbitrator's decision, it was ruled that the IPA was authorized to delegate the attendance to an officer interview to another IPA staff member.

Today, the IPA is notified of the date and time of scheduled interviews with subject and witness officers. IPA personnel attend all interviews where unnecessary force is alleged and provides questions for the investigator to ask. Guidelines for conducting subject officer interviews were written by the IPA and have served as training tools for new investigators assigned to IA.

The IPA has attended several hundred officer interviews since 1994. From 1994 through 2000, the number of interviews for each year remained fairly consistent, averaging approximately 22.5 interviews per year. In 2002 however the number of officer interviews attended by the IPA increased to 33 and in 2003 that number again increased to 51. The creation of internal policies and more communications with IA facilitated the IPA to attend more officer interviews. It should be noted that only complaints classified as Formal Complaints involve interviewing subject and witness officers.

C. Progression of Investigations

The IPA monitors the progression of the investigation of the complaint. It is at this time that the IPA may be required to examine a scene or the location where the complaint originated. The monitoring phase acts as a quality control measure that assesses and rates such areas as objectivity, thoroughness, and fairness in the interview process, in the collection of physical evidence and in the strategy and tactics employed by the investigator.

The monitoring process also ensures that all information is documented promptly, completely and accurately.

III. AUDITING OF CITIZEN COMPLAINTS

After IA investigators complete the investigation it is submitted to the IPA. The auditing process is the last step in the processing of a citizen complaint, and is conducted prior to notifying the complainant or the subject officer of the finding. The auditing of complaints includes a critical examination and analysis of the circumstances that lead to the complaint, of the officer's conduct or actions, and of the quality of the investigation. The audits are the public's insurance that their complaints are taken seriously and examined thoroughly, impartially, and without preconceived conclusions.

The auditing of an investigation reveals any deficiencies in the investigation and agreement or disagreement with the findings reached by the IA investigator. The audit produces either a closure to the case, additional investigation, or disagreements with the outcome of the investigation. Disagreements are documented stating the reason(s) for the disagreement. Documentation of the disagreements is forwarded to the following parties depending on the case, the IA Unit Commander, Chief of Police, or the City Manager. Meetings to verbally discuss the disagreements are scheduled. The reasons for the disagreement are explained and debated if necessary. The issues brought to light by the IPA may be agreed upon at the IA Unit Commander level, or with the Chief of Police. If no consensus can be reached with the Chief of Police the case is forwarded to the City Manager for a final decision.

AUDITED COMPLAINTS REQUESTING FURTHER INVESTIGATION	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Requested Further Investigation	N/A	22	46	93	60	58	28	34	33	69	84	527
Not Requested Further Investigation	N/A	132	397	539	563	645	369	578	244	245	220	3932
Total Cases Audited	N/A	154	443	632	623	703	397	612	277	314	304	4459
% Requested Further Investigation	N/A	14%	10%	15%	10%	8%	7%	6%	12%	22%	28%	12%
% Not Requested Further Investigation	N/A	86%	90%	85%	90%	92%	93%	94%	88%	78%	72%	88%

A. Further Investigation Requested

An important component of the audit process is requesting follow-up investigations whenever the IPA recognizes the need to verify the accuracy of the contents of the IA investigation or has other questions. Follow-up investigations include interviewing or re-interviewing witnesses to clarify or augment questions that the IPA may raise. Follow-up investigations are also necessary to verify the accuracy of the witness statements submitted by the IA investigators, for the purpose of inspecting incident scenes, to request additional or omitted police reports, and as an opportunity to examine evidence. Additionally, the IPA uses audit forms in assessing the thoroughness, objectivity, and weight of the evidence in supporting a finding. Audit forms are also used to track patterns and trends, the number of cases the IPA disagrees with the finding, and other information.

The data collected from past audits reveals that the IPA conducted 4,459 audits since 1994. Of these cases 527 complaints required additional investigation.

B. Agreed/Disagreed Cases

The data in the chart below shows that in ten years the IPA disagreed with the investigator's

findings in 297 cases. This number represents 7% of all the audited cases. The relatively low number of cases in which there is disagreement in the final outcome of the complaint is due to in part to the ongoing communication, exchange of information, and prior requests for further investigation from the IPA to the IA Unit.

C. Concluding Observations

The low number of cases requiring follow up investigation can be attributed to several factors. First, the cooperation and frequent communication between the IPA and IA personnel have lead to a better understanding, identification and resolution of issues at an early stage. Second, many of the IPA's concerns are resolved during the monitoring phase of the case. Third, IA investigators are, for the most part, conducting thorough investigations. The method and approach to auditing complaints has improved in the past ten years. The auditing process has led to improving the investigation of citizen complaints by setting standards in measuring the thoroughness of the investigations. The benefits derived from examining and refining the quality and integrity of the investigations through the auditing process has been at the core of providing effective oversight of the citizen complaint process.

AGREED vs. DISAGREED AUDITED COMPLAINTS	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Agreed with Findings	N/A	152	404	569	585	613	376	604	269	300	290	4162
Disagreed with Findings	N/A	2	39	63	38	90	21	8	8	14	14	297
Total Cases Audited	N/A	154	443	632	623	703	397	612	277	314	304	4459
% Agreed with Findings	N/A	99%	91%	90%	94%	87%	95%	99%	97%	96%	95%	93%
% Disagreed with Findings	N/A	1%	9%	10%	6%	13%	5%	1%	3%	4%	5%	7%

IV. DISCIPLINE

The data collected from the audits indicate that in the past ten years the SJPD has taken action in 803 internal and external complaints alleging inappropriate conduct by SJPD officers. The action varied from training or counseling to termination, according to the severity of the misconduct. In 1993, 81 actions were administered, increasing to 101 in 1995. A steady decline followed, with slight increases through 2003. This pattern may indicate the existence of an evolution where there is a greater acceptance, compliance and adherence to departmental policies and procedures and statute regulations by SJPD officers.

statistical purposes. It is not required of the complainant to complete this form and they may decline to do so. This information is entered into a joint database and does not become part of the investigative file. Additionally, all complainants are surveyed about the level of satisfaction with the services they received at the IPA and the IA offices when they filed their complaint. It does not measure their level of satisfaction with the outcome of their complaint.

A. Complainant Demographics

The diversity of San José has always been one of the City’s most positive attributes. The IPA has tracked the ethnic composition of the City as it

TYPE of DISCIPLINE or ACTION	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Training and/or Counseling	4	8	33	21	19	20	11	22	9	14	20	181
Documented Oral Counseling	19	33	27	24	15	23	15	35	21	16	28	256
Letter of Reprimand	19	25	16	19	13	11	7	5	9	8	10	142
10-Hour Suspension	15	7	8	4	4	4	1	1	4	3	1	52
20-Hour Suspension	2	3	0	0	5	3	5	1	4	3	3	29
40-Hour Suspension	3	1	0	1	2	2	4	0	2	1	1	17
80-Hour Suspension	6	3	1	1	1	2	2	1	2	1	0	20
100-Hour Suspension	0	0	0	0	0	1	0	0	0	0	0	1
120-Hour Suspension	0	0	1	2	2	0	0	0	0	0	0	5
160-Hour Suspension	0	0	3	1	3	1	2	0	1	0	0	11
13 Months Suspension	0	0	0	1	0	0	0	0	0	0	0	1
Demotions/Transfers	2	3	0	0	0	0	1	0	0	2	0	8
Terminations	7	0	2	2	0	1	2	0	1	0	0	15
Retired	4	4	2	3	3	3	2	3	1	7	0	32
Resigned	0	0	8	4	6	5	0	0	1	2	3	29
Settlement Agreement	0	0	0	0	0	1	2	0	0	0	1	4
Total	81	87	101	83	73	77	54	68	55	57	67	803
%	10%	11%	13%	10%	9%	10%	7%	8%	7%	7%	8%	100%

V. WHO ARE THE COMPLAINANTS?

The IPA and IA collect demographical data from complainants. This information is used to create a profile of the complainants and to better identify the communities served. The complainant is asked to complete a Voluntary Questionnaire for

relates to the number of complaints filed by each ethnic group from 1995 to present. The findings indicate the following:

- European Americans make up 36% of the City’s population, and 36% of the complaints were filed by European Americans.

CHAPTER THREE | OVERSIGHT OF THE COMPLAINT PROCESS

- African Americans make up 4.1% of the City's population, and 12% of the complaints were filed by African Americans.
- Asian Americans make up 12% of the City's population, and 4% of the complaints were filed by Asian Americans.
- Hispanic/Latino make up 30.2% of the City's population, and 30% of the complaints were filed by Hispanic/Latinos.
- Vietnamese make up 9% of the City's population, and 1% of the complaints were filed by Vietnamese.

ETHNICITY of the COMPLAINANTS	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total	%	% of San José Population
African American	N/A	N/A	17	61	43	50	21	28	45	37	20	322	12%	4%
Asian American	N/A	N/A	5	7	5	5	41	34	8	6	7	118	4%	13%
European American/White	N/A	N/A	50	136	77	64	210	255	58	65	52	967	36%	36%
Filipino American	N/A	N/A	1	5	6	1	2	7	2	4	3	31	1%	5%
Hispanic/Latino	N/A	N/A	56	164	115	85	82	104	70	63	72	811	30%	30%
Native American	N/A	N/A	3	8	9	5	2	4	3	2	2	38	1%	1%
Vietnamese	N/A	N/A	1	5	6	4	0	0	1	0	2	19	1%	9%
Other	N/A	N/A	4	13	32	7	0	0	4	5	5	70	3%	3%
Decline	N/A	N/A	3	81	86	98	0	0	14	4	6	292	11%	0%
Total:	N/A	N/A	140	480	379	319	358	432	205	186	169	2668	100%	100%

COMPLAINANT'S EDUCATION	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total	%
Graduate Degree	N/A	N/A	0	16	29	25	21	39	22	22	24	198	7%
College	N/A	N/A	62	212	133	90	101	135	84	72	73	962	36%
High School or Below	N/A	N/A	74	206	120	108	111	177	80	85	72	1033	39%
Decline	N/A	N/A	4	46	97	96	125	81	19	7	0	475	18%
Total:	N/A	N/A	140	480	379	319	358	432	205	186	169	2668	100%

COMPLAINANT'S OCCUPATION	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total	%
Administration	N/A	N/A	3	42	43	20	42	66	27	33	31	307	12%
Public Employees	N/A	N/A	0	3	4	7	9	6	5	5	0	39	1%
Disabled	N/A	N/A	3	14	4	4	6	13	10	10	5	69	3%
Homemaker	N/A	N/A	7	20	15	16	13	11	6	5	0	93	4%
Laborer	N/A	N/A	41	143	97	94	83	129	67	58	77	789	30%
Professional	N/A	N/A	25	73	53	25	32	33	18	8	18	285	11%
Retired	N/A	N/A	2	12	8	6	4	26	3	2	5	68	3%
Self-Employed	N/A	N/A	7	7	19	10	5	14	6	1	4	73	3%
Student	N/A	N/A	19	33	25	24	23	36	17	16	11	204	8%
Unemployed	N/A	N/A	18	12	8	7	11	20	13	6	9	104	4%
Decline	N/A	N/A	16	121	103	106	146	69	33	15	12	621	23%
Total:	N/A	N/A	141	480	379	319	374	423	205	159	172	2652	100%

B. Satisfaction Level with the services received at the Independent Police Auditor?

In 2000, the IPA implemented a process to gather information from complainants to assess the level of satisfaction with the complaint intake process and the IPA staff. The IPA designed and administers a customer satisfaction survey that is mailed to all complainants shortly after they file a complaint either at the IPA or at IA. Responses are mailed back to the IPA for tabulation and reporting. The following satisfaction ratings are a combination of all surveys received from 2000 to 2003.

Overall, 51% of the respondents were completely satisfied with the services received from the IPA, and only 4% of the respondents were completely dissatisfied, with a 10% expressing no opinion.

The customer satisfaction surveys measured the following areas of satisfaction, and revealed the following ratings.

- Receptiveness of the IPA staff when first contacted.

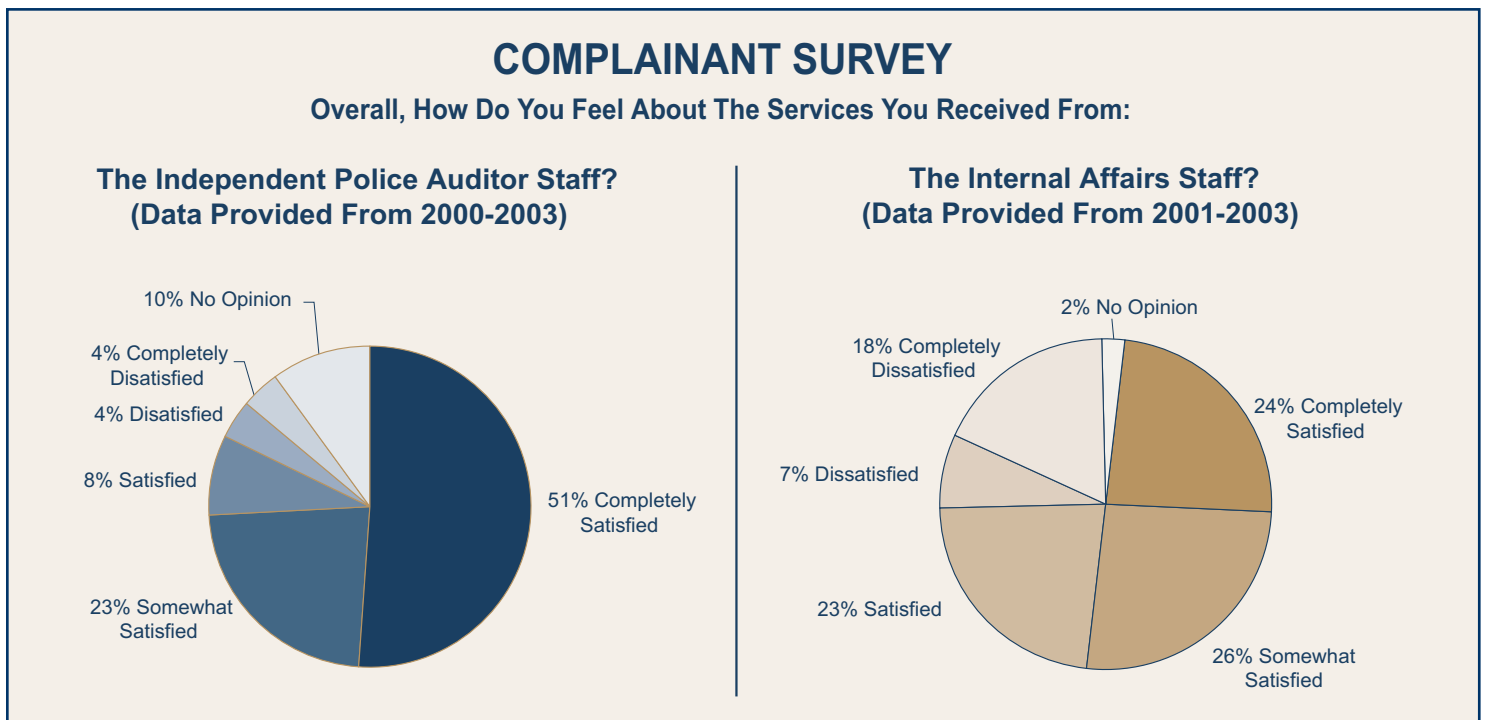
- o Excellent- 56%
- o Above average- 23%
- o Average- 7%
- o Below average- 3%
- o Poor- 2%
- o No opinion- 9%

- Satisfaction with the explanation of the complaint process by the IPA staff.

- o Completely Satisfied- 45%
- o Satisfied- 30%
- o Somewhat Satisfied- 12%
- o Somewhat Dissatisfied - 6%
- o Dissatisfied- 4%
- o No opinion- 3%

C. Satisfaction Level with the services received at Internal Affairs?

In 2001, the IA became part of the satisfaction survey process. The following satisfaction ratings are a combination of all surveys received from 2001 to 2003. The customer satisfaction surveys reflect that 24% of respondents rated the services



they received from IA as, “completely satisfied,” 26% as, “somewhat satisfied,” 23% as “satisfied”, 25% as, “dissatisfied.” 2% of respondents expressed no opinion.

The customer satisfaction surveys measured the following areas of satisfaction, and revealed the following ratings.

- Receptiveness of the IA staff when first contacted.
 - o Excellent- 28%
 - o Above average- 22%
 - o Average- 25%
 - o Below average- 8%
 - o Poor- 14%
 - o No opinion- 4%
- Satisfaction with the explanation of the complaint process by the IA staff.
 - o Completely Satisfied- 27%
 - o Satisfied- 31%
 - o Somewhat Satisfied- 17%
 - o Somewhat Dissatisfied - 5%
 - o Dissatisfied- 17%
 - o No opinion- 3%

subject officers have received 58% of all citizen complaints, which is consistent with the percentage they represent in the SJPD.

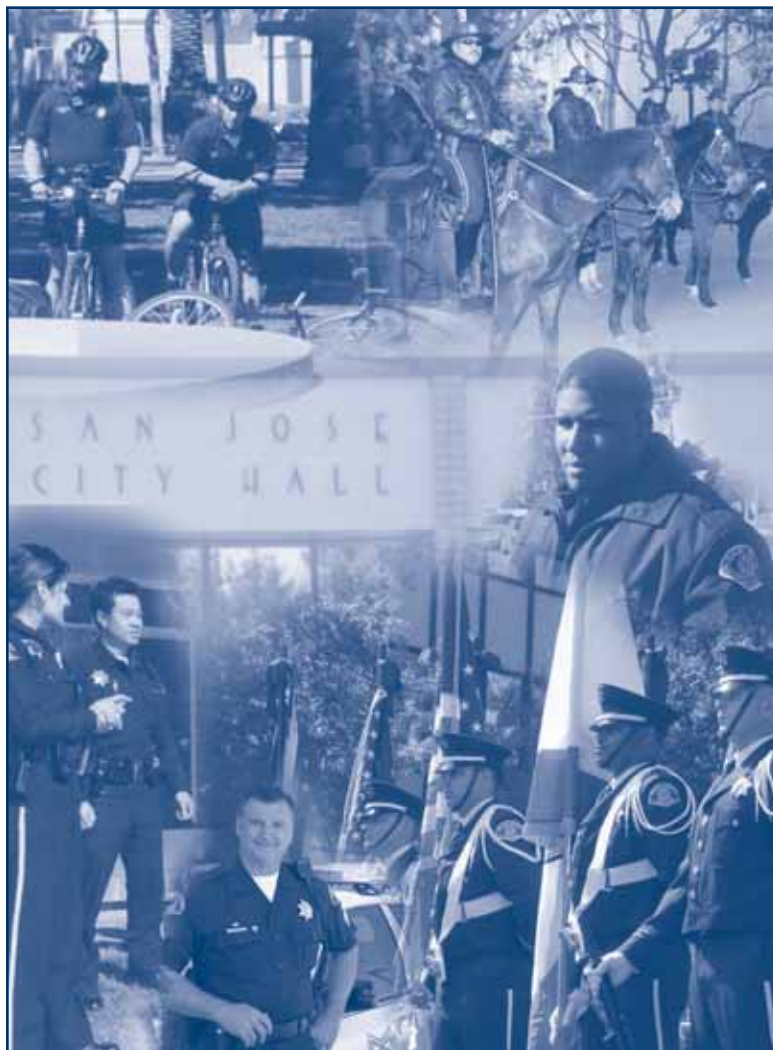
B. Years of Experience

The years of experience is a second indicator used to assess patterns and trends. The IPA data indicates that police officers with 2-4 years of experience receive the highest percentage of complaints followed by officers with 16+ years of experience.

VI. WHO ARE THE SUBJECT OFFICERS?

A. Subject Officer Demographics

The IPA also tracks information about subject officers receiving complaints. The ethnicity of subject officers is used to cross-reference it with the ethnicity of complainants. Analysis conducted reveals that minority complainants file complaints in equal numbers against minority and non-minority officers. The IPA began tracking the ethnicity of the subject officers from 1995 to present, but information was not obtained in 1997. The ethnicity chart indicates that overall, European American



SJPD officers assisted the IPA in designing informational materials. They are not subject officers.

ETHNICITY of SUBJECT OFFICERS	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total	%
African American	N/A	N/A	13	21	N/A	31	21	28	10	14	11	149	6%
Asian American	N/A	N/A	16	23	N/A	33	41	34	29	26	26	228	9%
European American	N/A	N/A	160	192	N/A	182	210	255	185	188	128	1500	58%
Filipino American	N/A	N/A	1	4	N/A	6	2	7	2	6	2	30	1%
Hispanic/Latino	N/A	N/A	61	66	N/A	96	82	104	107	75	55	646	25%
Native American	N/A	N/A	0	2	N/A	2	2	4	1	5	1	17	1%
Total:	N/A	N/A	251	308	N/A	350	358	432	334	314	223	2570	100%

YEAR of EXPERIENCE of SUBJECT OFFICERS	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total	%
0 -1+	N/A	N/A	36	41	34	25	29	53	23	31	5	277	9%
2 -4+	N/A	N/A	50	73	136	134	146	113	99	85	70	906	30%
5 -6+	N/A	N/A	46	36	35	43	41	75	62	31	35	404	14%
7 -10+	N/A	N/A	43	42	63	52	68	74	41	60	45	488	16%
11 -15+	N/A	N/A	40	46	49	40	27	31	43	39	25	340	11%
16+	N/A	N/A	36	70	85	56	47	86	66	68	43	557	19%
Total:			251	308	402	350	358	432	334	314	223	2972	100%

In an attempt to provide plausible reasons for this variance in the number of complaints reported, the data leads the IPA to infer that officers in the beginning stages of their careers are more careful and hesitant to act because they are in their training and probationary phases of their employment as police officers. Training officers and supervisors closely monitor this group of officers. Officers with two to four years of experience are beyond their probationary phase and are likely to be more confident and eager to apply what they learned and experienced. They tend to be more active and initiate more contacts with the public. The lack of experience and increase in self confidence and eagerness of this group may increase the number of public contacts that result in conflict in the course of their work, thus increasing the potential for citizens to file complaints.

As officers gain on the job experience, training, and education they become more confident and comfortable with their position and authority. These officers seem to settle into their roles as

police officers and may not be as defensive or threatened by the confrontational situations that they encounter. These officers may be less hasty to react, make better decisions, and be better capable of handling stressful situations in a calm, patient and reasonable manner, which may result in the decline of citizen complaints filed against them. As time on the job increases for police officers the toll of working in constant conflict and stressful conditions may have a negative impact on some officers. The data indicates that after fifteen years of experience officers experience an increase in the number of complaints. The reason for this may be that these officers are experiencing “job burnout” or are tired of dealing with the emotional turbulence the job inherently exposes them to. Their tolerance and patience may diminish as a result and may lead to the increase in the number of complaints.

These observations are generalizations and are derived from reading hundreds of statements from complainants and subject officers.

C. Subject Officers' Satisfaction Level with the Investigative Process

Three years ago the IPA designed a subject officer customer satisfaction survey designed to gather feedback about the subject officers' experience with the overall complaint process. The IPA provides the surveys and self-addressed stamped envelopes to the IA. After the complaint investigation is concluded, IA mails a survey to the subject officer containing the IPA's office return-address. The survey contains 6 questions that the officers may answer by selecting from a set of prescribed answers. There are two additional questions that ask for comments or opinions. In 2002, 86% of the surveys returned rated the complaint process as fair. Of those surveyed, 6% of subject officers felt the process was unfair. There was 8% of subject officers surveyed that did not answer this question. In 2003, 90% of all subject officers surveyed felt the complaint process was fair and only 7% felt otherwise. The remaining 3% of subject officers surveyed did not respond to the survey.

The majority of subject officers undergoing the investigative process for alleged misconduct, indicate that the citizen complaint process is fair, the personnel is courteous, investigations are timely, and objective. These surveys have been instrumental in the IPA's identification of patterns and trends that have led to the IPA making recommendations for change within the SJPD in order to provide better services to the public and to the subject officers named in the complaint.

VII. CONCLUDING OBSERVATIONS

Before the IPA was established, the public was skeptical of the SJPD's ability to objectively investigate citizen complaints against police officers. The reason for this was that citizen complaints were being investigated by other police officers and there were no external mechanisms in place to

ensure fair and impartial investigations. The IPA was established to ensure the public that their complaints would be taken seriously and investigated fairly. As a result of monitoring and auditing investigations, the IPA has detected mistakes, uncovered evidence, and requested additional investigation in many complaints.

Today citizens are more knowledgeable of the existence and functions of the IPA and where they may report complaints of police misconduct. The relationship with the IA Unit is cooperative, effective and professional. What is apparent is that police policy and procedural changes resulting from the SJPD's implementation of the IPA's recommendations have created positive results in policing. The significance of the IPA's presence cannot be underestimated as its existence serves as a deterrent to police misconduct, helps to improve police services, and provides greater accountability. As a result, the citizen complaint intake process is citizen friendly and it encourages reporting of police misconduct. While complainants may still not be satisfied with the final outcome of the investigation, satisfaction with the process is evident.

The IPA has initiated many SJPD policy changes since its establishment, and it acknowledges that the critical examination and assessment of the current procedures, practices and policies of the Department must continue. Maintaining a process that is fair, accessible, and thorough can be accomplished through the primary functions of the IPA, which include the Citizen Complaint Intake process, and the Monitoring and Auditing processes.

CHAPTER THREE | OVERSIGHT OF THE COMPLAINT PROCESS

SUBJECT OFFICER SATISFACTION SURVEY	2002	2003	Total
1. At all times, did the Internal Affairs staff treat you courteously?			
Yes	30	39	69
No	0	2	2
2. Was Internal Affairs responsive to any question (s) you asked?			
Yes	27	37	64
No	1	1	2
N/A	2	3	5
3. Did Internal Affairs staff members formally interview you?			
Yes	28	39	67
No	2	2	4
N/A		0	
If yes, please answer the following questions:			
a. My interview was conducted in a courteous manner?			
Completely Agree	25	26	51
Agree	3	12	15
Somewhat Agree		0	0
Disagree		0	0
Completely Disagree		2	2
b. My interview was conducted objectively?			
Completely Agree	21	22	43
Agree	5	13	18
Somewhat Agree	2	2	4
Disagree		0	0
Completely Disagree		2	2
c. Was a representative from the IPA present at the interview?			
Yes	9	18	27
No	14	19	33
4. Was the Internal Affairs process completed in a timely manner?			
Yes	26	34	60
No	4	6	10
5. Were you given an opportunity to fully explain your side?			
Yes	29	38	67
No	1	3	4
6. Do you think the Internal Affairs process was fair?			
Yes	26	37	63
No	2	3	5

Chapter Four



Civilian oversight of law enforcement exists in many countries. In countries such as England, Ireland, and Australia, civilian oversight is nationalized. In the United States there are currently over 125 cities with some type of civilian oversight¹, which include most large cities. Civilian oversight is a new service that is not readily available in all cities but is rapidly growing. In 1993 the city of San José established the IPA to provide an independent review of the citizen complaint process. The City introduced this new service as a proactive measure and in response to community concern about police practices. As a new service, the IPA faced the challenge of providing community awareness of the office’s existence, role, and independent status.

Early on, the Police auditor recognized that community outreach was going to be necessary and instrumental in creating awareness of the services offered and in establishing public confidence. In the past ten years, the IPA has encountered obstacles, resistance and criticism, but has also made significant inroads in gaining trust, respect, and support from the public, elected officials, and the San José Police Department.

Maximizing its limited resources, the IPA, has gradually developed outreach efforts to:

- Educate people of the mission and functions of the IPA.
- Assess the needs and concerns of diverse communities.
- Maintain the services visible and accessible to the citizens.

I. THE CITY’S INTRODUCTION TO THE INDEPENDENT POLICE AUDITOR

Awareness of the citizen complaint process has been critical in raising the public’s confidence in the IPA. Therefore, staying connected to the community has been an ongoing process that allowed the office to stay on top of community concerns and needs. To maintain that awareness, the IPA required more than passing out flyers and media sound bytes, it needed to make a personal connection with the community. The IPA sought to insure that citizens knew their concerns were being heard. The IPA accomplished this goal by making a commitment to go out into the community and by providing “face time” with individuals, groups and organizations.

The creation of an oversight agency in the city drew much attention from the media the first two years. Reporters from diverse communities in San José produced stories in their native language about the office. The IPA was accessible to all who wanted to learn about the role of the office and how the services could benefit local, state, and national communities. The police auditor participated in television talk shows and radio talk shows. The media was a key catalyst in introducing the IPA office to the citizens of San José. Although not many people knew all the specific functions of the office, the existence of the office gradually started to be known.

In the beginning the level of information distributed was minimal but as the demand for the services and the resources increased, the IPA searched for more avenues to inform people. With the passage of time, more residents became aware of the existence of the office and its mission and functions. Outreach efforts included the following:

¹ National Association for Civilian Oversight of Law Enforcement (NACOLE)

- Participation in television and radio programs.
- Press conferences.
- Sending public service announcements.
- Distribution of literature about the IPA office.
- Participation in annual resource fairs.
- Presentations to organizations and neighborhood associations.
- Making information more readily available.

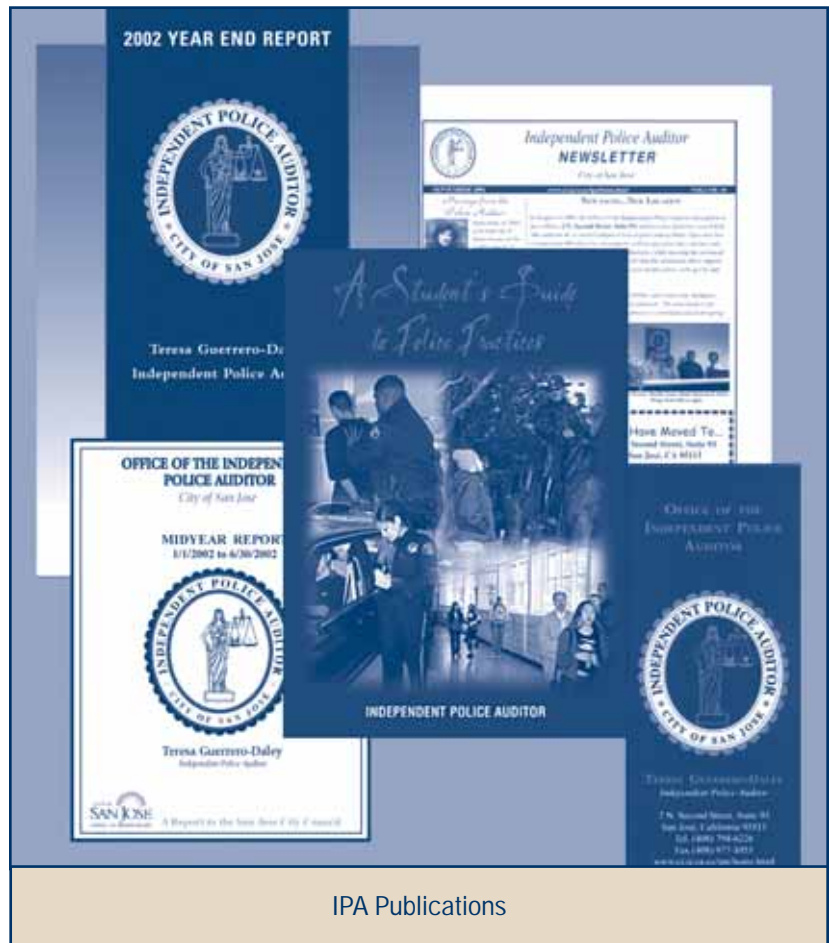
requirement to biannual and year-end reports. The quality of the content and the professional presentation of the reports have been used as reference by agencies, cities, and institutions nationwide.

In the 1996 Midyear report the IPA requested to be added to the City's Internet connection to increase the office's visibility. The IPA website went live in May of 1997 containing contact information and copies of the reports and newsletters. The website was the first outreach effort that placed the IPA on the map internationally. Shortly after the website went live, the office experienced an increase in calls with inquiries about the functions of the office and information about how the IPA services were impacting the San José community. Although the website is connected to the

II. SPREADING THE NEWS ABOUT THE INDEPENDENT POLICE AUDITOR

IPA brochures and flyers have been distributed and translated in different languages to meet the needs of the diverse San José communities. The IPA has information in English, Spanish, Vietnamese, Tagalog, Samoan, and Korean. The brochures contain information about the mission of the IPA, who can file a complaint and what is needed, how they can contact the IPA, and directions to the office. Newsletters have been another form of informing organizations about updates and opportunities to inform their constituents of the service the IPA provides.

The IPA's formal means of communication with the public and with the Mayor and City Council has been through the biannual and year-end reports. During the first year of operation, the IPA published quarterly reports. After the first year the City Council recognized that the IPA office had limited resources to be required to report so frequently. In addition, the City Council gained confidence with the office's performance that they reduced the



IPA Publications

City's homepage, the IPA staff has been responsible for its creation, design, and maintenance. Through the website the office has been able to:

- Educate people about the functions of the IPA and of civilian oversight.
- Create awareness of a person's right to file a complaint.
- Be more accessible to the public.
- Expand the IPA's communication capabilities.
- Share informational resources.



IPA Panel presentation at 2002 National Association of Civilian Oversight of Law Enforcement (NACOLE) conference.

Left to right: Merylee Shelton, Bryan Monroe, Victor Garza, Vice Mayor Pat Dando, Teresa Guerrero-Daley

III. TARGETED AND SYSTEMIC OUTREACH

When the office was established, a community outreach position did not exist, therefore, the police auditor responded to requests from community leaders, advocates, city departments and organizations to inform them about the role and mission of the IPA. The police auditor took an

active role with the National Association for Civilian Oversight of Law Enforcement (NACOLE), a national organization that provides continuing education for practitioners of civilian oversight. The police auditor participated in NACOLE as a member of the Board of Directors, as a speaker, and instructor at the annual NACOLE Conferences. Local and national interest and requests for the police auditor to present increased. Most importantly, there was a need to proactively reach out to the community; therefore, the outreach staff position became necessary. By 1999 requests from neighborhood associations, non-profit organizations, city programs, and elected officials increased. That same year, the community outreach coordinator position was created to meet the demands and to develop other means of communicating with the public.

In the last ten years, the IPA has presented to a wide range of audiences on numerous topics. The initial high demand was from advocacy groups, but the pattern changed after the fourth year. Through a more targeted and systemic outreach program, the IPA has received greater recognition and broader support from diverse professions, community leaders, and research institutions. The addition of a community outreach position facilitated the ability to conduct greater outreach and inform more people of the mission and functions of the IPA.

A. Independent Police Auditor Advisory Committee (IPAAC)

The IPA made gains in establishing a presence in the community by being a speaker and attending meetings, but in a city of almost a million population, more efforts were required. The IPA needed a pair of "eyes and ears" in each community to identify police related concerns and needs. Such foresight initiated the creation of the Independent Police Auditor Advisory Committee (IPAAC) in 1999. The committee was established with the purpose of identifying, mobilizing and coordinating



Meeting of the Independent Police Auditor Advisory Committee (IPAAC)

resources to assure maximum public, private, agency, and individual commitment to provide expanded police oversight. The advisory committee was comprised of 23 members, who were community leaders, grassroots organizers, and professionals that represented the Vietnamese, Mexican/Latino, African American, Filipino, Asian American, Islamic, Sikh, Native American, Gay/Lesbian, business, nonprofit, and legal community.

The addition of the advisory committee has been instrumental in the success of the IPA. Rose Amador is the president of the Center for Training & Careers (CTC) and has been on the advisory committee since 2000, she states, “as an IPAAC member it is not only my responsibility to bring forth police concerns my constituents express, but also to actively participate in the process of ensuring that they are addressed objectively and fairly.”

B. Referral Sites

In the past ten years the IPA office detected behavioral patterns from citizens filing complaints. An area that needed to be addressed was a citizen’s comfort level about filing a complaint. The

process of filing a complaint against a police officer can be an intimidating experience for most people. Many thoughts and questions may run through a person’s mind before they decide to come forward and file a complaint. People may have doubts about the strength of their case or may not know whom to turn to or what they can do. In such cases, it is more likely for them to talk about the experience with a familiar person instead of directly contacting the IPA or the SJPD. It is logical to deduce that people will seek someone they can confide in. In 1999 the IPA established referral sites in an effort to reach those that would be reluctant to come forward. Identified sites consisted of local community centers, city programs, and public and private agencies. Some of the executive directors of the referral sites have served as members of the IPAAC. Referrals sites do not take complaints; their goals have been to increase the visibility and accessibility of the IPA. Their functions are to provide citizens with information about the IPA, assist the IPA with dissemination of information, and to act as a personal contact with possible complainants. The IPA started with 17 sites in 1999, and gradually increased to 36 sites in 2002. In 2003 the City experienced budget constraints and decreased the



Community forums were organized in 1999 and 2003 due to the wide concern of officer involved shootings.

IPA's budget. As a result, the IPA had to minimize the amount of marketing material available to distribute to the referral sites, as well as the amount of time spent doing on-site visits with the referral sites staff.

IV. INDEPENDENT POLICE AUDITOR INFORMATIONAL FORUMS

The IPA has organized several community informational forums in the past ten years. Through these public forums the IPA has been instrumental in diffusing situations that had the potential of escalating and damaging public confidence. The IPA has played a key role in bringing the community and police together to address impending issues and has helped foster relationships with community leaders, while maintaining an objective perspective. The goal of the forums was to provide the citizens with an opportunity to voice

their concerns and to hear from the different agencies working in the field of civil rights, police accountability, and police practices and procedures.

An example of one of these forums occurred in 1999 when the IPA received numerous calls expressing concern about officer-involved shootings and racial profiling cases. The community wanted answers and needed an avenue to communicate with the parties involved. The IPA approached the situation as an opportunity to bring everyone together for a candid discussion and organized a citywide informational forum. The panelists included the following professionals: San José Vice-Mayor, the Chief of Police, the Police Auditor, the Assistant District Attorney, the General Counsel for the San José Police Officers' Association, a representative from the United States Department of Justice Community Relations Services, and the Chair of the Human Rights Commission. Each speaker had an

opportunity to talk about their responsibilities, the services they provided and how they were involved in cases involving officer-involved shootings and racial profiling cases. The audience received a comprehensive presentation of the various roles each agency played but also had an opportunity to ask direct questions to the speakers. KGO Newstalk Radio broadcasted the discussion live and received a significant level of local and national attention.

A more recent forum occurred in 2003 after the city experienced four officer-involved shootings within a few months. The IPA organized a public forum, which included representatives from the District Attorney’s Office, the SJP, a civil rights attorney, and the Police Auditor to inform the community about their respective roles in police shootings and to give the public an opportunity to be heard. The large turnout was a clear message to the IPA that such forums needed to continue to recur because the make up of the community changes and people need to be informed on this issue.

The success the office had in organizing these forums is attributed to the support it received from the City, the various agencies involved, and the diverse community organizations that cosponsored the forums. These opportunities have been significant because they have served as outlets for people’s frustrations, as forums to express sentiments and opinions, and helped the IPA assess the level of awareness the community had about police related issues and the IPA office.

V. YOUTH OUTREACH

In 2002 the office saw the need to educate youth about police practices. With the support of the City Council, the SJP, and the Parks Recreations



and Neighborhood Services Department, the IPA published the first “*Student’s Guide to Police Practices*.” The goal was to educate youth about their rights and responsibilities when interacting with police officers. The booklet contains fundamental information every youth and parent needs to know about police practices. Additional material includes information on drugs, trespassing, curfew, profile stops, conduct on school grounds, a list of community resources, and information on filing a complaint. The IPA had the booklet reproduced in a miniature interactive CD and made the booklet available in English, Spanish and Vietnamese.

VI. THE INDEPENDENT POLICE AUDITOR’S DOMESTIC AND INTERNATIONAL CONTRIBUTION

At a national level, the IPA continued to actively participate in establishing, training, cultivating, and mentoring other oversight agencies across the nation. The San José IPA assisted the National Association for Civilian Oversight of Law Enforcement (NACOLE) in changing civilian

oversight from a grassroots movement to a profession led by trained, skilled, and experienced practitioners. The IPA office has repeatedly been recognized as one of the most effective offices in civilian oversight in the country.

In 2003 the IPA was selected by the Mexican federal government to represent the United States in the first “*International Seminar on Police Accountability*” held in Mexico City, October 28-31. The police auditor was selected to participate in the exchange of professional experience that included participants and concept papers from Germany, Colombia, Brazil, Mexico, and other countries around the world.

VII. WHAT DO THE NUMBERS SAY?

The IPA participated in three annual citywide surveys commissioned by the City to measure public awareness and satisfaction with city services. The surveys were administered in 2000, 2001 and 2003. The results emphasized the need for the IPA to continue its outreach efforts. In 2000 only 17 percent of those surveyed had heard about the office and 16 percent in 2001. The ongoing outreach efforts the IPA office made resulted in an increase in the percentage of people surveyed that had heard of the IPA in the 2003 survey to 30 percent. According to the reported findings from the consulting firm that administered the survey, there was an 87.5 percent increase in the awareness level of the existence of the IPA from long-term residents of San José, homeowners, college educated residents, those age 50 and over, registered voters, and residents who are white or African-American.² Furthermore, 57 percent of the residents surveyed indicated a belief in the IPA’s ability to be effective in providing civilian oversight of the SJPD.

VIII. CONCLUDING OBSERVATIONS

Community outreach opened channels of communications locally, nationally, and internationally to address police misconduct issues. The IPA has established and fostered relationships with community leaders, organizations, the SJPD, City departments, the San José Police Officers Association, and City officials to ensure that police concerns do not turn into serious problems. Proactive measures, such as publishing the “*Student’s Guide to Police Practices*,” organizing community forums, and making policy recommendations, positively contributed to the delivery of services by the SJPD. The respect, credibility, and support the IPA has gained in the past ten years is the result of making outreach efforts a priority. Community outreach has been the primary vehicle by which citizens are informed, the community’s needs and concerns heard, a visible presence maintained, and of ensuring accessibility to all a reality.

² The City of San José Community Surveys, Consultant Fairbank, Maslin, Maullin & Associates.

Conclusion

In ten years of operation, the Office of the Independent Police Auditor has evolved from an office that was established on a trial basis amidst great controversy to an office that is recognized as a leader in civilian oversight of law enforcement throughout the United States and in many other countries. Based on its cumulative experience, the IPA concludes that:

1. Acceptance of civilian oversight by law enforcement is gradual and remains guarded;
2. When faced with fierce opposition, compromise can be a positive starting point;
3. Years of community confidence building can be toppled by a few acts of police misconduct or corruption;
4. Quick response to minor complaints develops a bank of goodwill that can be drawn upon during crisis;
5. Trust is developed, one complainant/one officer at a time;
6. In the absence of external oversight, the police have a tendency to relax internal oversight measures;
7. Dissension is a natural by-product of police work; therefore, the role of police oversight should be viewed as an essential, preventative mechanism and a long-term process; and
8. Early detection of police misconduct reduces liability and increases safety for citizens and officers.

The accomplishments that the IPA has been able to achieve can be attributed to the relationships it fostered throughout the years. Foremost is the support that the IPA has received from the community at large. This was evident when the voters of San José voted to make the IPA a permanent chartered office; through the gradual reduction of clamor for a civilian review board and in the active participation of community leaders openly supporting the IPA. Secondly, the IPA has been effective because of the commitment by the Mayor and City Council to honor the IPA's independence and by supporting the work of the IPA. Lastly, and very important, the effectiveness of the IPA is attributed to the cooperation and commitment to problem solving from the SJPD. Therefore, it can be said that effective civilian police oversight can be achieved when key stakeholders, (community, elected officials, police) work in harmony and towards mutual goals.

Appendix A

Classification of Complaints

COMPLAINT DEFINED: 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 SJP. A complaint must not be confused with criminal charges, which are filed by the District Attorney's office. There are six classifications of complaints used by the SJP.

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 SJP.
 - 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. **Command Review (CR) Complaints** involve 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. The utilization of this process does not imply that the subject officer has or has not, in fact, committed the transgression as described by the complainant. This is typically a Rude Conduct complaint.
 3. **Procedural (PR) Complaint** is defined in two separate portions:
 - a. 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.
 - 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 complainant.
- 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. **Inquiry (IN)** refers to a complaint 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.
 6. **No Boland (NB)**- a complaint 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.

Appendix B

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 damaged.

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.

Unofficer like Conduct (UC) allegation deals specifically with off-duty behavior. The conduct, which is the subject of Unofficer like 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 involves the use of force that is excessive or improper.

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

Racial Profiling (RP) allegation occurs when a police officer initiates a contact solely upon the race of the person contacted.

Appendix C

Disposition of Complaints

I. AVAILABLE DISPOSITIONS FOR FORMAL COMPLAINTS

A Formal complaint alleges serious misconduct on the part of a member of the San José Police Department (SJPD). These complaints allege serious violations of City policy, Department policy or 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 findings available for a Formal complaint are:

A. Sustained: The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.

B. Not Sustained: The investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove the allegation.

C. Exonerated: The acts which provided the basis for the complaint or allegation occurred; however, the investigation revealed that they were justified, lawful and proper.

D. 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.

E. 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.

II. AVAILABLE DISPOSITIONS FOR PROCEDURAL COMPLAINTS:

A. Within Procedure-The initial investigation determined that 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.

B. No Misconduct Determined- The initial investigation determined that 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.

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.”

III. AVAILABLE DISPOSITION FOR COMMAND REVIEW COMPLAINTS:

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. The allegation of this process does not imply that the subject officer has or has not, in fact, committed the transgression as described by the complainant.

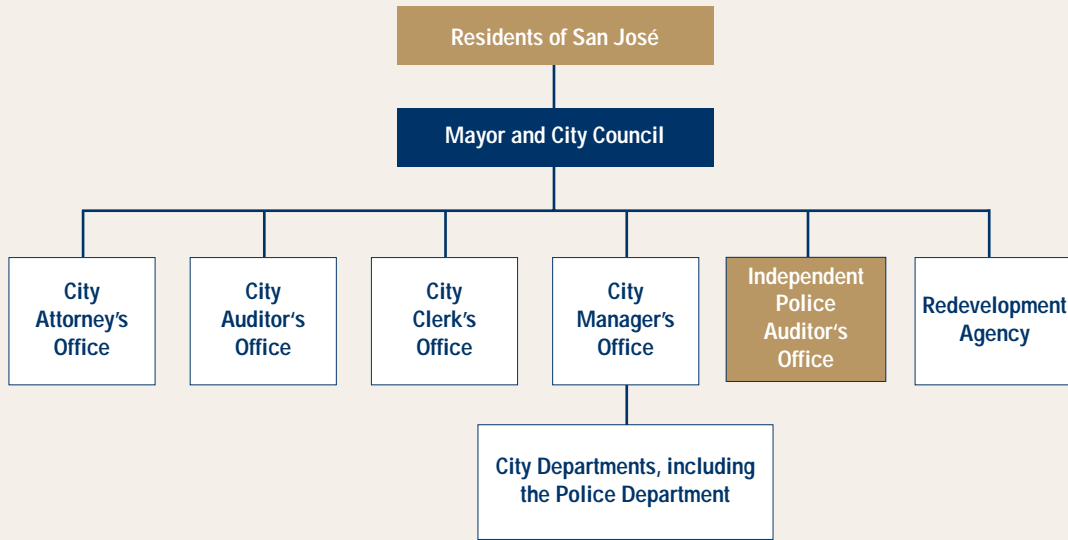
IV. INQUIRY- a complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen’s satisfaction can be reclassified and be fully investigated.

V. NO BOLAND - a complaint 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.

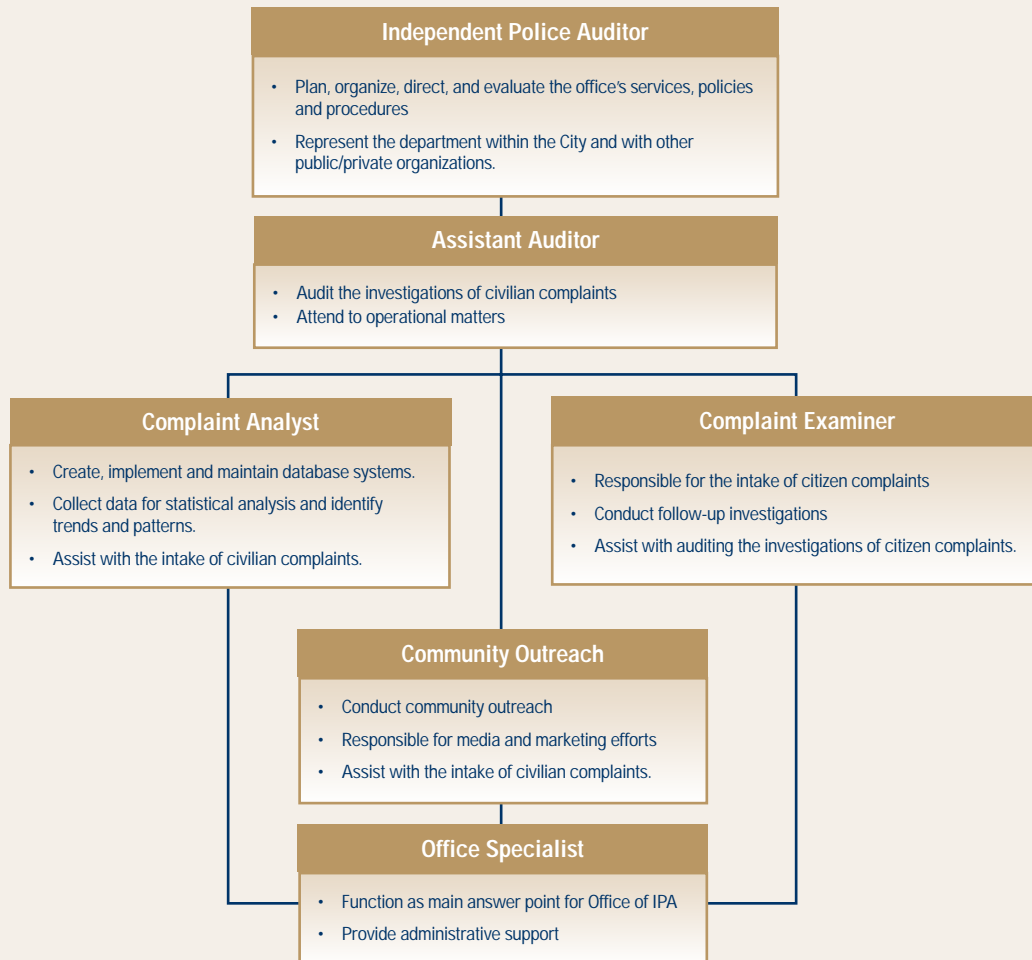
VI. WITHDRAWN- a complaint is withdrawn at the complainant’s request.

Appendix D & E

CITY OF SAN JOSE STRUCTURE



OFFICE OF THE INDEPENDENT POLICE AUDITOR STRUCTURE



Appendix F

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	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 types of complaints.	Adopted	2nd Quarter and 1994 Year End Report
	Establish procedures to address potential bias between Internal Affairs Investigators and complainants and subject officers.	Adopted	2nd Quarter and 1994 Year End Report
	Enact policy to ensure objectivity in the Intake of citizen complaints.	Adopted	2nd Quarter and 1994 Year End Report
1994 3rd Quarter Report	Establish a timetable with goals in which to classify and investigate complaints.	Adopted	1994 Year End Report
	Implement a citizen "Onlooker Policy" that addresses a person's right to witness a police incident.	Adopted	1995 Mid Year Report
	Standardize the way all investigations are written by IA personnel.	Adopted	1994 Year End Report
	Provide report writing training in "Drunk in Public" cases to include the basis for the arrest. Reports are to be retained on file.	Adopted	1994 Year End Report
	Provide chemical testing for "Drunk in Public" cases to verify if the person was in fact intoxicated.	Not Adopted	
	Send minor complaints to the Bureau of Field Operations to expedite investigations.	Adopted	1994 Year End Report
1994 Year End Report	Establish procedures to insure neutrality in the classification of complaints.	Adopted	1994 Year End Report
	Interview complainants and witnesses within three months of the initiation of a complaint.	Adopted	1994 Year End Report
	Contact complainants at regular intervals through updates and closing letters.	Adopted	1994 Year End Report
	Provide a copy of all SJPD Reports relevant to complaint to the Police Auditor.	Adopted	1994 Year End Report
	Require written authorization before conducting a search of a home based on consent.	Not Adopted	
	Enact policy to require that, in cases where an officer's use of force caused great bodily injury, supervisors collect evidence and conduct an investigation into the need for the officer to use such force.	Adopted	1995 Year End Report
	Ensure that handcuffs are double locked to prevent wrist injuries.	Adopted	1994 Year End Report
	Write the complainant's statement in addition to tape recording and provide a copy to the complainant.	Adopted	1994 Year End Report
	Improve IA investigator's interpersonal skills in interacting with complainants.	Adopted	1994 Year End Report
	Handle complaints classified as Command Review through counseling by the Field Supervisor and contact the complainant (where requested).	Adopted	1994 Year End Report
Revise letters sent to complainants to include information about the IPA's role.	Adopted	1994 Year End Report	
1995 Mid-Year Report	Maintain a central log of all public contacts for tracking purposes and to reduce the number of complaints that are lost or misplaced.	Adopted	1995 Year End Report
	Obtain additional office space for IA so that complainants are interviewed in private.	Adopted	1997 Year End Report

Appendix F

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
1995 Mid-Year Report	Require the Police Department to offer complainants a choice of where to file complaints, at either IA or IPA.	Adopted	1995 Year End Report
	Implement policy to standardize the format used in subject and witness officer interviews.	Adopted	1995 Year End Report
	Create policy to require closer scrutiny when conducting strip searches for misdemeanor arrests.	Adopted	1995 Year End Report
	Revise Off-Duty Employment Practices to provide accountability of the type and number of hours worked by officers off duty.	Adopted	1997 Year End Report
1996 Mid-Year Report	Connect IPA to City of San José's internet network.	Adopted	1997 Year End Report
	Conduct preliminary investigation of complaints closed because they lack a signed Boland Admonishment to determine the seriousness of the allegations.	Adopted	1996 Mid-Year Report
	Retain the name of the subject officer where a 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 Mid-Year Report
	Design and implement a new computer database system that links the IA and IPA on real time.	Adopted	1996 Mid-Year Report
1996 Year End Report	Implement a process to respond to citizen's requesting an officer's identification.	Adopted	1997 Year End Report
	Establish Class I and Class II Use of Force type of complaints.	Adopted	1996 Year End Report
	Complete Class I Use of Force investigations within 180 days	Adopted	1996 Year End Report
	Complete all investigations of citizen complaints within 365 days	Adopted	1996 Year End Report
	Request that the City Attorney issue an opinion clarifying the IPA's authority to audit DI cases with a nexus to a citizen.	Adopted	1997 Year End Report
1997 Year End Report	Require that officers identify themselves in writing when requested.	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 a reliable tracking system should be implemented in every bureau and City department involved with reviewing a citizen complaint.	Adopted	1998 Year End Report
1998 Year End Report	Expand the IPA jurisdiction to review all officer-involved shootings even if a complaint is not filed.	Adopted	1999 Year End Report
1999 Year End Report	Request the City Council to authorize added staff for the IPA, to increase communication and personal contact with individual complaints and increase community outreach.	Adopted	2000 Year End Report
	Recommended that the City Council grant to the Internal Affairs Investigators subpoena power to compel the attendance of civilian witnesses and to compel the production of documentary or physical evidence.	Adopted	2000 Year End Report

Appendix F

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
1999 Year End Report	Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes examining physical evidence and follow up contact with complainants and witnesses.	Not Adopted	
	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 for officers to use in interacting with the public.	Adopted	2000 Year End Report
	It is recommended that in cases where the police erred, i.e. the wrong house was searched, an explanation and/or apology be given as soon as possible, preferably at the onset.	Adopted	2000 Year End Report
	It is recommended that motorists be told the reason for the enforcement action such as why s/he was stopped, searched, and/or detained 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 will assist the family in obtaining necessary but non-confidential information.	Adopted in practice only	2000 Year End Report
2000 Year End Report	To assure 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.	Adopted	2001 Year End Report
	The Chief of Police should include in all citizen complaint printed materials wording that clearly states, <i>"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 or witness directly or indirectly,"</i> or similar words that emphasize the Chief's position.	Adopted	2001 Year End Report
	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.	Not Adopted but adopted in practice	2001 Year End Report
	The Chief of Police should continue to develop Ethics and Integrity Training to reflect and align police practices with ethical standards expected by the citizens of San José.	Adopted	2001 Year End Report
	The Chief of Police should expand the fields in the racial profiling data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Not Adopted	
	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.	Adopted	2001 Year End Report
	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.	In progress	2001 Year End Report

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INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
2000 Year End Report	The San José Police Department's Internal Affairs Unit should formally investigate allegations of officers refusing to identify themselves under an Improper Procedure allegation.	Adopted	2001 Year End Report
	Continue to identify alternate, less lethal weapons, and make them more readily accessible.	Adopted	2001 Year End Report
	Provide specialized training in handling suspects armed with non-automatic projectile weapons.	Adopted	2001 Year End Report
	The Crisis Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with history of mental illness.	Adopted	2001 Year End Report
	Increase recruiting efforts to hire more officers with bilingual skills. Examine the current strategies and marketing material used for recruiting.	Adopted	2001 Year End Report
	The Disciplinary Review Panel, which determines the type of discipline to impose, should document the basis for their findings to enable the IPA to conduct an audit of this phase of a citizen complaint investigation.	Not Adopted	
2001 Year End Report	A study should be conducted to assess the feasibility of expanding the front lobby to alleviate the crowded conditions that exist.	Adopted	2002 Year End Report
	A separate waiting area should be developed for designated services such as sex offenders waiting to register, criminals waiting to self-surrender, and other people that would pose a threat to the safety of others waiting in the lobby area of the main police station.	Not Adopted	
	An interview room should be made available for desk officers to obtain statements from walk-in victims and/or witnesses of crimes that affords privacy.	Adopted	2002 Year End Report
	Additional courtesy telephones should be installed in the Information Center.	Adopted	2002 Year End Report
	Monitors should be installed in the lobby of the San José Police Station displaying information such as activities, services, and meetings taking place in the Police Administration Building.	Pending	
	Access to public restrooms should be made available to the public from within the San José Police Station lobby. This would eliminate the requirement to sign-in with desk officers, go through the security gate, and provide access to restricted areas of the police department.	Not Adopted	
	A receptionist should be placed in the San José Police Station lobby to provide assistance and information to the general public.	Pending	
	Customer service training should be developed and provided to officers assigned as desk officers working at the Information Center located in the lobby of the SJPD.	Adopted	2002 Year End Report
	Information Center Sergeants should have the front desk as their primary responsibility and they should be provided office space where they can monitor the activities of the Information Center.	Adopted	2002 Year End Report
The Chief of Police should implement incentives to attract officers to work at the Information Center.	Pending		

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INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
2001 Year End Report	Include in police job descriptions and recruiting material those skills necessary to effectively implement community policing such as communication, conflict resolutions, and interpersonal skills.	Adopted	2002 Year End Report
	Design and implement recruiting strategies that depict and family related issues.	Adopted	2002 Year address End Report
	Revise the policies governing transfer opportunities for SJPD sergeants to require that openings be posted, and that the application and selection process, provide all candidates an equal opportunity for the assignment.	Adopted	2002 Year End Report
	Continue to develop and provide training in communication and interpersonal skills as ongoing CPT.	Adopted	2002 Year End Report
	Train all SJPD staff members, especially those who are in positions of providing information to the public, about the citizen complaint process, the functions of the IPA and IA Unit, and where a complaint can be filed.	Adopted	2002 Year End Report
	The SJPD should compile vehicle stop data on an annual basis so that a comparative analysis can be made from year to year.	Adopted	2002 Year End Report
	The Chief of Police should expand the fields for data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Renewed and Adopted	2002 Year End Report
2002 Mid-Year Report	Complete the investigation of all citizen complaints within six months.	Adopted	2003 Year End Report
2002 Year End Report	It is recommended that the Chief of Police continue to provide Intervention Counseling for subject officers meeting a set criterion.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police implement procedures to insure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police 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.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police direct the Command staff to incorporate discussion about the allegations and findings of the officer's complaint history to determine if a pattern exists.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police upgrade the SJPD's early warning system to include other indicators such as civil claims and lawsuits.	Not Adopted	
	It is recommended that the Chief of Police in conjunction with the City Manager develop a written policy that addresses the procedure to follow when serious misconduct allegations are filed against top ranking SJPD officers.	Adopted	2003 Year End Report

Appendix F

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
2003 Mid-Year Report	A written policy should be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting.	Adopted	2003 Year End Report
	The San José Police Department (SJPD) should improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.	Adopted	2003 Year End Report
	The SJPD should prepare an annual report detailing the work of the Officer-Involved Shooting Review Panel and any new recommendations, policies and/or findings.	Adopted	2003 Year End Report
	The SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.	Adopted	2003 Year End Report
	The IPA should be part of the roll-out team to the scene of an officer-involved shooting.	Pending	
	The IPA's review of officer-involved shootings, where no citizen complaint is filed, should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints.	Pending	
	The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.	Pending	



The IPA logo incorporates one of the most recognized legal symbols, Lady Justice. Lady Justice is blindfolded signifying impartiality. The IPA logo depicts the scales of justice with a badge symbolizing the SJPD on one side and an image symbolizing the people of San Jose on the other. In creating this logo, the IPA envisioned a trademark that would convey the message that it would be the weight of the evidence that would determine the outcome of a complaint. The virtues represented by Lady Justice: fairness, impartiality, without corruption, prejudice, or favor are virtues central to the mission of the IPA office and are the guiding principals by which the IPA seeks to operate.

Teresa Guerrero-Daley, Independent Police Auditor, designed this logo.

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