

2004 YEAR END REPORT



A REPORT TO THE SAN JOSÉ CITY COUNCIL



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Independent Police Auditor

San José Mayor & City Council



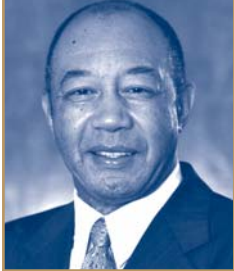
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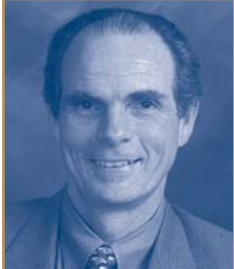
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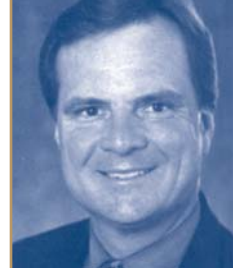
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Office of the Independent Police Auditor

BARBARA ATTARD

Independent Police Auditor

June 13, 2005

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

Dear Mayor Gonzales and Members of the City Council:

The enclosed is the Independent Police Auditor's (IPA) 2004 Year End Report submitted for your approval. This annual report focuses primarily on statistical analysis of complaint data for the 2004 calendar year. The report also provides updated information on past recommendations, particularly agreements made regarding IPA responsibilities for reviewing officer-involved shootings. Two new recommendations are presented, one for continued reporting of Taser use by the San José Police Department (SJPD) and the second for adjustments to intake procedures at the IPA and SJPD Internal Affairs Unit.

As a recent Council appointee with a staff that includes several new employees, the preparation of this report presented challenges and an excellent opportunity to learn details of the complaint process and statistical nuances.

It will be an honor to appear before you to provide an overview of this report at the City Council meeting scheduled for June 21, 2005. Chief Davis will be providing a response to this report on the same date.

I would like to acknowledge the Mayor and the City Council for your continued support of the Office of the Independent Police Auditor and the civilian oversight process. I want to thank the members of the IPA staff for their ongoing support and the major contribution they have made to the development of this report.

I want to acknowledge the IPA Advisory Committee for its contribution to the City and the IPA. On behalf of the IPA staff, I would also like to recognize and express appreciation of the San José Police Department, and in particular the Internal Affairs Unit, for providing the office with the information needed to prepare this report and their ongoing cooperation.

I welcome your comments and will be available to answer questions or provide further explanations as requested.

Respectfully submitted,

Barbara Attard
Independent Police Auditor

INDEPENDENT POLICE AUDITOR & STAFF



Photograph courtesy of Erika Holmgren

Barbara Attard, Police Auditor – Ms. Attard was appointed as the Independent Police Auditor and began her tenure in January 2005. She is a licensed private investigator with civilian oversight experience spanning the last 22 years. Ms. Attard served as the director of the office of the Berkeley Police Review Commission for the last seven years. Her career in oversight began with the San Francisco Office of Citizen Complaints. Ms. Attard's previous professional experience includes working in employment and training and with the San Francisco Sheriff's Department County Parole program. Ms. Attard earned her Bachelor's degree in Philosophy at Humboldt State University and a Masters in Public Administration at the University of San Francisco. Ms. Attard is the Vice-President of the National Association of Civilian Oversight of Law Enforcement (NACOLE).

Steve Wing, Assistant Auditor – Mr. Wing has worked with the IPA for the past four years. Prior to coming to the IPA, he worked for more than twenty-four years in community and public services, working as a legal aid and public interest lawyer and in a variety of positions with the City of San José, including, legislative policy analyst, administrative manager, and equal opportunity director. Mr. Wing obtained his Juris Doctor from Santa Clara University and a Bachelor's degree in Criminology from the University of California, Berkeley.

Suzan L. Stauffer, Citizen Complaint Examiner – Ms. Stauffer comes to the IPA with more than 20 years of experience working in the criminal justice field. A Bay Area native, Ms. Stauffer earned a Bachelor of Arts degree from Stanford University and a Juris Doctor from the University of San Francisco. She served as a prosecuting attorney in California and Hawaii before coming to the City of San Jose. In 1993 Ms. Stauffer designed and implemented the award winning Safe Alternatives & Violence Education Program (SAVE) for the City of San Jose and remains committed to making a difference in the community.

Sandra Avila-Diaz, Public & Community Relations – Ms. Avila's role is to promote public awareness citywide about the Office of Independent Police Auditor by conducting presentations, attending community events and developing partnerships with the community at large. Prior to joining the IPA, Ms. Avila worked at the San José Police Department as a Crime Prevention Specialist. She has a Bachelor of Arts degree in Liberal Studies from San José State University. Ms. Avila attended the Police Officer Standards and Training course at Evergreen Reserve Academy and was a volunteer reserve deputy for the Santa Clara County Sheriff's Department.



INDEPENDENT POLICE AUDITOR & STAFF



Current IPA Staff

Photo from left to right:
Steve Wing, Barbara
Attard, Suzan Stauffer,
Vivian Do, Tamasha
Johnson and
Sandra Avila.

Photograph courtesy of Karen Wing

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.

Tamasha M. Johnson, Office Specialist II – Ms. Johnson joined the IPA with a background in office administration and management and real estate sales. She currently attends Mission College in Santa Clara. Ms. Johnson has volunteered in the community for several organizations, including, Westwind 4-H, Eastfield Ming Qoung Children's and Family Services, and Miss America's Tri-Counties Pageant. She enjoys being of service and would like work to improve and develop community neighborhoods.



2004 IPA Staff

Photo from left to right:
Al Morales, Marifel Juan,
Xochitl Yanez, Teresa
Guerrero-Daley, Steve
Wing and Vivian Do.

Photograph courtesy of Kit Kwan

Mission

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

Purpose and Objectives

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

The objectives are to:

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

Participation

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

Independence of the Police Auditor

The Police Auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views

of the Police Auditor alone. No person shall attempt to undermine the independence of the Police Auditor in the performance of her duties and responsibilities as set forth in the San José Municipal Code Section 2.06.020.

Independent Police Advisory Committee Members

Yoyi Aglipay-Franco, Filipino American Heritage Appreciation Project, Inc. (1999-2004)

Tony Alexander, Silicon Valley African American Democratic Coalition (1999-2004)

Ahmad Al-Hewel, South Bay Islamic Association (2001-2004)

Rose Amador, Center for Training & Careers, Inc. (2001-2004)

Robert Bailey, San José Human Rights Commission (2002-2004)

Rick Callender, NAACP (2001-2004)

Bob Dhillon, United Neighborhood of Santa Clara County (1999-2004)

Minh Steven Dovan, Attorney (1999-2004)

Larry Estrada, Santa Clara County La Raza Lawyers (2000-2004)

Josué García, Santa Clara & San Benito Counties Building Trades Council (2004)

Victor Garza, La Raza Roundtable (1999-2004)

Aminah Ayoola Jahi, Alliance of African American Community Organization (1999-2004)



INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE



Independent Auditor Advisory Committee Members Receive a City Commendation from Mayor Gonzales and the City Council.

Kenneth D. Lee, Korea IT Network (1999-2004)

Craig Mann, Governing Board Member, East Side Union H.S.D. (1999-2001, 2004)

Sundust Martinez, Indian Health Center of Santa Clara Valley, Inc. (2004)

Sofia Mendoza, Community Child Care Council (1999-2004)

Helal Omeira, Council on American-Islamic Relations (2001-2004)

Merylee Shelton, San José City College (1999-2004)

Wiggys Siversten, San José State University (1999-2004)

Patrick J. Soricone, Billy DeFrank Lesbian & Gay Community Center (2004)

Jennifer Tait, Friends Outside National Organization (2004)

Alfredo Villaseñor, Community Child Care Council (2001-2004)

Gary L. Wood, Coalition for Justice and Accountability (2000-2004)

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EXECUTIVE SUMMARY

Chapter One: The Office of the Independent Police Auditor

As the City of San José grows and the population becomes increasingly diverse, a positive relationship between the police and the community remains a priority. Police misconduct is a serious issue that deeply impacts the trust and support the public has in its police department. In its eleventh year, the Office of the Independent Police Auditor (IPA), in cooperation with the San José Police Department (SJPD), serves to assure the residents of San José that there is a process available to address community concerns and fairly and thoroughly investigate citizen complaints of police misconduct.

The IPA has four primary functions: (1) to provide an alternate location where people may file complaints, (2) to monitor and audit investigations conducted by the SJPD Internal Affairs Unit (IA), (3) to promote public awareness of the complaint process, and (4) to make recommendations to enhance and improve SJPD policies and procedures.

The IPA prepares reports for the City Council semi-annually, providing statistical analysis of complaints received and closed, analysis of visible trends, and discussions of new and past recommendations. Pursuant to the requirements of San José Municipal Code Section 2.06.020(c), this Year End Report presents the findings of the 2004 calendar year.

Eleven years after its inception, the IPA continues to provide an important channel of communication between the San José community and the San José Police Department. As 2005 commences, the City can look back with pride at the success of the IPA under the leadership of former IPA Teresa Guerrero-Daley, and look forward to the continued progress of the office with newly appointed auditor Barbara Attard.

Chapter Two: Policy Recommendations

This year's annual report focuses primarily on statistical analysis of complaints received and audited in 2004. Chapter 2 describes two new recommendations the IPA is making regarding continued reporting of SJPD Taser use, and a proposed revision of complaint intake procedures at IA and the IPA. The report also provides updates on officer-involved shooting recommendations that were implemented in 2004.

I. New Recommendation – Continued Reporting of SJPD Use of Tasers

With the deployment of Tasers to all officers in 2004, the SJPD has sought to provide officers with the tools to protect the public, suspects, and themselves while using the least amount of force necessary to take combative or dangerous suspects into custody.

While no serious injuries or deaths have occurred in San José following the use of a Taser, the expansion of Taser use across the country has raised concerns and questions about several issues, including: incidents in which a death has occurred after Taser use in other jurisdictions, Taser availability increasing the escalation of force, and Taser use on juveniles. The IPA supports

EXECUTIVE SUMMARY

continued tracking of SJPD Taser use, ongoing analysis of updated information about the use of Tasers, and recommends continued reporting of Taser use by SJPD officers. This information will provide the City and the community with the information needed to evaluate the effectiveness and safety of continued use of Tasers.

II. New Recommendation – Revision of IPA and IA Complaint Intake Procedures

The IPA recommends that the IPA and Internal Affairs (IA) revise intake procedures to comply with California Penal Code §832.7, which requires agencies receiving citizen complaints to provide complainants with a copy of their statements at the time the complaint is filed. The current procedure is to provide the statement at a later date upon request.

III. Updates of Prior Recommendations: Review of Officer-Involved Shootings

In 2004, the IPA and SJPD reached a compromise regarding protocols for IPA review of officer-involved shootings. The recommendations were adopted by the City Council in April 2004 and have since been implemented. The recommendations include:

- The IPA will be notified and may respond to the scene of officer-involved shootings; at the scene SJPD personnel will provide a briefing about the incident to the IPA and the IA commander.
- The IPA will be provided a copy of the IA administrative officer-involved shooting report and will have access to the homicide investigation. The IPA will coordinate outreach efforts after officer-involved shooting incidents and the SJPD will participate.
- The IPA will work with either the City Manager or the City Attorney, to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint.

These protocols have been in place for much of 2004 and have proven to be effective in providing the IPA access to information needed to review officer-involved shooting incidents. The IPA worked with SJPD to present two informational forums following officer-involved shootings in 2004. The participants provided information to the community about the investigation and review procedures governing officer-involved shootings.

Chapter Three: The Complaint Process and Year End Statistics

This chapter provides a review of the complaint process, explanation of case-related definitions, and information about the types of cases and complaints received in 2004. Statistical information about complaint allegations, findings, and the types of discipline imposed are analyzed.

In 2004, a total of 366 complaints were filed. The three most common allegations were: improper procedure, rude conduct, and unnecessary force. While complaint numbers are down from previous years, there was a 13% increase in complaints received compared to 2003. Formal complaints, the most serious of the complaint categories, increased 29% over complaints filed in 2003.

The IPA monitors the classification and the progress of complaint investigations, and audits the findings and conclusions reached by IA. While the IPA is mandated to audit all unnecessary force cases, the office routinely audits 100% of all complaints, providing a measure of quality control. Of the 210 complaints audited in 2004, further investigation was requested on 49 cases before the investigation was closed. The chapter provides a synopsis of four cases in which the IPA disagreed with the IA findings.

Chapter Four: Use of Force Analysis

This chapter provides information and data concerning complaints alleging that a San José police officer used unnecessary force. There were 62 unnecessary force complaints, with a total of 98 unnecessary force allegations, filed in 2004. While the 2004 totals are somewhat higher than the levels of unnecessary force complaints and allegations filed between 2001 and 2003, they are lower than the levels for the years prior to 2001.

In addition to tracking data from the unnecessary force complaints filed, the IPA also tracks data obtained from the audits of completed unnecessary force complaint investigations. In order to determine whether any trends or patterns can be detected from use of force complaints, the IPA tracks: 1) the level of injury caused by the use of force; 2) the part of the complainant's body impacted; and 3) the type of force used by the officer. The IPA audited 73 unnecessary force complaint investigations in 2004.

It is significant to note that over the past five years, combined levels of major and moderate injuries remained consistently low, 17% of alleged injuries in 2004. Minor and no injuries have accounted for the highest percentage of injury levels, 74% in 2004.

The data provided indicate that the distribution of the frequency of different types of force allegations has remained steady during the past five years. The use of hands, the application of tight handcuffs, use of the ground, and use of the feet continue to be the four types of unnecessary force alleged most often.

Deadly force is the most serious type of force that can be used by a police officer. The IPA works with the SJPD to provide careful scrutiny of these cases to ensure that the officers acted lawfully and within department policies and procedures.

Since 1999 the IPA has participated in Officer-Involved Shooting Review Panels that review shooting incidents to determine if any training issues are present, or if any policy or procedural changes should be considered. In 2004, IPA authority was expanded to include review of IA and homicide officer-involved shooting reports.

There were six officer-involved shootings in 2004; Chapter 4 provides a detailed table with information about these incidents. The review process for four officer-involved shootings was completed in 2004. In each case, the Grand Jury found that there was insufficient evidence to support a criminal charge and the administrative review found that the involved officer acted reasonably and within SJPD policies and procedures. The IPA will review the cases further to determine any policy recommendations for the upcoming mid-year or 2005 annual report.

EXECUTIVE SUMMARY

The chapter also discusses SJPD training for officers to reduce the need for officers to use force to gain control in violent situations. Two types of training discussed are Crisis Intervention Training and Force-Option Simulator Training.

Chapter Five: Subject Officer Demographics

Various types of statistical data about officers receiving complaints are presented in this chapter. In 2004, 253 of San José's 1,341 police officers were named in complaints. Women officers received a lower percentage of complaints than their ratio in the police force. Fifteen female officers were named as subject officers; women represent 6% of the officers receiving complaints, and 10% of the total number of officers in the SJPD. Male officers were named in 94% of the 239 complaints; men represent 90% of the officers in the police department.

The data indicate little difference between the ethnic ratio officers in the SJPD and the percentage of complaints they receive. IPA statistics show that San José officers with two to five years of experience receive the highest number of complaints per officer. In 2004, officers in the two to five year experience group accounted for 22% of complaints received and represent 12% of the total number of officers in the police department.

Of the 1,341 officers employed by SJPD in 2004, 171 officers received one complaint. Thirty-eight officers received multiple complaints, with the following breakdown: 33 received two complaints, four received three complaints, and one officer received four complaints.

Chapter Six: Complainant Demographics

Chapter 6 provides a summary of the background of complainants in 2004. The information is gathered from voluntary questionnaires that complainants are asked to complete, thus the number of questionnaires returned dictates the accuracy of the data. In 2004, the IPA and IA provided 323 statistical surveys to complainants; 151, a 47% sample, were returned. The data from this sample indicate that Hispanic/Latino complainants filed the greatest number of complaints, followed by white complainants and African Americans. The numbers of complaints and overall demographics including age, education, and occupation are represented by the illustrations in this chapter.

Chapter Seven: Community Outreach

Awareness of the complaint process is critical in raising public confidence in the Office of the Independent Police Auditor. Staying connected to the community has been an ongoing priority that has kept the IPA informed of the concerns and needs of the people of San José. To maintain an effective community connection, the IPA has made a commitment to reach out to the community and provide face-to-face contact with individuals, groups and organizations.

Highlights of IPA outreach in 2004 include 53 presentations reaching more than 3600 members of the San José community, and 25 presentations focused on San José youth.

EXECUTIVE SUMMARY

The Independent Police Auditor Advisory Committee (IPAAC) is comprised of 24 members, including community leaders, grassroots organizers, and professionals representing the City of San José's diverse community. In December 2004, the IPAAC received a City of San José Commendation from Mayor Ron Gonzales and the City Council acknowledging the IPAAC's contributions to the community.

In November 2004, the IPA was featured in a segment of San José In-Focus, hosted by Brian Adams. The production, "Truly Independent," highlights the complaint process and tells the history of the IPA through interviews. It can be viewed on the IPA website.

Chapter Eight: Cases By Council District

This chapter provides a presentation of complaints and allegations by the council district in which they occurred. As in prior years, statistics indicate that the largest numbers of complaints are filed in Council District 3, which includes the downtown area. This chapter also provides information on the breakdown of unnecessary force complaints as well as the numbers of more general citizen inquiries and contacts.

Conclusion

2004 was a year of change for the Office of the Independent Police Auditor both in leadership and staffing. The IPA continues to provide quality control of the complaint process and now has an expanded role in the review of officer-involved shootings. Tasers were fully deployed to the SJPD and will continue to be studied and tracked to ensure their effectiveness and safety. Now under the direction of Barbara Attard, the IPA will continue to reach out to the San José community and work to ensure the thorough, fair and impartial investigation of complaints.

I. IPA — 2004 A Time of Change

The Office of the Independent Police Auditor (IPA) was established over eleven years ago by the San José City Council. The Council reviewed information and listened to testimony from professionals in oversight, community members, activists, and law enforcement before establishing the auditor model of oversight to reach out to the diverse San José community and to help enhance police/community relations. As the IPA enters its twelfth year, there is a change in leadership and new challenges. This year-end report covers primarily the period of January 1 to December 31, 2004.

This past year has been one of major staffing changes for the IPA. Teresa Guerrero-Daley, the former IPA, was elected as a Santa Clara County Superior Court Judge, taking the Bench in January 2005. She concluded her eleventh year as the IPA in December 2004. Ms. Guerrero-Daley is widely known as an advocate and pioneer of the auditor model of civilian oversight. Under her direction the City of San José and the IPA established the auditor model as a strong method of oversight—with the authority to ask for further investigation of misconduct cases, attend officer interviews, and statistically dissect cases to make substantive policy recommendations. In the last few years the IPA has gained the authority to respond to and review investigations of officer-involved shootings, some of the most serious incidents that involve police officers. Ms. Guerrero-Daley's work was recognized nationally with an award for Outstanding Achievement in Oversight presented at the 2004 National Association of Civilian Oversight of Law Enforcement (NACOLE) conference in Chicago. The Office of the Independent Police Auditor and the City of San José remain indebted to Ms. Guerrero-Daley for her leadership and tireless service throughout her tenure.

Barbara Attard, a long-time oversight practitioner, was appointed as the new IPA to begin in January 2005. The IPA experienced turnover in three additional key staff positions during this transitional period, establishing the two “veteran” staffers, Steven Wing and Vivian Do, as the sole office historians and conveyors of the IPA process. At the time of this report, all positions have been filled and an enthusiastic, dedicated staff is in place to provide the San José community with effective oversight of the citizen complaint process.

Chapter One

CHAPTER ONE | THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

II. Establishment of the Office of the Independent Police Auditor

The San José City Council passed the ordinance to establish the Office of the Independent Police Auditor on September 13, 1993. The IPA was created to provide civilian oversight of the citizen complaint process and to make policy recommendations to the San José Police Department (SJPD). Unlike many cities in the United States, police oversight in San José was not created in response to a crisis in the San José Police Department, however, the Rodney King incident provided momentum to a grassroots effort seeking to establish civilian oversight in San José.

On November 4, 1996, San José residents voted to amend the City Charter to make the IPA a permanent branch of city government. The change to the City Charter also directed the City Council to appoint the Police Auditor to serve four year terms and established that the removal of the Police Auditor, midterm, requires a vote of at least ten of the eleven City Council members. See **Appendix A** for the complete San José City Charter Section 809.

III. Independence of the Police Auditor

The IPA is established as an independent body as set forth in Title 8 of the San José Municipal Code, Section 8.04.020, C and D:

- 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 the duties and responsibilities set forth in Section 8.04.010.

See **Appendix A** for the complete San José Municipal Code, Section 8.04.

IV. Reporting Requirements

The IPA reports are prepared on a semi-annual basis pursuant to the requirements of the San José Municipal Code Section 8.04.101 (D). This section states that the report of the IPA shall:

- Include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken;
- Analyze trends and patterns;
- Make policy recommendations.

V. Functions of the Independent Police Auditor

The mission of the IPA is to provide independent review of the citizen complaint process, thereby ensuring increased accountability by the San José Police Department. The four primary functions of the IPA are:

- To serve as an alternative location for citizens to file a complaint against a San José police officer;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct community outreach and provide information about the services the office provides to the community;
- To make recommendations to enhance and improve policies and procedures of the SJPD.



I. New Recommendation — Continued Reporting of San José Police Department (SJPD) Use of Tasers

The IPA has recommended and encouraged the SJPD to take reasonable measures to reduce the possibility that an officer would have to use deadly force. Increasing the availability and use of less-lethal weapons is one of these measures. Tasers, sometimes referred to as “stun guns,” provide officers with a less-lethal force option that can reduce the possibility of more serious injuries to both suspects and officers in situations involving persons who are physically threatening, assaultive, resistive or physically uncooperative. In the spring of 2004, the SJPD took the significant step of equipping all of its patrol officers with Tasers, and began Taser training early in 2004. After officers were trained they were issued the new X26 Taser device. As of October 31, 2004, Tasers were fully deployed to San José officers.

The Chief of Police implemented a study to determine if Tasers were being deployed effectively and to identify any training and/or safety issues related to their use. A report was issued covering the first six months of expanded Taser deployment, May 1, 2004 to October 31, 2004. With the input of the IPA, the study generally concluded that there were no particular issues with the increased use of Tasers and that they may have been effective in reducing injuries. The SJPD study found that Tasers were used a total of 110 times during the six-month study period. As indicated in **Chapter 4, Illustration 4-F**, there were only four unnecessary force complaints involving the use of Tasers in 2004.¹

While no serious injuries or deaths have occurred in San José following the use of a Taser, the expansion of Taser use across the country has raised concerns and questions about several issues, including incidents in which a death has occurred after Taser use in other jurisdictions, Taser availability increasing the escalation of force, and Taser use on juveniles.

The IPA supports the decision of the Chief of Police to continue to track and study Taser use and recommends that the SJPD continue to provide periodic reports assessing Taser use by SJPD

¹SJPD released 12-month report of Taser use by SJPD officers on May 9, 2005; it will be discussed in the next IPA Mid-Year or Year-End report.

officers. The IPA also recommends that the SJPD and the IPA continue to follow and analyze new studies or other developments that could provide more definitive information concerning the safety of Tasers, and their effectiveness and appropriate use.

II. New Recommendation — Revision of IPA and IA Intake Procedures

California Penal Code Section 832.7², one of the laws that govern citizen complaints of police misconduct, requires agencies receiving complaints to provide the complainant with a copy of his/her statement at the time the complaint is filed. This procedure has not been followed by the IPA or the SJPD Internal Affairs (IA) Unit; complainants have been given a copy of their statement upon request, or they are offered a copy to be mailed to them at a later date. Providing a copy of the complaint at the time the complaint is filed informs the complainant of the issues that have been recorded, allows them to verify that their statement has been documented accurately, and gives the complainant the case number for follow-up. This requirement to furnish the complainant the statement at the time the complaint is filed would require the summary to be completed immediately, but would not increase the workload for the unit because summarization of the statement is a task that must be completed by the intake officer, regardless of the timing. The Santa Clara County Civil Grand Jury recommended that this procedure be followed in its 1999–2000 investigation report.

III. Updates of Prior Recommendations: Review of Officer-Involved Shootings

A. New Procedures for Officer-Involved Shootings

In its *2003 Mid-Year Report*, the IPA analyzed and evaluated the effectiveness of the Officer-Involved Shooting Review Panel and made seven recommendations. Four of these recommendations were agreed to by the SJPD and were implemented in 2003.³ On December 2, 2003, the City Council directed the IPA and the SJPD to further discuss the three remaining recommendations. Early in 2004, after the appointment of the new Chief of Police, the IPA and the SJPD reached a compromise and jointly presented the following recommendations to the City Council, which were adopted on April 27, 2004 and have since been implemented.

- 1. Recommendation:** The IPA should be part of the rollout team to the scene of an officer-involved shooting.

Adopted Policy: The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander. The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene. On-scene personnel will then brief the IPA and the Internal Affairs Commander as to the details of the incident.

- 2. Recommendation:** 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.

² Complete text of CA Penal Code Section 832.7 is included as Appendix B.

³ A complete listing of IPA recommendations and dispositions is included as Appendix E.

Adopted Policy: The IPA will be provided a copy of the IA administrative investigation report of the officer-involved shooting, for auditing purposes, as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation.

The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure that it participates in these forums.

- 3. Recommendation:** The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.

Adopted Policy: The City Manager or the City Attorney, as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services that cost in excess of \$100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.

B. Results of New Officer-Involved Shooting Procedures

After the adoption of the officer-involved shooting recommendations, four officer-involved shootings occurred during the remainder of 2004.

Implementation of the new procedures has gone well, with the IPA and the SJPD continuing to cooperate to make this a successful effort. The IPA has been called to the scene of each incident in a timely manner and has been briefed about the incident. This first-hand knowledge has been very beneficial, assisting the IPA in developing a clear

understanding of the initial circumstances of the shooting incidents. Additional information about the officer-involved shootings that occurred in 2004 is provided in **Chapter 4**.

New procedures were implemented to ensure that the IPA receives the completed Internal Affairs administrative investigation report in a timely manner so it can be reviewed and audited. The IPA is also provided access to the homicide investigation for review.

In 2004, the IPA and SJPD partnered in presenting two informational forums that provided information to the community concerning the investigation and review procedures governing officer-involved shootings. The IPA, the Chief of Police, the Assistant District Attorney, the Assistant Chief of Police and the Internal Affairs and Homicide Commanders participated, provided information and responded to questions from community members.

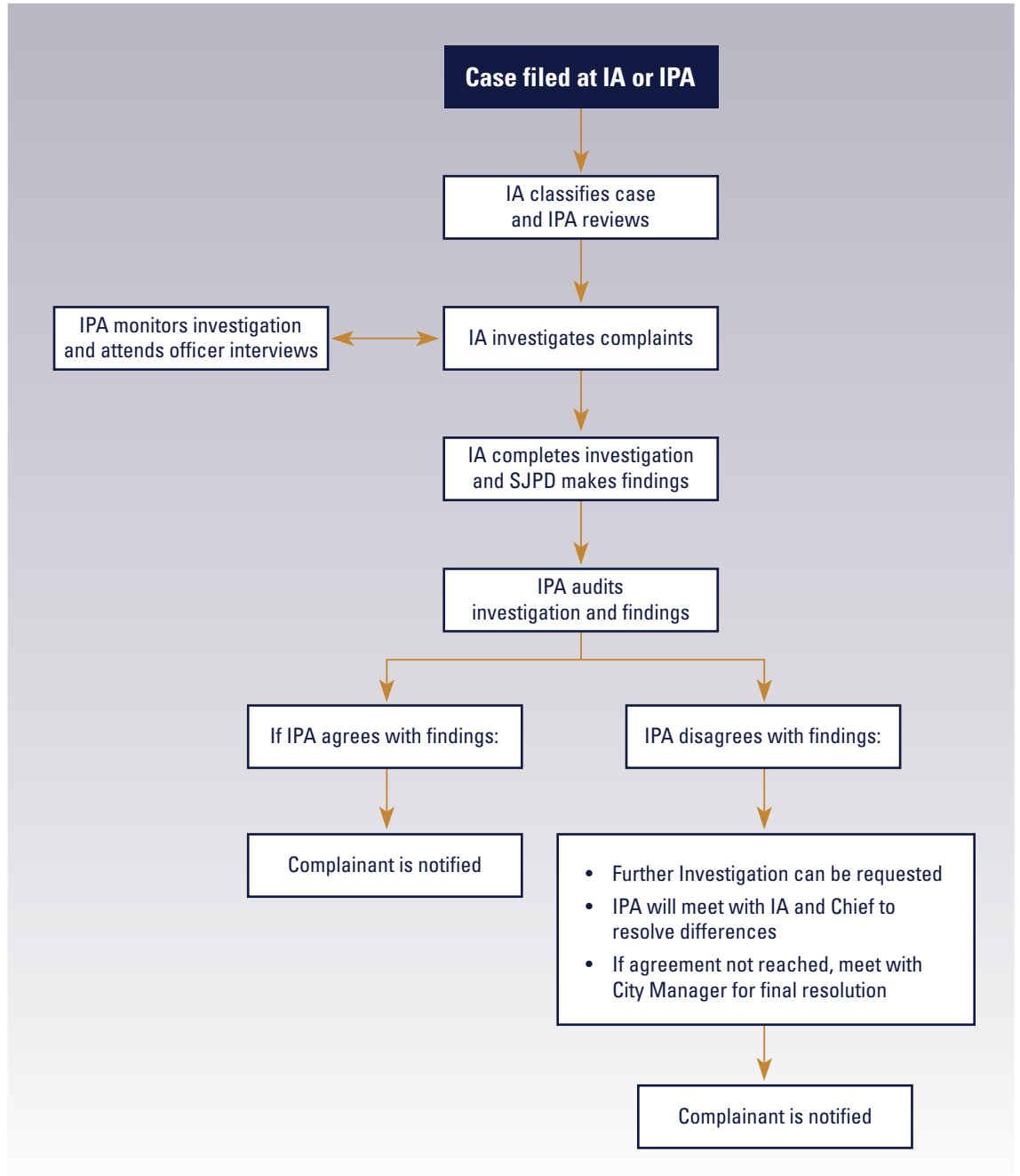


Illustration 3-A: The Complaint Process

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This section discusses the IPA's involvement in the complaint process, including complaint intake, monitoring of the investigation, and auditing completed Internal Affairs (IA) reports. Statistical information about the types of cases received in 2004 by both IA and the IPA, the classification of cases, findings reached by IA, officer discipline, and the audit process is detailed and analyzed.

I. Oversight of the Complaint Process

Prior to the establishment of the IPA, complaints against San José police officers were reported exclusively to officers assigned to IA. Since 1993 the IPA has offered an alternative non-police venue for filing a complaint and has provided independent review of misconduct complaint investigations to ensure timely, objective, and thorough investigations by IA investigators.

The IPA follows a specific process mandated by the San José Municipal Code and California Penal Code sections that provide procedures for investigation of citizen complaints.⁴

Complaints go through three phases in the IPA office: the intake process, monitoring the investigation, and the audit of the completed investigation. The flowchart presented in **Illustration 3-A** provides a graphic representation of the main steps involved in the complaint process after a person contacts either the IPA or IA to file a complaint.

A. Filing A Complaint

Members of the public may report their complaints of suspected police misconduct to the IPA or IA via mail, telephone, facsimile, e-mail, or in person. The intake officer at either the IPA or IA 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 explain the complaint process and provide documents to complete and sign to initiate the complaint investigation and the audit process. If the interview was conducted over the phone the documents are mailed. Cases received by the IPA are sent to IA for investigation.

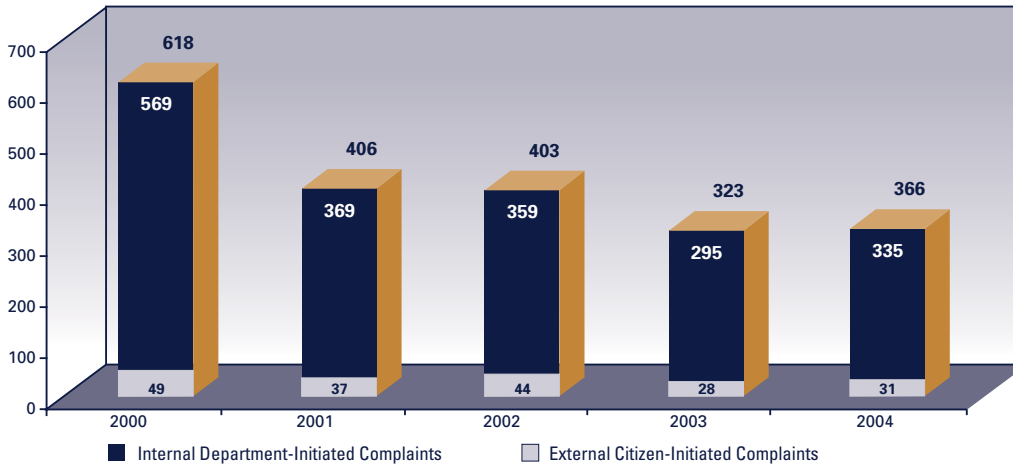
Complaint Confidentiality

California Penal Code §832.7 (**Appendix B**) deems complaints of police misconduct and complaint investigations confidential as they may be considered part of an officer's personnel file. Governed by this law, the IPA is limited in the information that it can reveal to a complainant or the public about investigated cases. The statistical analysis provided in this report must be in a form that will not disclose the identities of the parties involved.

⁴Full Text of San José Municipal Code §8.04.010 is included in Appendix A.

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Illustration 3-B: Five-Year Overview of Total Complaints Received



Complaints Received—Internal and External

All complaints from the public that involve a San José officer are registered and documented in a shared IA/IPA database. Complaints from members of the public are “external” complaints; IA also investigates department-initiated “internal” complaints. As indicated in **Illustration 3-B**, in 2004, 366 total complaints were filed, a combination of internally generated and external complaints. This represents a 13% increase over the total 323 complaints filed last year, yet complaint numbers are significantly lower than complaints received in previous years.

Intake: IA and IPA

Although IA and the IPA are independent offices, both departments enter case information into a shared database. Last year the SJPD invested in a new complaint database program that allows better tracking of issues and officer’s misconduct records. Both offices have access to immediate, real time information regarding complaints and other types of citizen inquiries.

In 2004, approximately 33% of the complaints received from civilians, 110 of 335, were filed at the IPA office. Although the percentage of

Illustration 3-C: External Complaints Filed

EXTERNAL COMPLAINTS FILED	IPA Intake	IA Intake	Total
Formal: Citizen Initiated Complaints	33	78	111
Informal: Command Review Complaints	9	20	29
Procedural Complaints	9	23	32
Policy Complaints	2	5	7
Inquiry	37	81	118
No Boland	11	7	18
Withdrawn	9	11	20
Total Complaints Filed	110	225	335
Citizen Contact (Not a complaint)	21	9	30

Illustration 3-D: Internal Complaints Filed

INTERNAL COMPLAINTS FILED	Number
Department Initiated	31
Total	31

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complaints received at the IPA declined slightly in 2004, actual numbers of complaints received at the IPA have been fairly consistent over the last four years. It is important to monitor the intake levels at the IPA and the IA as a measure of gauging the effectiveness of outreach efforts and community awareness of the IPA. **Illustration 3-E** provides a ten-year record of complaint intake.

Types of Allegations Received

The new complaint database has enabled the IPA to review all types of allegations received. Previously only allegations of unnecessary/excessive force were specifically analyzed. In future years, comparative data regarding all types of allegations will be available for reporting.

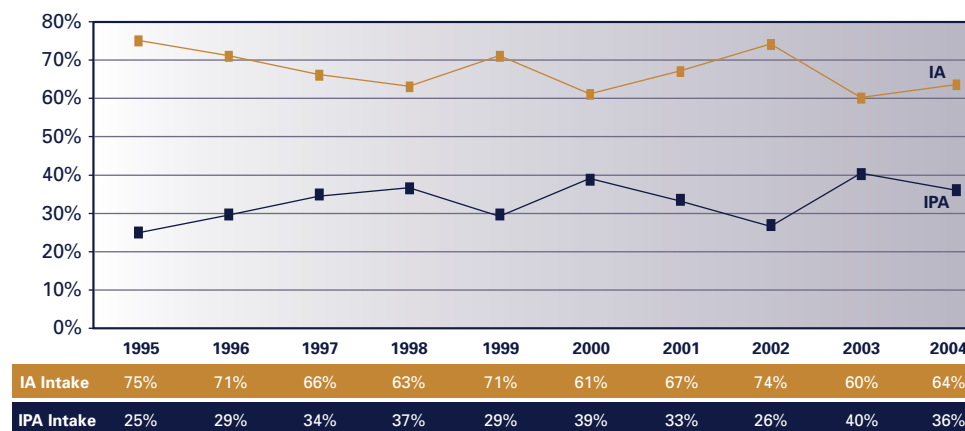
In 2004, 366 total complaints containing 541 allegations were received. See **Illustration 3-F**. A single complaint may include more than one

allegation. The three types of allegations reported most frequently in 2004 were:

- Improper Procedure, 163 allegations, 30% of all allegations filed;
- Rude Conduct, 135 allegations, 25% of all allegations filed;
- Unnecessary Force, 98 allegations, 18% of all allegations filed.

Other types of allegations were reported at a much lower level, 7% or less of the allegations filed, as delineated in **Illustration 3-F**.

Illustration 3-E: Complaint Intake at IA vs. IPA from 1995 to 2004



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Illustration 3-F: Types of Allegations Received

TYPES OF ALLEGATIONS RECEIVED	Distribution	%
Improper Procedure	163	30
Rude Conduct	135	25
Unnecessary Force	98	18
Inquiry (Unclassified)	36	7
Unlawful Arrest	31	6
Missing/Damaged Property	15	3
Unofficer-like Conduct	14	3
Unlawful Search	13	2
Failure to Take Action	10	2
Racial Profiling	9	2
Discrimination	7	1
Excessive Police Service	3	1
Policy	5	1
Harassment	2	0
Total Allegations	541	100

Police Contacts

Allegations of police misconduct should be considered in view of the fact that most San José police officers successfully resolve situations with no issues of complaint. In 2004, members of the SJPD handled a total of approximately 404,000 calls for service from the public. These contacts ranged from responding to life threatening situations, to issuing traffic citations, to responding to false alarms. Of all the citizen-to-police contacts in 2004, just over 26,500, 6.6%, involved making an arrest or issuing a criminal citation. This is consistent with the overall low crime rate in San José.

Misconduct Allegations

Allegation types recorded in formal complaints:

Discrimination (D) and Harassment (H) allegations are used to classify all types of discrimination or harassment, i.e. racial, sexual, etc.

Excessive Police Service (ES) allegation arises where a citizen alleges excessive, recurring contacts by a police officer or by multiple police officers.

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) 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 legally 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 or abuse of authority.

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

Unlawful Search (US) allegation is an improper or illegal search.

Racial Profiling (RP) allegation indicates that an officer initiates a contact solely based on the race of the person contacted.

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B. Monitoring Ongoing Investigations

The IPA monitors the classification and the progress of complaint investigations. Providing a quality control measure, this process enables the IPA to assess the objectivity and thoroughness of the investigation, the fairness of the interview process, the collection of physical evidence, and the strategy and tactics employed by the investigator.

When monitoring the case the IPA may: review documents, attend officer interviews, request follow up investigations and/or interviews, examine the location where the complaint originated, and maintain contact with complainants. This process ensures that all information is examined and documented promptly, completely and accurately.

Classification of Complaints:

After a case is received, IA determines whether or not an investigation is warranted and the appropriate level of investigation. Cases are classified depending on the seriousness of the case and the most beneficial course of investigation. The IPA reviews the classification of the case early in the investigation and during the audit process.

Illustration 3-G presents a five-year overview of the types of complaints that have been filed. The number of complaints received has leveled out over the last four years after a decline in 2001. There was a 13% increase, 43 cases, in the number of complaints received in 2004, 366 cases, up from 323 cases received in 2003. The largest increase in 2004 was in formal external complaints received from the public. Formal complaints are the more serious cases that warrant a more detailed investigation. External citizen-initiated complaints in this category increased 29% to 111 complaints, up from 86 in the previous year.

Illustration 3-G: Five-Year Overview of Types of Complaints Received

TYPE OF COMPLAINTS	2000	2001	2002	2003	2004
Formal: Citizen-Initiated Complaints	171	106	97	86	111
Formal: Department-Initiated Complaints	49	37	44	28	31
Informal/Command Review Complaints	57	49	41	39	29
Procedural Complaints	80	57	49	27	32
Policy Complaints	17	9	1	1	7
No Boland/Withdrawn	46	30	43	29	38
Inquiry	198	118	128	113	118
Total Complaints Filed	618	406	403	323	366

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Classification of Complaints/Contacts

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 SJPD. 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 SJPD:

1. Formal Complaint: After the initial investigation by the intake officer, IA determines that the facts of the allegations, if proven, would amount to a violation of the law or of Department policies, procedures, rules or regulations.

- **External Civilian/Citizen-Initiated (CI):** Complaint initiated by a member of the public alleging misconduct by an SJPD officer.
- **Internal Department-Initiated (DI):** Complaint initiated by the Chief of Police alleging a serious violation of Department policy or a violation of law by an officer.

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 (Typically a rude conduct complaint).

3. Procedural (PR) Complaint is defined in two ways:

- After the initial investigation by the Intake Officer, the Department determines the subject officer acted reasonably and within policy and procedure given the specific circumstances and facts of the incident, and there is no factual basis to support the misconduct allegation.
- The allegation is a dispute of fact wherein there is no independent information, evidence or witnesses available to support the complaint and there exists another judicial entity available to process the concerns of the complainant.

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 (IQ) refers to a complaint that is immediately resolved by an intake officer 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 (CA Penal Code 148.6) requires that the complainant sign a Boland Admonishment form in order to have the complaint investigated. The Boland Admonishment form indicates that the complainant has been informed that it is a misdemeanor to file a false complaint against an officer.

7. Contacts (CC): A communication involving issues that are not misconduct against a San José police officer. Complainants are referred to the appropriate agency to handle their concerns or are offered help to deal with bureaucratic procedural issues, i.e. tow hearings and property issues, etc.



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C. Auditing Complaints

Auditing by the IPA is the final step in the processing of a complaint, and is conducted prior to notifying the complainant or the subject officer of the findings. Audits involve a critical examination and analysis of the circumstances that led to the misconduct complaint, and evaluation of the quality of the investigation. The audit process is the community’s assurance that complaints are taken seriously and examined thoroughly, impartially, and without preconceived conclusions.

Upon completion of an investigation of a complaint by IA, a copy of the investigative report is sent to the IPA for audit. The review includes a thorough examination of all documents and may involve listening to taped interviews and contacting witnesses to verify information or ask further questions.

The audit determines whether the case should be closed or considered for additional investigation or analysis and is documented in an internal IPA database for statistical purposes.

The IPA is mandated to audit all excessive/unnecessary force complaints and 20% of all other complaints. The IPA has extended the number of audits conducted beyond its mandate, and has routinely audited 100% of the external civilian generated complaints investigated by IA. In 2004 the IPA audited approximately 92% of the external complaints closed, less than usual due to staff turnover. Internal police-generated complaints are reviewed and are audited if there is a “citizen nexus” that links the case to a citizen complaint. Cases categorized and closed as citizen contacts and inquiries are reviewed, but not as rigorously as cases which are formally audited. This comprehensive approach allows the IPA to do a more thorough and accurate analysis of misconduct and policy issues facing the SJPd.

In 2004, IA completed 378 complaint investigations, 354 external complaints and 24 internal police-generated complaints. Of the 354 external complaints that were closed in 2004, 115 were inquiries; the IPA audited 220 of the remaining 239 closed external cases.

Illustration 3-H: Types of Complaints Audited

EXTERNAL COMPLAINTS AUDITED	Number
Formal: Citizen Initiated Complaints	116
Citizen Nexus to Department Complaints	2
Informal: Command Review Complaints	34
Procedural Complaints	27
Policy Complaints	7
No Boland/Withdrawn	34
Total Complaints Audited	220

Illustration 3-I: External Complaints Closed

EXTERNAL COMPLAINTS	Number
Formal: Citizen Initiated Complaints	126
Informal: Command Review Complaints	34
Procedural Complaints	32
Policy Complaints	7
Inquiry	115
No Boland/Withdrawn	40
Total Complaints Closed	354

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Audit Results — Agreement/Disagreement with IA Findings

Through audits, perceived deficiencies in an investigation and/or disagreements with findings reached by the IA investigator are determined. An audit results in closure of the case, request for additional investigation, or disagreement with the outcome of the investigation. If there is disagreement, the issue is first raised with the IA commander. If the IPA and IA are unable to resolve their differences, a formal memorandum will be presented to the Chief of Police detailing the IPA’s concerns. Meetings are held to discuss, explain and debate the merits of the issues. The issues brought to light by the IPA may be agreed upon at the IA commander level, or with the Chief of Police. If no consensus can be reached with the Chief of Police the case may be forwarded to the City Manager for final resolution.

It is not uncommon for the IPA to request further action on a case. Of the 220 cases audited in 2004, further action was requested in 49, 22% of the cases.

Cases in Which the IPA Disagreed with IA Findings

Each year there are cases that result in disagreement. In 2004, of the 220 cases audited, four cases, 2%, resulted in disagreement. As shown in **Illustration 3-K**, in the last five years there has been disagreement on 5% or less of the cases audited each year.

Profiles of the cases and the issues that resulted in disagreement in 2004 are featured in the text box, “Cases In Which the IPA Disagreed with IA Findings.”

Illustration 3-J: IPA Audit Determinations

IPA DETERMINATION	Audits	%
Agreed at First Review	171	78
Agreed after Further Action	45	20
Disagreed after Further Action	4	2
Total Complaints Audited	220	100

Illustration 3-K: Five-Year Overview of IPA Determination of Audited Complaints

IPA REQUESTS	2000	2001	2002	2003	2004	Total
Agreed with Findings	604	269	300	290	216	1679
Disagreed with Findings	8	8	14	14	4	48
Total Cases Audited	612	277	314	304	220	1727
% Agreed with Findings	99%	97%	96%	95%	99%	97%
% Disagreed with Findings	1%	3%	4%	5%	2%	3%

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Cases In Which The IPA Disagreed With IA Findings

1 Case One

The complainant alleged that two officers used rude offensive language towards him and struck him unnecessarily across his shoulder blade with a baton. While walking downtown, the complainant and a friend stopped to observe a police investigated incident. The officers ordered the two men to leave the area. After a brief verbal confrontation, the complainant alleged he was struck by a baton even though he was complying with the officer's orders to leave.

Two officers admitted that they used rude offensive language and one officer admitted using his baton to push the complainant to remove him from the area. The officer reported the use of force to his supervisor, but failed to document it. The IA investigation concluded that the officer did not comply with current policy for documenting the use of force as required by the duty manual. Both officers received Documented Oral Counseling (DOC) for the rude conduct and the officer that used the baton received DOC and training for failing to document the use of force.

The IPA disagreed with IA's finding of exonerated for the allegation of unnecessary force for using the baton. The officers and witnesses who were interviewed agreed that the subject officer did have his baton out, however, they disagreed on how it was used. The IPA believed that IA did not present sufficient information to support accepting one statement over the other. The IPA believed that the finding should have been "not sustained," because the evidence was not sufficient to prove or disprove this allegation.

2 Case Two

The complainant, a high school student, alleged that an officer working a police secondary employment job as a school security officer, struck him four to five times with his "walkie talkie" radio causing cuts to his forehead and back of his head. The student was involved in a school fight and was escorted by the officer to the school office. While in the school office, the complainant was involved in another fight with a student. When the officer intervened to stop the fight, the complainant and the officer had a physical altercation resulting in injuries to the complainant.

Since IA investigators concluded that the officer had time to drop the radio and had other force options available to control the complainant, IA referred the unnecessary force allegation to the officer's chain of command for findings and recommendations. After further investigation, the chain of command changed the allegation from unnecessary force to improper procedure for the violation of the policy defining the proper use of impact weapons. The improper procedure allegation was sustained and the officer received Documented Oral Counseling (DOC) and training for use of impact weapons.

The IPA disagreed with this finding and believed there was sufficient evidence to support a sustained finding for the allegation of unnecessary force. Because the subject officer received discipline for other allegations in this complaint, the IPA closed the case and documented the disagreement in a letter to the Chief of Police.

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3 Case Three

The complainant alleged that following a traffic stop for a tail light violation he was unlawfully arrested for being under the influence of a controlled substance. He also alleged that he and his vehicle were unlawfully searched and the dashboard of his vehicle was damaged.

The IPA agreed with the findings exonerating the officer for unlawful arrest and search because the evidence presented supported the conclusion that the complainant was possibly under the influence of a stimulant and the subsequent search was reasonable. The IPA disagreed with the findings of IA that the allegation of property damage was unfounded. Based on the evidence presented, it is possible that the officer's search of the car, including "lifting the dash mat" could have caused or contributed to the damage alleged by the complainant. The IPA believed there was insufficient evidence to either prove or disprove this allegation and believed that the finding should have been "not sustained."

4 Case Four

The complainant alleged that the officer used unnecessary force when arresting the complainant in a downtown disturbance, and failed to identify himself when requested. The complainant also alleged that a second officer violated department procedure when transporting the complainant to jail.

The IPA agreed with the "not sustained" finding related to the rude conduct allegation based on a lack of evidence. The IPA disagreed with the findings of the Internal Affairs investigation exonerating the officer of the allegations of unnecessary force, and improper procedure. The allegation that the officer used force in retaliation for the complainant making the request for identification was not addressed at all in the IA investigation.

The IPA questioned the objectivity of the investigation because the statements of the complainant and his three witnesses were summarily discounted without sufficient grounds. A finding of exonerated requires that the acts complained of occurred and that after investigation of the circumstances, those acts were found to be justified, lawful and proper. Findings of exonerated for the allegations of unnecessary force and improper procedure are not supported by the evidence in this case. The IA investigation does not provide sufficient justification for finding the account of the officer more credible than those of the witnesses, which support the complainant. Furthermore, the IPA found that the witness officer's credibility was questionable based upon discrepancies in two statements he gave during the investigation. The IPA believes the findings for the allegations of unnecessary force and improper procedure in this case should have been "not sustained" based on the lack of sufficient evidence to clearly prove or disprove the allegations.

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II. Findings of Internal Affairs Investigations

Illustrations 3-L and 3-M detail the findings of IA complaint investigations. The standard of evidence used by IA is “preponderance of evidence.” This means that the evidence suggests that it is more likely than not that a violation occurred or did not occur. In 2004, IA closed 378 cases, 354 citizen-initiated external complaints containing 501 allegations, and 24 internal department-initiated complaints containing 36 allegations. It is significant to note that the majority of allegations investigated in internal cases were sustained, none were exonerated and one was unfounded. In contrast, in citizen-initiated

cases, 169 allegations, nearly 48% of the external allegations closed, were exonerated; 88 allegations, 18%, were closed as no finding, 63 allegations, 12%, were unfounded; and 30 allegations, 6%, were sustained.

Because the definition of exonerated is that the action occurred, but was justified and proper, it would be expected that no complaints would be initiated as internal cases by the police department against an officer that would be found to be exonerated or proper. The definition of unfounded is that the investigation conclusively proved that the acts complained of did not occur. Text boxes containing allegation and finding/disposition definitions are presented on pages 15 and 23.

Illustration 3-L: Dispositions of Allegations: Internal/Department-Initiated Cases

DISPOSITION	ALLEGATIONS													Total
	ES	D	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained							9	5	1			16		31
Not Sustained							1							1
Exonerated														
Unfounded												1		1
No Finding							2		1					3
Within Procedure														
No Misconduct Determined														
Command Review														
Within Policy														
Total Allegations							12	5	2			17		36

- ES= Excessive Police Service
- D= Discrimination
- F1= Unnecessary Force (w/medical)
- F2= Unnecessary Force (w/o medical)
- FA= Failure to Take Action
- H= Harassment
- IP= Improper Procedure
- MDP= Missing/Damaged Property
- RC= Rude Conduct
- RP= Racial Profiling
- UA= Unlawful Arrest
- UC= Unofficer-like Conduct
- DR= Delay in Response/Slow Response
- US= Unlawful Search

Illustration 3-M: Dispositions of Allegations: External/Citizen-Initiated Cases

DISPOSITION	ALLEGATIONS													Total
	ES	D	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained				2	3		18	2			3	1	1	30
Not Sustained				8			8		19		1	2		38
Exonerated		1	9	81			36	3	11	3	19		6	169
Unfounded			1	7	3	1	10	10	23	4	2	2		63
No Finding		2	2	8	2		31	7	29		2	2	3	88
Within Procedure	1			4	1		28				5		2	41
No Misconduct Determined		3					4	1	6	2				16
Command Review					2		13		38					53
Within Policy							3							3
Total Allegations	1	6	12	110	11	1	151	23	126	9	32	7	12	501

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Complaint Dispositions/Standard of Evidence

I. Dispositions for Formal Complaints:

- **Sustained:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
- **Not Sustained:** The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
- **Exonerated:** The incident occurred as alleged; however, the investigation revealed that the officer's actions were justified, lawful and proper.
- **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 that may have occurred.
- **No Finding:** The complainant withdrew the complaint, failed to disclose promised information to further the investigation, or is no longer available; the investigation revealed that another agency was involved and the complainant has been referred to that agency. Additional reasons may include: lack of signature on the Boland Admonishment; officer resigned from the SJPD before the investigation was closed; the officer's identity could not be determined.

II. Dispositions for Procedural Complaints:

- **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.
- **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.

III. Dispositions For Command Review Complaints: Involves allegations of minor transgressions by an officer, which may be handled informally through the officer's chain of command. This process does not imply that the subject officer has or has not 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 or by failure of the complainant to return a signed Boland Admonishment.

Standard of Evidence: "Preponderance of Evidence," the evidence suggests that it is more likely than not that a violation occurred or did not occur.

CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

A. Sustained Misconduct

In 2004, 18 of 126 closed external citizen-initiated complaints were sustained (closed with at least one sustained allegation), resulting in a 14% sustained rate, see **Illustration 3-N**. This percentage is up from the two previous years. By contrast, 22 of the 24 internal department-initiated investigations closed with at least one sustained allegation, a 92% sustained rate. This is the highest rate of sustained department-initiated complaints in five years. Department-initiated complaints are initiated by the Chief of Police and may include both internal and external matters. An external matter is one that involves a citizen, while internal issues can involve any type of policy or procedural violation, including personnel issues such as tardiness, abuse of sick leave, etc. The combined sustained rate for formal cases overall was 27% in 2004, which is lower than the combined sustained rate in the previous three years.

The highest number of allegations sustained (16) in internally generated complaints is in allegations classified as unofficer-like conduct. These allegations address complaints related to off-duty behavior. Nine improper procedure allegations were sustained.

In complaints from the public 18 improper procedure allegations were sustained. Other categories that were sustained include two unnecessary force and property allegations, three unwarranted action and failure to take action, and one allegation of unlawful search and unofficer-like conduct. See **Illustrations 3-L and 3-M** for tables detailing findings.

Illustration 3-N: Five-Year Overview of Formal Complaints Sustained

PERIOD/ TYPE OF COMPLAINTS	Closed Complaints	Sustained Complaints	Sustained Rate	Combined Sustained Rate
2004 External Complaints	126	18	14%	27%
2004 Internal Complaints	24	22	92%	
2003 External Complaints	94	11	12%	34%
2003 Internal Complaints	40	34	85%	
2002 External Complaints	81	8	10%	32%
2002 Internal Complaints	52	34	65%	
2001 External Complaints	113	29	26%	36%
2001 Internal Complaints	35	24	69%	
2000 External Complaints	187	18	10%	21%
2000 Internal Complaints	41	31	76%	

CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

III. Discipline Imposed

As delineated in **Illustration 3-O**, in 2004, discipline was imposed on 37 officers in external citizen-initiated cases and on 25 officers in internal department-initiated cases. A total of 30 allegations were sustained in 18 external complaints closed and a total of 31 allegations were sustained in 22 internal complaints closed.

The majority of types of discipline imposed in citizen-initiated complaints were training and/or counseling. It is significant to note that in 11 external citizen-initiated cases, allegations were found to be not sustained, exonerated and/or unfounded, and yet discipline of counseling and/or training was imposed. Officers received Documented Oral Counseling in seven internal and seven external complaints. Suspensions were imposed against one officer in an external complaint and against eight officers in internal complaints. Three officers were terminated in internal cases and two officers resigned as the result of investigations of one internal and one externally generated case.

Illustration 3-O: Discipline Imposed on Subject Officers

DISCIPLINE	Officers in External Complaints	Officers in Internal Complaints	Total	%
Training and/or Counseling	21	3	24	39%
Informal Counseling	2	0	2	3%
Informal Counseling and Training	4	0	4	6%
Documented Oral Counseling	7	7	14	23%
Letter of Reprimand	0	2	2	3%
Retired before Discipline	0	0	0	0%
Resigned before Discipline	1	1	2	3%
10-Hour Suspension	0	2	2	3%
20-Hour Suspension	0	1	1	2%
40-Hour Suspension	0	4	4	6%
60-Hour Suspension	0	1	1	2%
80-Hour Suspension	1	0	1	2%
160-Hour Suspension	0	0	0	0%
Disciplinary Transfer	1	0	1	2%
Termination	0	3	3	5%
Settlement Agreement	0	1	1	2%
Total Discipline Imposed	37	25	62	100%

I. Introduction

This chapter provides information and data concerning complaints alleging that a San José police officer used unnecessary or excessive force. It also provides information about officer-involved shootings in 2004. Use of force complaints present some of the most serious issues of potential police misconduct. Consequently, the IPA is required to audit all use of force complaint investigations conducted by Internal Affairs (IA).

An investigation of a use of force complaint must examine the question of whether the officer used objectively reasonable force as defined in the SJPD Duty Manual. Police officers are allowed to use force in the performance of their duties in situations in which they are forced to overcome resistant or combative individuals and/or defend themselves or others. An investigation must examine all the facts and circumstances associated with the incident in order to determine whether or not the officer acted reasonably.

II. Use of Force Complaints and Allegations

A. Unnecessary Force Complaints Filed in 2004

Illustrations 4-A and 4-B, respectively, show that there were 62 unnecessary force complaints with a total of 98 unnecessary force allegations filed in 2004. The number of unnecessary force allegations can be higher than unnecessary force complaints because each complaint can contain more than one force allegation. While the 2004 totals are somewhat higher than the level of unnecessary force complaints and allegations from 2001 through 2003, they are significantly lower than the level of force complaints for the years prior to 2001.

Unnecessary force complaints are divided into two categories: Class 1 and Class 2. A Class 1 unnecessary force complaint includes allegations of unnecessary force that cause serious bodily injury requiring medical care. Class 2 unnecessary force complaints include the remainder of unnecessary force allegations. In 2004, there were a total of seven Class 1 unnecessary force complaints; the remaining 55 were Class 2 unnecessary force complaints. The total number of Class 1 complaints is similar to the totals from the previous three years.

Chapter Four

Illustration 4-A: Five-Year Overview of Unnecessary Force Complaints Filed

PERIOD	UF Class 1 Complaints	UF Class 2 Complaints	Total UF Complaints	Total Number Complaints	UF % of Total Complaints
2000	16	68	84	618	14%
2001	6	46	52	406	13%
2002	9	45	54	403	13%
2003	7	42	49	323	15%
2004	7	55	62	366	17%

Illustration 4-B: Five-Year Overview of Unnecessary Force Allegations Filed

PERIOD	UF Class 1 Allegations	UF Class 2 Allegations	Total UF Allegations
2000	27	102	129
2001	16	76	92
2002	11	77	88
2003	23	60	83
2004	12	86	98

B. Unnecessary Force Complaints Audited in 2004

In addition to tracking data from the total number of unnecessary force complaints filed, the IPA also tracks other data obtained from the audits of completed unnecessary force complaint investigations. In order to determine whether any trends or patterns can be detected from use of force complaints, the IPA tracks: 1) the level of injury caused by the force used; 2) the part of the complainant’s body impacted by the force; and 3) the type of force used by the officer. As indicated in **Illustration 4-C**, the IPA audited 73 closed unnecessary force complaint investigations in 2004.

Illustration 4-C: Unnecessary Force Complaints Audited

PERIOD	UF Class 1 Complaints Audited	UF Class 2 Complaints Audited	Total UF Complaints Audited
2000	14	112	126
2001	10	36	46
2002	7	49	56
2003	10	63	73
2004	6	67	73

CHAPTER FOUR | USE OF FORCE ANALYSIS

Illustration 4-D provides data about the level of injury resulting from the alleged use of force. There are five categories ranging from “major” to “none.” Major injuries generally require significant medical attention, whereas minor injuries usually do not require any medical attention. For example, minor injuries can involve minor abrasions, the use of chemical agents, or bruising from tight handcuffs. It is significant to note that over the past five years major and moderate injuries together have remained constant, amounting to 17% of alleged injuries in 2004. Minor and no injuries have accounted for the highest percentage of injury levels, 74% in 2004.

Illustration 4-E provides data tracking the part of the complainant’s body that was involved with the use of unnecessary force. The IPA tracks this data

to determine if any trends exist in force cases. The area of the body that is involved is divided into five categories: head, torso, limbs, multiple body parts and unknown. In each complaint the alleged unnecessary force can impact more than one body area. The IPA closely monitors the number of allegations citing that the complainant’s head was afflicted by unnecessary force, as this area has the potential for the most serious injuries to occur. There was a slight decrease in 2004 in the number of times complainants alleged that unnecessary force was applied to their heads. Overall, the data indicate there were no significant changes in 2004. The distribution of injuries to different areas of the body in 2004 did not change significantly from the prior three years.

Illustration 4-D: Five-Year Overview of Complainant’s Level of Injury

DEGREE OF INJURY	2000		2001		2002		2003		2004	
	Number	%	Number	%	Number	%	Number	%	Number	%
Major	9	7%	2	4%	0	0%	0	0%	4	5%
Moderate	10	8%	5	11%	8	14%	11	15%	9	12%
Minor	59	47%	25	54%	37	66%	39	53%	45	62%
None	30	24%	9	20%	6	11%	13	18%	9	12%
Unknown	18	14%	5	11%	5	9%	10	14%	6	8%
Total	126	100%	46	100%	56	100%	73	100%	73	100%

Illustration 4-E: Location of Force Applications - Five-Year Comparison

LOCATION OF FORCE	2000		2001		2002		2003		2004	
	Number	%	Number	%	Number	%	Number	%	Number	%
Head	45	30%	17	27%	27	35%	33	30%	26	25%
Torso	44	29%	11	17%	18	23%	33	30%	34	33%
Limbs	47	31%	28	44%	23	29%	31	28%	33	32%
Multiple Body Parts	8	5%	7	11%	8	10%	9	8%	7	7%
Unknown	7	5%	0	0%	2	3%	4	4%	2	2%
Total	151	100%	63	100%	78	100%	110	100%	102	100%

Illustration 4-F: Type of Forced Alleged – Five-Year Comparison

TYPE OF Unnecessary FORCE	2000		2001		2002		2003		2004	
	Number	%	Number	%	Number	%	Number	%	Number	%
Baton	24	13%	7	9%	7	7%	14	10%	18	13%
Canines	2	1%	0	0%	0	0%	1	1%	0	0%
Car	2	1%	2	3%	5	5%	3	2%	2	1%
Chemical Agent	4	2%	1	1%	4	4%	2	1%	4	3%
Gun	2	1%	0	0%	1	1%	1	1%	1	1%
Feet	6	3%	9	12%	8	8%	9	6%	13	9%
Ground	4	2%	6	8%	15	14%	26	19%	16	12%
Hands	102	56%	35	45%	45	43%	56	40%	51	37%
Handcuffs	15	8%	8	10%	13	12%	13	9%	10	7%
Knee	13	7%	4	5%	5	5%	9	6%	13	9%
Taser	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	4	3%
Object	0	0%	1	1%	0	0%	3	2%	3	2%
Other	6	3%	4	5%	1	1%	2	1%	2	1%
Unknown	3	2%	0	0%	1	1%	1	1%	1	1%
Total	183	100%	77	100%	105	100%	140	100%	138	100%

Illustration 4-F provides data about the different types of unnecessary force alleged to have been used in each of the past five years. The IPA collects this information to track the frequency of the types of force used. The number of types of force alleged is greater than the total number of unnecessary force complaints because there can be more than one type of force alleged in the same complaint, and there can be more than one officer alleged to have used unnecessary force. For example, a complainant may allege that an officer or officers struck him with a baton, hit him with fists, kicked him and placed handcuffs on too tightly. This example would account for four different types of unnecessary force alleged against multiple officers in one complaint.

Illustration 4-F also indicates that the distribution of the frequency of different types of force allegations has remained fairly consistent during the past five years. The use of hands, followed by the application of tight handcuffs, use of the ground, and use of the feet continue to be the four types of unnecessary force alleged most often. Allegations of force involving batons have increased in 2003 and 2004 from the previous two years.

Illustration 4-G: Disposition of Unnecessary Force Allegations

DISPOSITION	UF Class I	UF Class II
Sustained	0	2
Not Sustained	0	8
Exonerated	9	81
Unfounded	1	7
No Finding	2	8
Within Procedure	0	4

Illustration 4-G provides specific information concerning the disposition for each unnecessary force allegation in external complaints. The data indicate that the vast majority of unnecessary force allegations were found to be “exonerated,” which means that the investigations have determined that the level and type of force used by the officers was reasonable and justified.

III. Officer-Involved Shootings

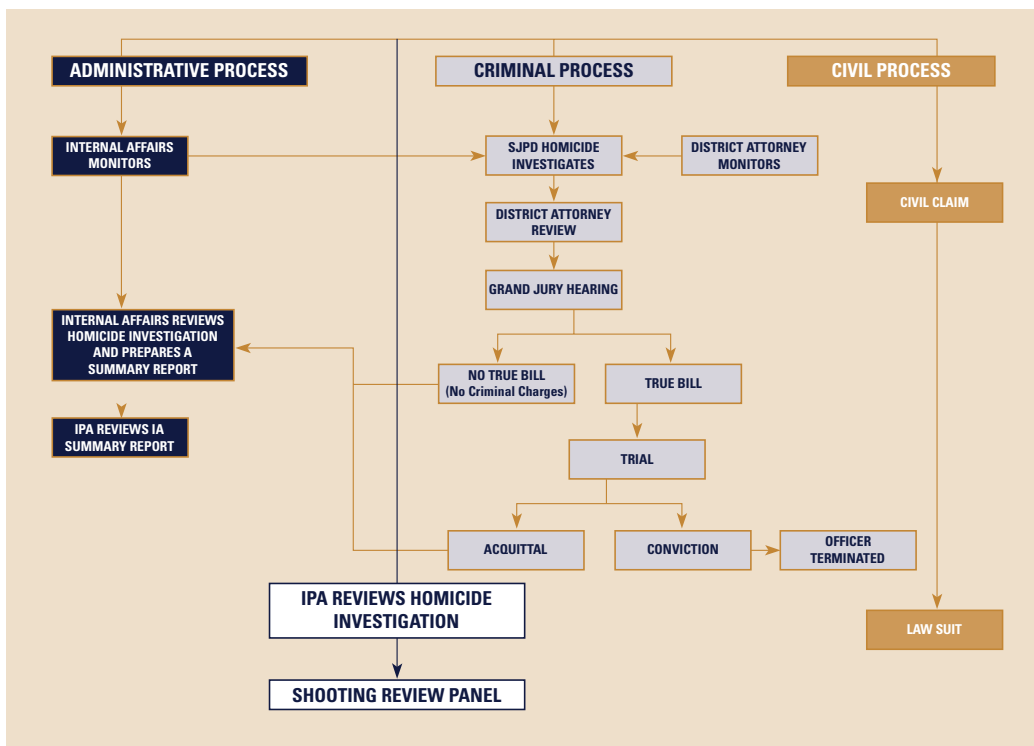
The use of deadly force is the most serious type of force that can be used by a police officer. The IPA continues to work with the SJPD to provide careful scrutiny of these cases to ensure that the officers acted lawfully and within department policies and procedures. The overriding goal of this review process is to explore all reasonable measures that could reduce the possibility that an officer would have to use deadly force.

The SJPD Duty Section L-2638 states that a San José police officer, “may discharge a firearm when it is objectively reasonable to do so when deadly force is necessary in self-defense or in defense of another person’s life.” When a person is injured or killed as a result of an officer-involved shooting, there is always great community concern and many questions arise about the necessity of the use of lethal force. In recognition of the serious

nature of these issues, the IPA continues to closely monitor and review the investigations of officer-involved shootings conducted by the SJPD.

Every officer-involved shooting that results in the death or injury to a person is subject to an intensive investigation and review that is outlined in the flow chart in **Illustration 4-H**. As the chart indicates, the SJPD Homicide Unit conducts a criminal investigation that is monitored by the Internal Affairs Unit. The criminal investigation is presented to the county Grand Jury by the Santa Clara County District Attorney to determine whether there is sufficient evidence for a crime to be charged. After completion of the criminal investigation and the Grand Jury review, if there is no “True Bill” for criminal prosecution, IA conducts an administrative review to determine whether the officer’s actions were within the department policies.

Illustration 4-H: Officer-Involved Shooting Review Process



The final step in the review process is the Officer-Involved Shooting Review Panel, initiated by the SJPD in 1999 following recommendations made by the IPA in its 1998 Year End Report. This panel consists of the Chief of Police and several SJPD command staff, the IPA, and a representative of the City Attorney’s Office. The purpose of the Shooting Review Panel is to review the incident to determine if any training issues are present, or if any policy or procedural changes should be considered.

The discussion of several significant officer-involved shooting recommendations regarding officer-involved shootings from the IPA 2003 Mid-Year Report continued into 2004 before being finally adopted and implemented; information about these recommendations is included in **Chapter 2** of this report.

A. Officer-Involved Shootings In 2004

There were six officer-involved shootings in 2004. The review process for four of these cases was completed in 2004. In each case, the Grand Jury found that there was insufficient evidence to support a criminal charge and the administrative review found that the involved officer acted reasonably and within SJPD policies and procedures. The IPA will review the cases further to determine any policy recommendations for the upcoming mid-year or 2005 annual report.

IV. Crisis Intervention Training and Force-Option Simulator Training

Crisis intervention training teaches officers how to better address situations involving persons who are experiencing some type of mental or emotional crisis, thus reducing the possibility of the officers having to use force to gain control of a situation. In 2004, 46 San José officers received the 40-hour Crisis Intervention Training (CIT) and there are now 400 CIT-trained officers in San José. The IPA continues to encourage and support this type of training for SJPD officers in an attempt to help reduce the need for officers to use force, including deadly force.

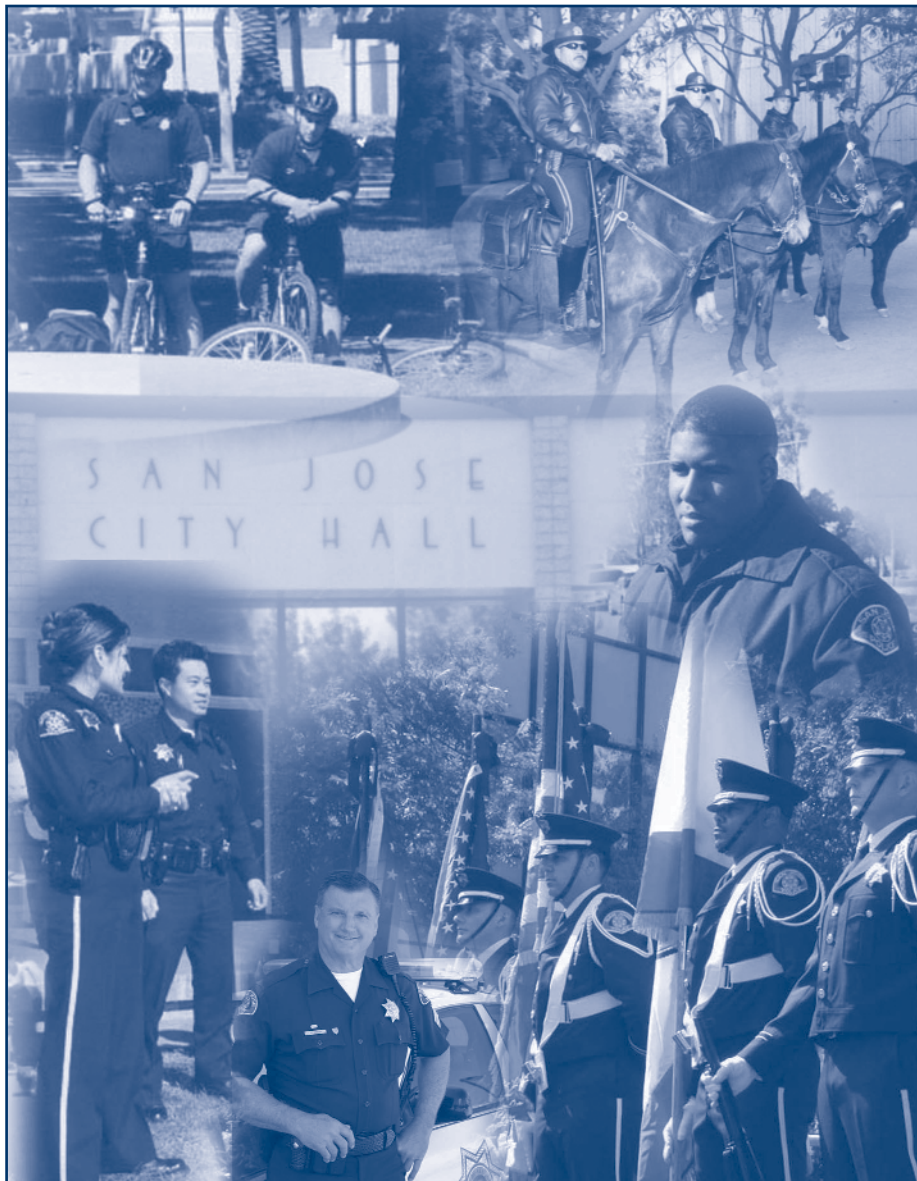
Similarly, SJPD continues to require officers to take a 4-hour Force-Option Simulator training as part of the “Perishable Skills Training Program.” Each officer must take this training every other year. The Force-Option Simulator training utilizes state of the art interactive video simulations of real-life scenarios that require officers to react to life-threatening situations.

Illustration 4-1: Officer-Involved Shootings In 2004

CASE	Ethnicity	Mental Illness History	Citizen Armed?	Type of Weapon	Citizen Shoot at Officer?	Prior Criminal Record?	CIT Scene?	Citizen’s Injuries	Within Policy?	Other Weapons Used
1	Hispanic	No	Yes	Vehicle	No	Yes	No	Fatal	Yes	Baton/OC
2	White	Yes	Yes	Handgun	Yes	Yes	Yes	Fatal	Yes	L8
3	Asian	Yes	Yes	Gun	No	No	Yes	Fatal	Yes	No
4	Hispanic	No	Yes	Pellet Gun	No	Yes	N/A	Wounded	Yes	No
5	Asian	Yes	Yes	Knife	No	Yes	N/A	Fatal	Yes	Taser
6	White	Yes	Yes	Chair	No	Yes	N/A	Fatal	TBD	Taser

LB= 40 mm rubber bullet launcher

OC= Oleoresin Capsicum or Pepper Spray



The SJPD officers portrayed in this collage assisted the IPA in designing informational materials. They are not subject officers.

Chapter Five

The IPA tracks information about subject officers in four categories of cases, formal (citizen-initiated and department-initiated), command review, procedural, and policy complaints, to determine if there are trends or particular problem areas. Specific areas of interest include the subject officer’s gender and years of experience with the SJPD at the time the incident occurred. Subject officers are not tracked in inquiries and contacts. The statistics in this chapter are based on information tracked in 210 cases received.

I. Complaints by Gender of Subject Officer

The gender of San José police officers named as subject officers in complaints in 2004 is reflected in **Illustration 5-A**. A total of 253 officers were named in 210 complaints in 2004. Women officers received fewer complaints than their ratio in the SJPD. Fifteen officers, (6%) of the named officers, were female. Male officers represent 94% of those named in complaints, receiving 238 misconduct allegations in 2004. Female officers comprise 10% of SJPD and male officers 90%.

Illustration 5-A: Gender of Subject Officers

GENDER	Subject Officers	%	Number of Sworn Officers in the Police Dept.	%
Male	238	94%	1211	90%
Female	15	6%	130	10%
Total	253	100%	1341	100%

II. Years of Experience of Subject Officers

The years of experience for San José police officers receiving complaints in 2004 is displayed in **Illustration 5-B**. Officers with two to five years of experience have the highest number of complaints when compared to their representation in the Department. Officers in the two to five year range account for 22% of all complaints and make up 12% of the total number of officers in the police department. Officers with five to seven years of experience, 46 officers, have the second highest ratio of complaints filed. They comprise 10% of the police force and 18% of officers receiving complaints.

Illustration 5-B: Years of Experience with SJPD and Gender of Subject Officers

Years of Experience	Gender of Subject Officers		Total Subject Officers	%	SJPD Sworn Officers		Grand Total	%
	Female	Male			Female	Male		
0-1+	1	7	8	3%	9	42	51	4%
2-4+	5	50	55	22%	23	141	164	12%
5-6+	2	44	46	18%	11	122	133	10%
7-10+	2	60	62	25%	27	279	306	23%
11-15+	2	35	37	15%	30	225	255	19%
16+	3	42	45	18%	30	402	432	32%
Grand Total	15	238	253	100%	130	1211	1341	100%

III. Subject Officers With One or More Complaints

Illustration 5-C depicts the number of complaints filed against specific subject officers. During the 2004 calendar year, 171 San José police officers received one complaint. Thirty-eight officers received multiple complaints, with 33 officers receiving two complaints, four officers receiving three complaints, and one officer receiving four complaints.

IV. Ethnicity of Subject Officers

This section reports the ethnicity of subject officers. White officers were named 133 times, 53% of the total number of subject officers, lower than their percentage in the SJPD, 59%. Asian American and Hispanic/Latino officers were named in complaints at a slightly higher ratio than their representation in the SJPD. Asian officers were named 27 times, 11% of subject officers, and they represent 9% of the officers in the Department. Hispanic/Latino officers were named in 69 complaints, 27% of the total number of subject officers; they represent 24% of the sworn police force.

Illustration 5-C: Complaints Received by Individual Officers

OFFICERS RECEIVING	Number of Officers	Number of Complaints
1 Complaint	171	171
2 Complaints	33	66
3 Complaints	4	12
4 Complaints	1	4
Total Complaints		253

Complaint Intervention Programs

SJPD has an Early Warning System (EWS) to identify officers exhibiting possible problem behavior, and to take corrective action. The EWS flags officers that receive three formal complaints or a combination of five complaints of any type within a 12-month period. Officers meeting this criteria are scheduled to participate in Intervention Counseling (IC). These counseling sessions involve a review of the complaints filed against the subject officer without regard to the finding. The subject officer is asked to meet with his/her supervisor, the Internal Affairs Commander, and the Deputy Chief in his/her chain of command. During these sessions the command staff has an opportunity to informally talk to the officer about personal or work related topics, provide counseling, and recommend training for the subject officer. Intervention Counseling is not discipline and only the fact that a session took place is recorded.

SJPD has established a Supervisor’s Intervention Program to assist supervisors in tracking the history of their subordinates if the team assigned to the supervisor receives three or more complaints within a six-month period. The supervisor meets with the chain of command, the lieutenant up to the deputy chief, to develop strategies for working with officers involved in the Early Warning System.

Illustration 5-D: Ethnicity of Subject Officers

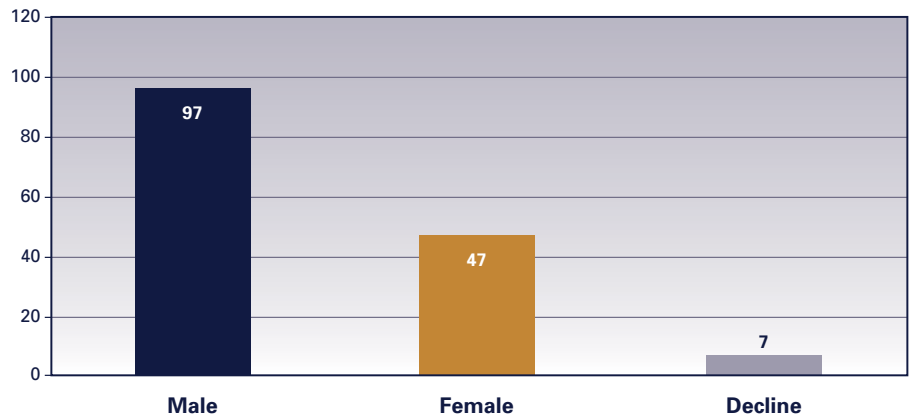
ETHNICITY	Number of Subject Officers		Number of Sworn Officers in the Police Dept.	
	Number of Subject Officers	%	Number of Sworn Officers in the Police Dept.	%
Native American	3	1%	5	0.5%
Asian American/Pacific Islander	27	11%	118	9%
African American	12	5%	64	5%
Filipino American	3	1%	30	2%
Hispanic/latino	69	27%	323	24%
White	133	53%	795	59%
Unknown	6	2%	6	0.5%
Total	253	100%	1341	100%

The diversity of San José is one of the City’s most positive attributes. In an effort to understand how to best serve the community and determine where services are most often used, the IPA and IA request that complainants complete anonymous voluntary survey questionnaires. The questionnaires provide information regarding complainant demographics and backgrounds. The accuracy of this data is dependent on the information reported by complainants. In 2004 the IPA and IA disseminated 323 statistical surveys to complainants; 151 surveys, a 47% sample, were returned.

I. Gender of Complainants

Illustration 6-A reflects the gender of complainants who returned voluntary surveys in 2004. Of 151 complainants, 97 or 64% of complainants were male, and 47 or 31% were female; seven complainants, 5%, declined to identify their gender. The gender breakdown has remained roughly one-third female and two-thirds male for the past 5-years. The gender ratio for San José based on the 2000 census is: 51% male to 49% female.

Illustration 6-A: Gender of Complainants



II. Ethnicity of Complainants

The voluntary statistical survey also requests information that reflects the ethnicity of individuals who file a complaint. In 2004, Hispanic/Latinos, representing 38% of complainants responding to the voluntary questionnaires, filed 58 complaints. This is a reduction from 2003 when 72 Hispanic/Latino complainants

CHAPTER SIX | COMPLAINANT DEMOGRAPHICS AS REPORTED THROUGH VOLUNTARY SURVEY QUESTIONNAIRES

responded, 43% of the total number of survey responses received. Based on the 2000 census report, 30% of the City’s population is of Hispanic/Latino descent.

European American/white complainants responding reported 42 complaints, 28%, similar to the level received in 2003, 52 complaints, 27%. San José reports a European American/white population of 36%.

African Americans responding reported 23 complaints, 15%, the third highest number of complaints in 2004 and the largest percentage in relation to the overall population. This is slightly higher than the 20 complainants, 12%, responding in 2003; and lower than the 45 complainants, 22%, responding in 2001. African Americans make up 4% of San José’s total population.

The ethnicity of other individuals returning the survey are identified in **Illustration 6-B**.

III. Age of Complainants

Illustration 6-C reflects the age of complainants for the past five years. The breakdown has remained fairly constant for the past four years. The largest numbers of complainants responding to the questionnaires in 2004 were individuals between the ages of 31 and 59. Individuals in this 30-year age span represent 57% of all questionnaires returned. Based on the 2000 census, this age group is approximately 59% of San José’s total population. The smallest group consisted of complainants over 60 years of age, 3% of the total.

Illustration 6-C: Five-Year Overview of Age of Complainants

AGE	2000	2001	2002	2003	2004
Under 18	3%	3%	3%	4%	5%
18-30	26%	32%	33%	33%	30%
31-59	49%	53%	61%	59%	57%
60+	9%	5%	3%	4%	3%
Decline/NA	13%	7%	0%	0%	5%
Total	100%	100%	100%	100%	100%

Illustration 6-B: Ethnicity of Complainants Responding to the Voluntary Survey

ETHNICITY	2000		2001		2002		2003		2004		% of San Jose Population
	Surveys	%	Surveys	%	Surveys	%	Surveys	%	Surveys	%	
African American	28	6%	45	22%	37	20%	20	12%	23	15%	4%
Asian/Pacific Islander	34	8%	8	4%	6	3%	7	4%	2	1%	13%
White	255	59%	58	28%	65	35%	52	31%	42	28%	36%
Filipino	7	2%	2	1%	4	2%	3	2%	2	1%	5%
Hispanic/Latino	104	24%	70	34%	63	34%	72	43%	58	38%	30%
Native American	4	1%	3	1%	2	1%	2	1%	2	1%	1%
Vietnamese	0	0%	1	0%	0	0%	2	1%	0	0%	9%
Other	0	0%	4	2%	5	3%	5	3%	10	7%	3%
Decline	0	0%	14	7%	4	2%	6	4%	12	8%	0%
Total Surveys /%	432	100%	205	100%	186	100%	169	100%	151	100%	100%

CHAPTER SIX | COMPLAINANT DEMOGRAPHICS AS REPORTED THROUGH VOLUNTARY SURVEY QUESTIONNAIRES

IV. Educational Level of Complainants

There was no significant change in the levels of education among individuals responding to the survey in the last few years. In 2004, just over half, 51% of complainants responding to the survey questions, report having attended college.

V. Occupation of Complainants

Complaints in San José are filed by individuals from all walks of life. **Illustration 6-E** provides a 5-year overview of the occupations of complainants responding to the surveys. The range of occupations has remained statistically constant for the past 5 years.

Illustration 6-D: Educational Levels of Complainants

EDUCATION LEVELS	Complainants	%
Graduate Degree	17	11%
College	61	40%
High School or Below	63	42%
Decline	10%	7%
Total	151	100%

Illustration 6-E: Five-Year Overview of Occupation

OCCUPATION	2000 by %	2001 by %	2002 by %	2003 by %	2004 by %
Administration	16	13	21	18	15
Public Employees	1	2	3	0	1
Disabled	3	5	6	3	3
Homemaker	3	3	3	0	3
Laborer	30	33	36	45	50
Professional	8	9	5	10	4
Retired	6	1	2	3	1
Self-Employed	3	3	2	2	1
Student	8	8	10	6	8
Unemployed	6	6	3	5	3
Decline	16	16	9	7	12
Total %	100%	100%	100%	100%	100%
Total Surveys	423	205	159	172	151

The IPA recognized early on that community outreach was essential to establish awareness of the IPA as a service provider and begin the process of building public confidence. In the past eleven 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. The IPA has developed outreach efforts for the purpose of: educating the community about the mission and functions of the IPA; assessing the needs and concerns of diverse communities; and making the services visible and accessible to the public.

I. Outreach Activities

Because awareness of the citizen complaint process is critical in raising public confidence in the IPA and the SJPD, staying connected to the community has been an ongoing priority that has also served to keep the IPA informed of issues important to the people of San José. To maintain an effective community connection, the IPA is committed to providing on-going face-to-face contact with individuals, groups, and organizations throughout the city of San José. Outreach efforts include:

- Participating in television and radio programs
- Holding press conferences
- Disseminating public service announcements
- Distributing literature about IPA services
- Participating in community resource fairs
- Making presentations to organizations and neighborhood associations
- Preparing and providing resource information



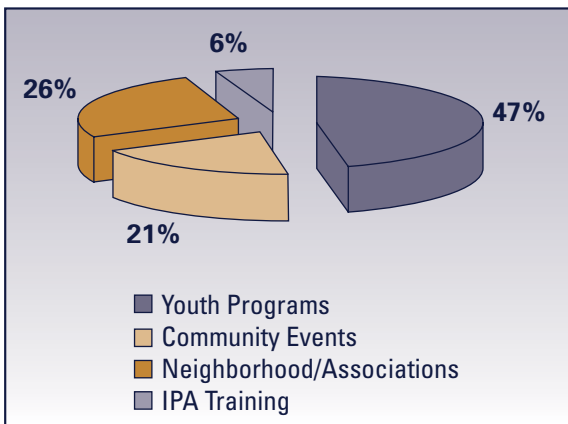
IPA Staff at a Community Resource Event

Chapter Seven

The IPA has reached out to neighborhood associations and attended many community fairs. Through these events and media presentations the office reached more than 3,500 community members in 2004. See **Illustration 7-A**.

In November 2004, the IPA was featured in a segment of San José In-Focus, hosted by Brian Adams. The production, “*Truly Independent*,” provides a comprehensive overview of the IPA’s Office. The show highlights the complaint process and tells the history of the IPA through interviews. This video, available on the IPA website, was a unique collaborative effort. The IPA acknowledges and thanks San José Mayor Ron Gonzales, Chief Rob Davis and Lt. David Cavallaro of the SJPDP, and community members and leaders Wiggys Sivertsen, Victor Garza, Craig Mann, and Minh Steven Dovan for appearing and making this a successful project.

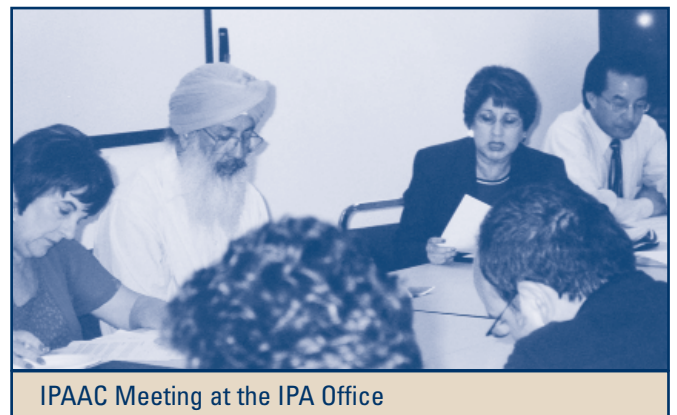
Illustration 7-A: Presentations in 2004



TYPES OF PRESENTATIONS	EVENTS	%	PARTICIPANTS	%
Youth Programs	25	47%	768	21%
Community Events	11	21%	1830	51%
Neighborhood Associations	14	26%	945	26%
IPA Training	2	6%	70	2%
Total Presentations	53	100%	3613	100%

II. Independent Police Auditor Advisory Committee (IPAAC)

The IPA established a presence through frequent speaking engagements at community meetings. Because of the City’s size and diversity, the office sought additional connections within the community to identify police-related issues and get the word out about the services provided by the IPA. The Independent Police Auditor Advisory Committee (IPAAC) was established in 1999 with the purpose of identifying, mobilizing and coordinating resources to assure maximum public, private, agency, and individual commitment to police oversight. The advisory committee is comprised of 24 members including community leaders, grassroots organizers, professionals, and individuals representing the Vietnamese, Mexican/Latino, African American, Filipino, Asian American, Islamic, Sikh, Gay/Lesbian/Bisexual/Transgender, business, nonprofit, and legal communities. The addition of the advisory committee has been instrumental in the success of the IPA. In December 2004, the IPAAC received a City of San José Commendation from Mayor Ron Gonzales and the City Council to congratulate and commend the IPAAC’s contributions to enhancing the quality of life for residents in the City of San José.



IPAAC Meeting at the IPA Office

III. Informational Forums

The IPA has organized several community informational forums in the past eleven years. Through these public forums the IPA has been instrumental in defusing situations having the potential to escalate and damage public confidence. The IPA has played a key role in bringing the community and police together to discuss controversial issues and has worked to foster relationships with community leaders, while maintaining an objective perspective. The goal of the forums is to provide community members with an opportunity to voice their concerns and to hear from different agencies working in the fields of civil rights, police accountability, and police practices and procedures.

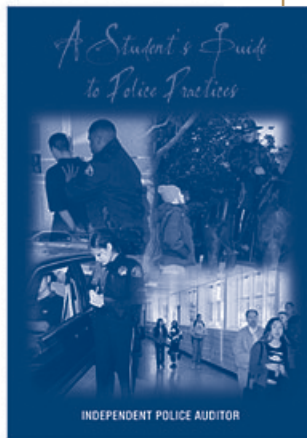


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Council, the San José Police Department, and the Parks, Recreation and Neighborhood Services Department, in 2002 the IPA published the first "Student's Guide to Police Practices." The goal of the project is to educate youth about their rights and responsibilities when interacting with police officers. The booklet contains fundamental information every youth and parent should know about police practices, as well as information on drugs,

trespassing, curfew, profile stops, conduct on school grounds, community resources, and information on filing a complaint. The IPA has made the booklet available in English, Spanish and Vietnamese. The English edition is also available in an interactive miniature CD format.

The success the office has 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 have co-sponsored the forums. These gatherings have been significant because they have served as an outlet for people to vent their frustrations and to express their sentiments and opinions about law enforcement actions. The forums assist the IPA in assessing the level of awareness in the community about police related issues and the IPA office.

IV. Youth Outreach

In 2004, the IPA hosted and organized two community forums, providing an opportunity for the community to express concerns related to police shootings.

The IPA recognizes the need to educate youth about police practices and inform them about the services of the IPA. With the support of the City

V. San José IPA—A Model Oversight

San José's Independent Police Auditor model of police oversight is recognized as a successful model in the field of civilian oversight. Cities across the country and internationally continue to invite the Police Auditor to speak to their communities about the IPA model and to provide guidance and assistance in developing new programs. The national recognition the IPA has received is attributed to the success of the office in making substantive recommendations for policy change, as well as providing an alternative forum for citizens to file complaints, the quality with which citizen complaint investigations are monitored and audited, and its continuous efforts to generate community awareness and involvement. In 2004, the IPA was invited to present the San José model of police oversight in Key West, Florida, Mexico City, Mexico, and the state of Minas Gerais, Brazil.

This chapter presents data reflecting the complaints, allegations, and community inquiries received from each of the city’s ten Council Districts. **Illustration 8-A** lists each Council District and the types of contacts that originated in each district. The distribution indicates the location where the incident occurred and not necessarily where the complainant resides. The category Unknown/Outside City Limits means that the location of the incident could not be identified, or the incident did not occur within San José city limits.

Complaints are classified into one of six categories: Citizen Initiated, Department Initiated, Command Review, Procedural, Inquiry and Policy. Citizen Contacts are not classified as complaints. Cases may be closed without a completed investigation for two reasons. A complainant may withdraw a complaint, or the case may be closed when the complainant does not file a signed Boland Admonishment. These terms are further defined in the textbox in **Chapter 3**.

Illustration 8-A: Cases by Council District (Including Citizen Contacts)

COUNCIL DISTRICTS	CI	DI	CR	PO	PR	IQ	CW	NB	CC	TOTAL CASES
District 1	2	0	2	0	3	5	1	3	0	16
District 2	7	4	2	0	1	5	0	1	1	21
District 3	35	11	11	4	9	24	7	5	10	116
District 4	8	1	1	1	1	3	3	1	2	21
District 5	13	1	3	0	0	12	2	3	1	35
District 6	8	1	3	0	0	11	3	1	1	28
District 7	8	1	2	0	1	7	0	0	2	21
District 8	6	0	2	0	2	4	1	0	0	15
District 9	3	0	0	1	4	10	1	0	0	19
District 10	8	0	1	0	5	7	2	0	0	23
Unknown/Outside City Limits	9	12	4	1	6	29	1	6	13	81
Total Cases Received	107	31	31	7	32	117	21	20	30	396

CI= Citizen Initiated Complaint	PO= Policy Complaint	CW= Complaint Withdraw
DI= Department Initiated Complaint	PR= Procedural Complaint	NB= No Boland
CR= Command Review Complaint	IQ= Inquiry	CC= Citizen Contact

I. Cases by Council District in 2004

Illustration 8-A reports the distribution of complaints and contacts received by the IPA and Internal Affairs in 2004. The chart identifies the council district as well as the classification of the contact received. District 3, which includes the downtown area, often receives the largest number of complaints. Complaints across the remainder of the city appear to be fairly equally divided.

II. Five-Year Comparison

Illustration 8-B shows a comparative five-year analysis of all cases by Council District. These cases also include citizen complaints and contacts. This distribution of complaints has remained fairly consistent.

III. Unnecessary Force Allegations by Council District

Illustration 8-C shows the distribution of unnecessary force (UF) allegations for each Council District. UF Class 1 unnecessary force includes allegations of unnecessary force that cause serious bodily injury requiring medical care. UF Class 2 unnecessary force complaints include the remainder of unnecessary force allegations. When unnecessary force is alleged the complaint is investigated as a formal complaint. The highest number of unnecessary force allegations received in 2004 was in District 3. This district received 39 allegations, 40% of the total unnecessary force allegations, which is consistent with the distribution of all cases received.

Illustration 8-B: Five-Year Overview of Cases by Council District (Including Citizen Contacts)

COUNCIL DISTRICTS	2000	2001	2002	2003	2004
District 1	26	17	11	6	16
District 2	45	21	34	35	21
District 3	198	132	162	122	116
District 4	29	21	17	32	21
District 5	77	46	37	47	35
District 6	67	45	39	43	28
District 7	61	35	37	27	21
District 8	41	22	25	8	15
District 9	28	28	18	18	19
District 10	40	18	15	22	23
Unknown/Outside City Limits	82	76	35	39	81
Total Cases Received	694	461	430	399	396

Illustration 8-C: Unnecessary Force (UF) Allegations by Council District

COUNCIL DISTRICTS	UF 1	UF 2	TOTAL	%
District 1	0	1	1	1%
District 2	0	4	4	4%
District 3	6	33	39	40%
District 4	3	4	7	7%
District 5	1	7	8	8%
District 6	0	13	13	13%
District 7	1	2	3	3%
District 8	0	3	3	3%
District 9	1	2	3	3%
District 10	0	5	5	5%
Unknown/Outside City Limits	0	12	12	12%
Total UF Allegations Received	12	86	98	100%

The year 2004 was one of change for the IPA. With the election of Teresa Guerrero-Daley to the Superior Court Bench, the year ended with the appointment of a new auditor to continue the leadership of the IPA. As the data in this annual report reflect, the IPA continues to provide a vital service to the San José Police Department and the San José community. The number and pattern of complaints in 2004 remained consistent with those of years past, and prior IPA recommendations have been implemented and new ones made.

The recommendation authorizing the IPA to respond to officer-involved shootings was implemented in 2004, and will improve the IPA's ability to review and more fully understand and assess these incidents and provide the community with an additional measure of confidence in the review process. The SJPD issued Tasers to all officers in 2004. Study of Taser use will be an important subject for review in the coming years.

The Office of the Independent Police Auditor, under the direction of Barbara Attard, supported by a team of new and experienced staff members, will continue to monitor SJPD's complaint process. With ongoing public education and outreach, the IPA will continue to work to ensure the thorough, fair and impartial investigation of complaints.

APPENDIX A

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

SAN JOSE MUNICIPAL CODE CHAPTER 8.04

OFFICE OF THE INDEPENDENT POLICE AUDITOR

8.04.010 Duties and responsibilities.

In addition to the functions, powers and duties set forth elsewhere in this code, the independent police auditor shall have the duties and responsibilities set forth in this section.

- A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
 - 1. The minimal number of complaints to be reviewed annually are:
 - a. All complaints against police officers which allege excessive or unnecessary force; and
 - b. No less than twenty percent of all other complaints.
 - 2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.
 - 3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.
 - 4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.
- B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of Officer-Involved shootings.
- C. Community function.
 - 1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
 - 2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.
- D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:
 - 1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.
 - 2. Analyze trends and patterns.
 - 3. Make recommendations.

APPENDIX A

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer.

(Ords. 25213, 25274, 25922.)

8.04.020 Independence of the police auditor.

A. 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.

B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in Section 8.04.010, above.

(Ord. 25213.)

SAN JOSE CITY CHARTER § 809

OFFICE OF THE INDEPENDENT POLICE AUDITOR

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

APPENDIX A

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

Added at election November 5, 1996.

§ 809.1. Independent Police Auditor; Power Of Appointment

- (a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996.

APPENDIX B

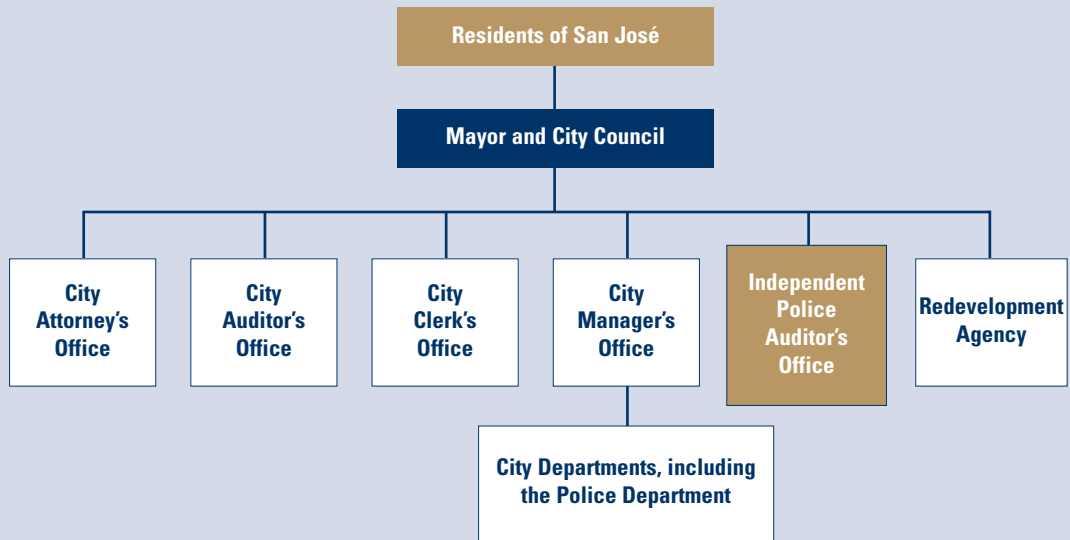
CALIFORNIA PENAL CODE §832.7

§ 832.7. Confidentiality of peace officer records: Exceptions

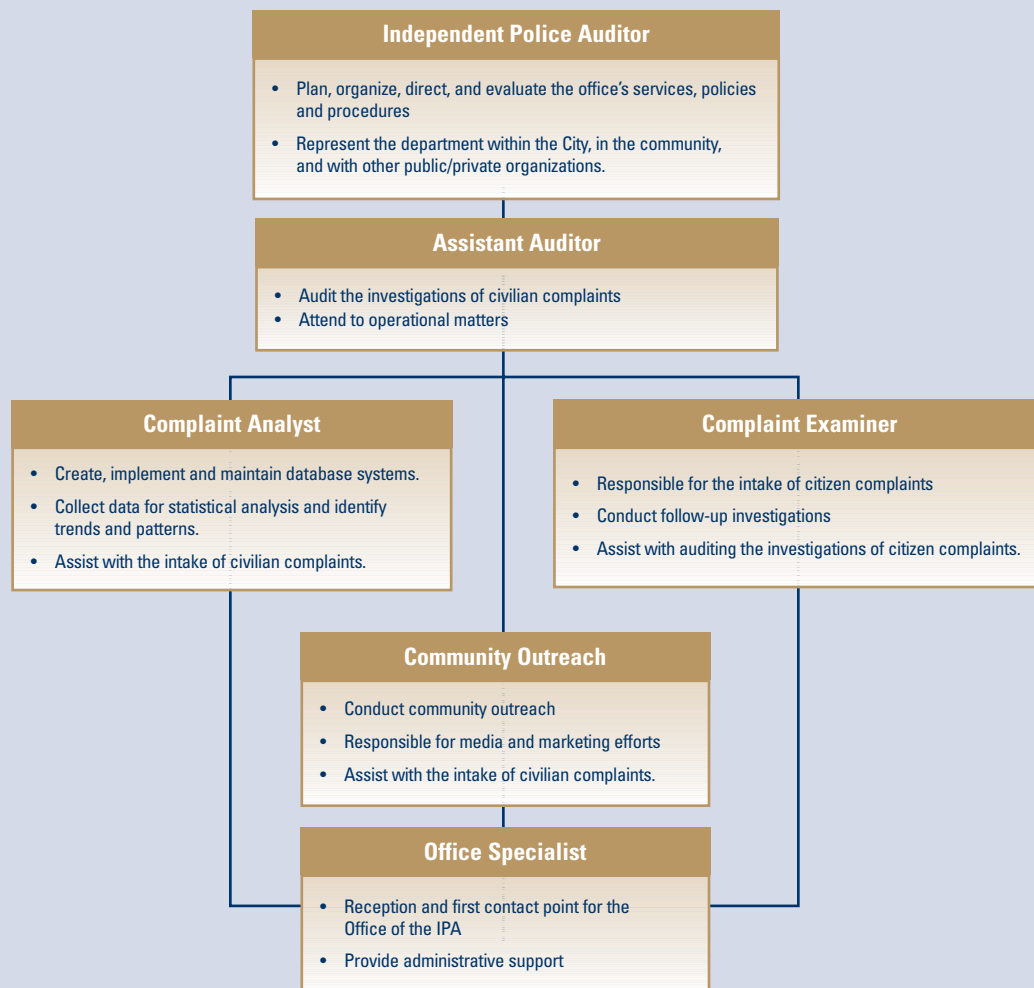
- (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to *Sections 1043 and 1046 of the Evidence Code*. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.
- (b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.
- (c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.
- (d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.
- (e)
 - (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.
 - (2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.
- (f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to *Section 1043 of the Evidence Code*.

APPENDIX C & D

CITY OF SAN JOSÉ STRUCTURE



OFFICE OF THE INDEPENDENT POLICE AUDITOR STRUCTURE



APPENDIX E

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
	Require the Police Department to offer complainants a choice 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
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

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	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
	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

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
2000 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
	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 if a complaint should be sustained and 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	

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	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 address family related issues.	Adopted	2002 Year 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.	Not Adopted	
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 ensure 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 E

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/ 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. Amended To: The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander. The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene. On-scene personnel will then brief the IPA and Internal Affairs Commander as to the details of the incident.	Amended and Adopted	2004 Year End Report
	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. Amended To: The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation. The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure that it participates in these forums.	Amended and Adopted	2004 Year End Report
	The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements. Amended To: The City Manager or the City Attorney as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services that cost in excess of \$100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.	Amended and Adopted	2004 Year End Report



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, former Independent Police Auditor, designed this logo.

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