



Independent Police Auditor

Office of the Independent Police Auditor

June 18, 2009

Honorable Mayor and Members of the City Council
200 East Santa Clara Street
San José, CA 95113

Dear Mayor Reed and Members of the City Council:

Enclosed is the Independent Police Auditor's (IPA) 2008 Year End Report submitted for your review. This annual report details complaints received, closed, and audited during the 2008 calendar year. It provides an overview of the classification of cases, officer demographics, complaints by council district, and our multi-faceted community outreach program. Significant changes to the police misconduct complaint process were implemented by the San José Police Department in July 2008. This report presents an overview of those changes and preliminary effects on the complaint process following implementation.

I want to acknowledge IPA staff for their dedication and hard work. While a permanent IPA has yet to be selected, the IPA staff continues to diligently fulfill our mandated duties, with a particular emphasis on receiving police misconduct complaints, monitoring investigations, and conducting community outreach. I would also like to thank the IPA Advisory Committee (IPAAC) for their time, support and input throughout the year. They are a valuable resource to the IPA and City of San José.

On behalf of the IPA staff, I would like to recognize the San José Police Department for their professional service to the San José community. In particular, I would like to acknowledge the Internal Affairs Unit for providing information needed to prepare this report and for their continuous cooperation and collaboration throughout the year.

Thank you for your ongoing support of the Office of the Independent Police Auditor. I look forward to presenting this report at the City Council Meeting. I welcome your comments and will be available to answer questions or provide further information as needed.

Respectfully submitted,

Shivaun Nurre

Acting Independent Police Auditor

INDEPENDENT POLICE AUDITOR & THE IPA TEAM



Shivaun Nurre, Acting Independent Police Auditor –

Ms. Nurre was appointed to the position of Assistant Police Auditor in January 2007 and Acting IPA in January 2009. She has ten years of public sector experience as a Deputy County Counsel for Santa Clara County. Her legal experience spans the areas of civil litigation, employment law, criminal justice and workers compensation. She obtained an undergraduate degree in history from the University of California at Riverside and then worked for several years at the Congressional Research Service within the Library of Congress before obtaining her Juris Doctor from the University of California at Davis. Ms. Nurre is a member of NACOLE and the American Inns of Court.

Vivian D. Do, Data Analyst – Ms. Do joined the Office of the IPA from the private sector seven years ago with specialized experience 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, including data analysis, database management and desktop publishing. Her skills are an integral part of the process of producing the IPA annual reports. Ms. Do earned a Bachelor of Science degree from San José State University, California.

Diane M. Doolan, Public Relations & Education Specialist/Complaint Examiner – Ms. Doolan joined the Office of the IPA in March of 2006 with over ten years of experience advocating for individuals who have physical, mental and developmental disabilities. Ms. Doolan is the former Program Director of the Mental Health Advocacy Project, Vice-President of the California Coalition of Mental Health Patients' Rights Advocates, and instructor in the Crisis Intervention Training Academy of the San José Police Department. She earned her Juris Doctor from the University of California Hastings College of Law. Her Bachelor's degree was obtained in her state of origin, from Southern Connecticut State University.

Jessica Flores, Office Manager – Ms. Flores joined the IPA office in June of 2006. She attended Administrative Assistance classes at West Valley College and uses that training as the front lobby receptionist. She greets visitors, answers questions for complainants, and directs them to appropriate sources. She enters case information on databases, creates and maintains case files, and helps where ever needed.

Suzan L. Stauffer, Complaint Examiner – Ms. Stauffer joined the IPA with more than 20 years of experience working in the justice field. In addition to over four years of direct experience in



INDEPENDENT POLICE AUDITOR & THE IPA TEAM



IPA Staff

Left to Right: Vivian Do, Shivaun Nurre, Barbara Attard, Suzan Stauffer, Jessica Flores, and Diane Doolan.

civilian oversight of law enforcement, Ms. Stauffer brings experience in law and police procedures, prosecution, investigations, community service, training and violence prevention. She has extensive experience working with City of San José departments including the City Attorney, Police, Code Enforcement, City Council, as well as community members, educators and criminal justice professionals. A Bay Area native, Ms. Stauffer earned a Juris Doctor from the University of San Francisco and a Bachelor of Arts degree from Stanford University. She served as a prosecuting attorney in both California and Hawaii before coming to the City of San José and is a California State Certified Mediator. In 1993 Ms. Stauffer designed and implemented the award winning Safe Alternatives & Violence Education Program (SAVE) for the City of San José and has worked with other California cities to implement the SAVE program. She is committed to making a difference in the San José community.

Barbara Attard, Former Police Auditor –Ms. Attard was appointed as the Independent Police Auditor in January 2005 and served in that capacity until the expiration of her contract in December 2008. She is a licensed private investigator with civilian oversight experience spanning over 25 years. She served as the director of the office of the Berkeley Police Review Commission for seven years before coming to San José. Her career in oversight began with the San Francisco Office of Citizen Complaints. 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. She is a current board member and past president of the National Association of Civilian Oversight of Law Enforcement (NACOLE). Ms. Attard is a recipient of the prestigious Don Edwards Civil Liberties Award presented by the ACLU of Santa Clara Valley.

INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE

Mission

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

Purpose and Objectives

The purpose of the IPAAC is to identify, mobilize, and coordinate resources in order to assure maximum public, private, agency, and individual commitment to effective police oversight.

The objectives are to:

1. Promote the mission of the IPA and inform the IPA of the needs, problems, and/or issues that surface in various communities.
2. Promote high standards of quality police service and civilian oversight in the City of San José.
3. Increase the visibility of the IPA through support of community events and public forums.

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 communities. The IPA convenes meetings of the IPAAC on an average of three (3) times per year.

2008 IPAAC Participants

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

Elisa Marina Alvarado, Teatro Visión (2008 - present)

Linda Young Colar, 100 Black Women (2007 - present)

Jeffrey Dunn, Santa Clara County Office of the Public Defender (2006 - present)

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

Nancy S. Freeman, Former Juvenile Justice Commission Member (2005 - present)

Aila Malik, Fresh Lifelines for Youth (2007 - present)

Sundust Martinez, Indigenous Peoples Council, Native Voice TV (2004 - present)

Socorro Reyes McCord, Community Peace & Justice Advocate (2007 - present)

Sofía Mendoza, Formerly with the Community Child Care Council (1999 - present)

Rev. Jethroe (Jeff) Moore II, NAACP of Silicon Valley (2005 - present)

Aejaie Sellers, LGBT Community Activist (2006 - present)

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

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

Dennis Skaggs, San José Downtown Association (2007 - present)



INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE



IPA Advisory Committee (IPAAC) Members and IPA Staff

Top Row: Reverend Jeff Moore, Wiggys Sivertsen, Nancy Freeman, Aila Malik, Aejaie Sellers, Alofa Talivaa, Diane Doolan, Alfredo Villaseñor, and Sundust Martinez.

Seated: Dennis Skaggs, Elisa Marina Alvarado, Barbara Attard, Socorro Reyes McCord, and Sofia Mendoza.

Alofa Talivaa, Community Activist (2007 - present)

Alfredo Villaseñor, Community Child Care Council of Santa Clara County (2001 - present)

Additional IPAAC Members

Rick Callender, NAACP of San José/Silicon Valley (2001 - present)

Bob Dhillon, Sikh Gurdwara - San José (1999 - present)

Josué García, Santa Clara & San Benito Counties Building and Construction Trades Council (2004 - present)

Victor Garza, La Raza Roundtable (1999 - present)

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Chapter One: The Office of the Independent Police Auditor and Updates on Policy Recommendations

Executive Summary

As the City of San José grows and the population becomes increasingly diverse, a positive relationship between the police and the community is essential. Police misconduct is a serious issue that impacts the trust and support the public has in its police department. In its fifteenth year, the Office of the Independent Police Auditor (IPA), in cooperation with the San José Police Department (SJPD), strives to provide San José residents with a police misconduct complaint process that is efficient and effective. By providing independent oversight of police misconduct investigations, the IPA seeks to increase public confidence in the complaint process. Through outreach to the San José community and thoughtful policy recommendations to the City Council, the IPA works to promote accountability and to strengthen the relationship between the San José Police Department and the community it serves.

The IPA has five 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, (4) to make recommendations to improve SJPD policies and procedures, and (5) to respond to the scene and review officer-involved shooting investigations.

The IPA prepares reports for the City Council providing analysis of complaints received and closed, identification of trends, and discussion of new and past recommendations.

This year end report covers the period of January 1 to December 31, 2008. It does not advance any new policy recommendations; updates are provided on two prior recommendations:

- In October 2008 public concern focused on news coverage which called into question SJPD's approach to public intoxication arrests pursuant to California Penal Code 647(f). The issue of 647(f) arrests was heard by the City Council in November 2008. The IPA prepared a report on the issue after examining 68 police misconduct complaints from 2003 through 2008 in which the complainant was arrested for 647(f). The IPA recommended to Council that the City Manager be directed to institute a policy that an officer making an arrest for 647(f) must complete a chemical test on that person. At the November 18, 2008 Council meeting, the Chief of Police announced that police practice would be amended to permit anyone arrested on a 647(f) charge to request a breath alcohol analysis test.

- In the 2006 IPA Year End Report, the IPA recommended that a new complaint process be implemented — one that used objective criteria for complaint classification. The Revised Complaint Process (RCP) went into effect on July 1, 2008. See summary in Chapter Two.



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Chapter Two: The Complaint Process

The City Charter and Municipal Code mandate the basic functions of the Office and designate the Office as an alternative location at which community members may file complaints against San José Police Officers. After a complaint is filed, the complaint is classified and investigated by Internal Affairs (IA). The IPA works closely with IA to ensure that every case is classified appropriately and includes all potential allegations. The IPA participates in interviews of subject officers for complaints involving force and other serious allegations. To complete the complaint process the IPA audits closed complaint investigations. If the audit process generates any questions or concerns, they are promptly communicated by the IPA to IA for consideration. A formal process by which the IPA can appeal to the City Manager is also in place.

In short, the complaint process is comprised of five steps: intake, classification, investigation, closing and audit. Chapter Two provides a review of the complaint process with focus on the first two steps, intake and classification.

In the 2006 IPA Year End Report, the IPA recommended that a new complaint process be implemented — one that used objective criteria for complaint classification. In mid-2007, at the direction of the City Council, the City Manager assembled a Revised Complaint Process Working Group (“Working Group”) for that purpose. On January 28, 2008, the Office of the City Manager presented a report on the new complaint process to the City Council. The City Council received the presentation including the recommendation that the proposed changes be implemented. The Council also directed that the City Manager return in one year with a progress report on the performance of the revised process and present any proposed changes. The Revised Complaint Process (RCP) went into effect on July 1, 2008 and the IPA and IA worked together to ensure uniformity in approach and application of the RCP changes.

Chapter Two describes some of the significant changes that occurred in July 2008, and identifies issues that may be monitored by the IPA for discussion in future reports. It should be noted that data from the old and new processes cannot be easily compared. The process has been simplified by reducing the number of allegations and classifications available; the effect on the complaint process has yet to be fully understood.

Chapter Three: Year End Statistics

This chapter discusses the IPA’s involvement in the complaint process including receiving complaints, monitoring the investigation, and auditing completed IA reports. Information about the types of cases received in 2008 by both IA and the IPA, the classification of cases, findings reached by IA, officer discipline, and the audit process is detailed and analyzed.



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In 2008 a total of 625 matters were filed; this figure includes complaints filed by members of the community as well as matters classified as INQUIRIES, NON-MISCONDUCT CONCERNS, and investigations initiated by the SJPD.

The total number of matters designated as external complaints decreased from 491 in 2007 to 467 in 2008. This decrease may be due to the creation of the NON-MISCONDUCT CONCERNS which, by department-created definition, are not complaints.

Between January and December 2008, 467 civilian-initiated cases and 56 department-initiated investigations were filed; these cases contained 1,147 separate allegations. The three types of allegations most frequently reported were *Procedure*, *Courtesy* and *Force*.

The IPA audits complaint investigations closed by IA. The IPA audited a larger number of complaints closed by IA in 2008 compared to years past; audits of 338 investigated cases were conducted this year. The IPA audited all force cases and approximately 93% of the investigated complaints closed. During audit, IPA staff look for those key factors mandated by the municipal code — namely was the investigation complete, thorough, objective and fair. Issues that are reviewed include timeliness, classification, supporting documentation, officer and witness interviews, application of policy to facts, and weighing of evidence. Of the 338 investigated cases audited, the IPA agreed with 83% of the investigations and disagreed with 17%. In 2008, 80 officers received discipline as a result of the complaint process; the type of discipline imposed most often was training and/or counseling.

Chapter Four: Use of Force Analysis

This chapter provides information and data concerning complaints alleging that San José police officers used force and contains information about the process which occurs when there is an officer-involved shooting incident. A “Force Case” is a complaint which includes one or more allegations of *Force* by a San José officer. In 2008 there were 117 Force Cases — the same number of Force Cases reported in 2007. Of the 1,147 allegations contained in all complaints, 16% were allegations of *Force*; the number and percentage of *Force* allegations has remained steady over the last two years.

There were no officer-involved shooting incidents or fatal critical incidents involving SJPD officers in 2008.

Chapter Five: Subject Officer Demographics

In 2008, there were 1,383 sworn officers in the SJPD — the largest number of officers in more than ten years. There were 394 officers named in complaints — 28% of sworn officers. Of these



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individuals, 96 were named in more than one complaint. Information about officers receiving complaints is presented in this chapter.

SJPD started the Intervention Counseling program as an "Early Warning System" to address minor allegations of misconduct at an early stage. Early intervention provides the Department with a tool to identify potential problems and provide timely guidance to officers. Fourteen officers received counseling as part of the Department's Early Intervention Program in 2008.

Chapter Six: Community Outreach

Outreach to the community is a mandated function of the Office of the Independent Police Auditor. The IPA conducts extensive outreach in order to educate the community about the mission and functions of the IPA office, assess the needs and concerns of diverse communities, and make services visible and accessible to the public. Better informed residents are more inclined to seek the assistance of the IPA and to have confidence in the existence of effective oversight.

The IPA and staff participated in 180 events, meetings, and presentations in 2008, reaching more than 5,800 people. Additional persons were reached via media and press conferences. The IPA has prioritized outreach to vulnerable populations such as ethnic minority members, immigrant communities, and youth. Of the 180 outreach events the IPA participated in during 2008, 84 or 47% involved one or both of these targeted populations.

In 2008 the IPA released a revised and expanded edition of a Student's Guide to Police Practices (Guide), first published in March 2003. The Guide was created to educate youth, parents, and teachers about basic legal rights, common crimes that sometimes involve youth, and how young people can avoid becoming victims. The revised Guide contains new sections that discuss serious social issues facing today's youth — gangs, hate crimes, internet safety, and dating abuse. Both print and CD versions of the Guide were updated in English, Spanish, and Vietnamese.

Chapter Seven: Cases By Council District

Chapter Seven provides a discussion of complaints and concerns by the council district in which they occurred. District 3, which includes the downtown area, continues to generate the largest number of complaints. Complaints across the remainder of the City are fairly equally distributed. This chapter also provides information on Force Cases by council district.

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Conclusion

The challenges that accompany increased population and changing demographics reinforce the need for professional and trustworthy law enforcement and for fair and effective oversight. The Office of the Independent Police Auditor is committed to fulfilling its mandated duties and instilling confidence in the complaint process through community outreach and objective review of police misconduct investigations. The IPA anticipates continuing to work cooperatively with SJPD to ensure that revisions made to the complaint process reflect the goals and objectives established in 2008.

Executive Summary



THE OFFICE OF THE INDEPENDENT POLICE AUDITOR— UPDATES ON RECOMMENDATIONS

I. The Office of the Independent Police Auditor

A. Establishment

The Office of the Independent Police Auditor was established in 1993 with the passing of an ordinance by the San José City Council. The Independent Police Auditor (IPA) was created to provide civilian oversight of the police misconduct complaint process and to make recommendations to improve San José Police Department (SJPD) policies. In response to a grassroots effort to establish oversight in San José, and increased awareness following the Rodney King incident, the City Council reviewed information and heard testimony from community members, professionals in oversight, activists, and members of 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.

In 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 midterm removal of the police auditor requires a vote of approval of at least ten of the eleven City Council members. See **Appendix A** for the complete San José Charter Section 809.

B. Independence

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

- 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, Chapter 8.04.

Chapter One

CHAPTER ONE | THE OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

C. IPA Reports

IPA reports are prepared pursuant to the requirements of the San José Municipal Code Section 8.04.010 (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.

D. IPA Mission

The mission of the Office of the Independent Police Auditor is to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations. By providing outreach to the San José community and making thoughtful policy recommendations to the City Council, the IPA works to promote accountability and to strengthen the relationship between the San José Police Department and the community it serves.

IPA guiding principles:

- The IPA strives to ensure that all concerns reported by members of the public are classified and investigated at the appropriate level based upon the premise that any case brought forward containing misconduct issues will be classified as a complaint with associated allegations, findings and officer names tracked.
- The IPA reaches out to inform the community about the complaint process and to listen and respond to broader community concerns.

- The IPA carefully considers aggregate data from complaints, community concerns and public policy in crafting recommendations aimed toward improving the quality services of the San José Police Department.

E. IPA Functions

The primary functions of the IPA are:

- To serve as an alternative location for individuals 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; and,
- To respond to the scene of and review officer-involved shooting investigations.

II. Updates on Staffing

In 2008 Barbara Attard completed her four-year term as the San José Independent Police Auditor. She was originally appointed to the IPA position in January 2005. During her tenure, she advocated strongly for creating written Taser usage guidelines, expanding a shooting-at-vehicles policy and developing a complaint process based on objective criteria. She was a proponent of expanding the investigative authority of the IPA office. She traveled locally and internationally offering expertise in the field



CHAPTER ONE | THE OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

of civilian oversight and, in May 2008, received the Don Edwards Civil Liberties Award from the local chapter of the ACLU of Northern California. Ms. Attard's contract expired in December 2008 and the City Council did not appoint her to another term. The data and information contained in this report reflect her leadership of the IPA office during 2008. More information on Ms. Attard is provided on page ii of this report. "Veteran" IPA staff members continue to perform the important services of the office and anticipate the appointment of a new IPA in 2009.

III. Updates on Recommendations

A. Revised Complaint Process

In the 2006 IPA Year End Report, the IPA recommended that a new complaint process be implemented — one that used objective criteria for complaint classification. In June 2007 the City Council directed the City Manager, the SJPd and the IPA to develop a revised complaint process based upon objective criteria and definitions. Numerous revisions were made to streamline and improve the complaint process. In July 2008 the SJPd Internal Affairs (IA) and IPA offices began using the revised complaint system. Under this revised system the definitions of complaint types and allegations were changed from those used under the former process. See **Chapter Two** for a thorough discussion of the revised process.

B. Public Intoxication Arrests

News coverage in October 2008 called into question SJPd's approach to public intoxication arrests pursuant to California Penal Code Section 647(f) [hereafter 647(f)]. Newspaper articles and editorials asserted that SJPd arrest rates for 647(f) were disproportionate in comparison with arrest rates in other jurisdictions and raised concerns about selective enforcement.¹

The issue of 647(f) arrests was placed on the November 18, 2008, City Council agenda. Specifically, the Council reviewed and discussed statistics related to 647(f) arrests and the SJPd's policies for handling such arrests. The IPA was requested to prepare a report about complaints that included allegations regarding public intoxication arrests.

IPA staff examined police misconduct complaints from January 2003 through November 2008 in which the complainant was arrested for 647(f). A total of 68 cases were reviewed and several patterns were identified. The 2008 IPA 647(f) Report expressed concern that many cases appeared to contain elements of an "attitude arrest."² An attitude arrest occurs when a person is arrested because the officer does not like the arrestee's attitude and/or arrests of individuals who may be perceived as uncooperative.³ The 2008 IPA 647(f) Report noted that the issue of arrests for drunk in public had been raised by the

¹See Sean Webby, *Drunkness Arrests in San Jose Outpace Other California Cities*, Mercury News, October 18, 2008 and *Arrest Numbers Point to Over-Enforcement of Drunkness Law*, Mercury News Editorial, October 21, 2008.

²The definition of "attitude arrest" was taken from the IPA 1994 *Third Quarterly Report*, page 26.

³The IPA cannot state with certainty whether the arrest was made in response to the arrestee's attitude because there are many subjective elements which are open to various interpretations or which are not adequately documented.

CHAPTER ONE | THE OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

Office of the Independent Police Auditor in the past. The IPA *1994 Third Quarterly Report* revealed that officers were failing to adequately document the required information in the police reports when making arrests for public intoxication and raised concerns that officers were making “attitude arrests.”

In the 2008 IPA 647(f) Report the IPA recommended to Council that the City Manager be directed to institute a policy that an officer making an arrest for 647(f) must complete a chemical test on that person.⁴ The IPA urged the Council to take timely affirmative steps to assure the community that its police officers were applying the drunk in public law in a fair and equitable manner.

At the November 18, 2008, Council meeting, the Chief of Police announced the implementation of the following changes:

- A supervisor’s approval would be required for every public intoxication arrest.
- Police practice would be amended to permit anyone arrested on a 647(f) charge to request a breath alcohol analysis test.

At the end of the public hearing, the City Council voted unanimously to create a Task Force to address public intoxication arrests. The Task Force, with the inclusion of key stakeholders, would attempt to identify non-criminal alternatives to arrests. The Task Force was also requested to examine the feasibility of sobering stations and requiring objective test options for those arrested. The Council did not take specific action on the IPA recommendation to have a

policy mandating a chemical test be completed as part of a 647(f) arrest.

The IPA was named as a member of the Task Force; there were no meetings in 2008. The IPA will review Task Force recommendations during 2009 and report on any related changes implemented by the SJPD and the City of San José in the future.

⁴Similarly, the IPA *1994 Third Quarterly Report* recommended that, among other things, chemical testing should be an option for any person arrested for drunk in public if one was requested.

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Consortium For Police Leadership And Equity In San José

On March 17, 2009, City Manager Debra Figone released a memorandum announcing that the Chief of Police had signed a letter of intent with the Consortium for Police Leadership and Equity (CPLÉ). The memorandum stated:

Recent news articles have pointed to the number of Hispanics among those arrested for various offenses, and some community members have suggested that these numbers are disproportionately high and reflect patterns and practices of bias-based actions by the Department. This concern has been the subject of much discussion by some members of the Public Intoxication Task Force. While at first glance these numbers are of concern, this must also be coupled with a more in-depth understanding of their significance before any conclusions can be drawn. As a result, the work of the CPLÉ, which just formed this past January, could not be a better fit at this time. My expectation is that the Consortium's effort in San Jose will not only provide insights regarding the questions being raised, but will also identify opportunities to make improvements.

The CPLÉ is a research consortium that attempts to promote police transparency and accountability by facilitating research collaborations between law enforcement agencies and social scientists.⁵ CPLÉ uses academic methodologies to research racial and gender equity issues within police organizations. CPLÉ researchers are not funded by law enforcement. The City Manager indicated that the CPLÉ will explore internal and external practices within the Department related to equity issues.⁶ The CPLÉ work will be used to evaluate changes or improvements to the SJPD's policies, practices and training.

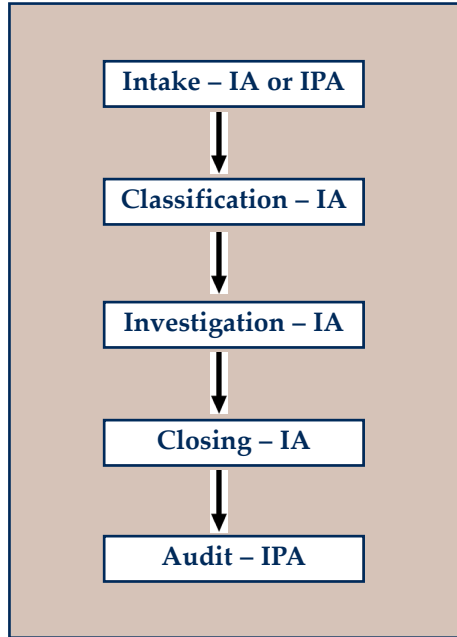
The IPA will follow the CPLÉ's work in San José and report on significant CPLÉ issues in the future.

⁵Information on CPLÉ from CPLÉ website at <http://cple.psych.ucla.edu/>.

⁶City Manager April 6, 2009, Memorandum to Rules & Open Government Committee.

THE COMPLAINT PROCESS

Chapter Two



Identification of both Allegations and Classifications is an important part of the Complaint Process.

Throughout this chapter and the remainder of the report *allegations* of misconduct are noted in *italics*. CLASSIFICATION of complaints are identified with SMALL CAP lettering.

I. The Mechanics of the Complaint Process

The complaint process is comprised of five steps: intake, classification, investigation, closing, and audit. In July 2008, at the direction of the City Council, significant changes were made to the process. This chapter focuses on the first two steps, intake and classification, and how they have changed. The remaining steps, investigation, closing, and audit, are not impacted by the revised process; these steps are discussed in **Chapter Three**.

A. STEP ONE: Intake

For most law enforcement agencies the filing of a complaint is the first step in the complaint process. A complaint can range from something basic, such as a concern about a rude officer during a traffic stop, to a more serious matter, such as an allegation that an officer used unnecessary force during an arrest.

Persons can contact either the IPA or the SJPD's Internal Affairs Unit (IA) with concerns about the conduct of a San José police officer and may do so via mail, telephone, facsimile, e-mail, or in

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person. Complainants⁷ may file a complaint even if they do not have a direct connection to the incident or the persons involved. A complaint may also be filed anonymously.⁸ Information about the incident is entered into a shared IA/IPA database. With the complainant's consent, interviews are recorded to ensure the information provided by the complainant is captured accurately. Each of the concerns articulated by the complainant are identified and assigned the most applicable allegation.

B. STEP TWO: Classification

After a case is received by the IPA and allegations have been identified, the case is forwarded to IA for classification and investigation. The Internal

Affairs Unit is responsible for classifying all complaints. Classification is an important management tool allowing IA to identify the level of seriousness of each complaint and devote staff time accordingly. Generally speaking, classification determines the level of investigation a case receives and whether allegations and officer names are permanently retained and tracked.

The classification system was changed by the new complaint process adopted in 2008. Matters received between January and June were classified under the former process and matters received between July and December were classified under the Revised Complaint Process (RCP) which is discussed later in this chapter.

Why Classification Is Crucial:

Classification is used by IA to categorize allegations based on the level of severity. The classification approach has been of interest to the IPA for many years. Various issues have been raised in previous IPA Reports and changes have occurred.

- In 2005 the IPA reported a notable change — a greater number of complaints were being classified as INQUIRIES. Cases in the INQUIRY category received little or no investigation. Officer names were not tracked and were therefore unavailable for officer discipline or early identification of problem behavior.
- In the 2006 Year End Report the IPA identified an increase in the classification of complaints as PROCEDURAL and a corresponding decline in the number of complaints receiving formal investigations. Formal investigations included interviews of the subject officers; PROCEDURAL investigations did not.
- In 2007 the IPA noted a positive change in the classification of cases; the number of complaints receiving formal investigation had increased and cases classified as INQUIRIES had declined.
- In July 2008 the NON-MISCONDUCT CONCERN was added as a new classification. Assignment to this classification follows a determination by IA that the conduct alleged does not rise to the level of violation of a Department policy, procedure, rule or law for which discipline can be imposed.

⁷The term "complainant" is used throughout this report to denote the individual who contacted the IPA or IA to express a concern regardless of the later classification of the complaint.

⁸Although a direct connection is not required, first-hand information is often needed for successful investigation of a complaint.

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C. STEP THREE: Investigation

Investigation is the process through which a complaint is examined by IA; reports, witness statements and evidence are collected and analyzed to determine what proof supports the complainant's allegations. A written finding is generated by IA for each allegation within a closed investigation.

D. STEP FOUR: Closing

The complaint is closed when the IA investigation has been completed and written findings made. An IA document summarizing the investigation and findings is forwarded to the IPA for audit.

E. STEP FIVE: Audit

The IPA audits the IA investigation to examine whether it is thorough, fair and objective. The investigation, closing and audit steps of the complaint process are discussed in **Chapter Three**.

II. The Revised Complaint Process: Changes to Classifications and Allegations

In the 2006 IPA Year End Report, the IPA recommended that a new complaint process be implemented — one that used objective criteria for complaint classification. In June 2007 the City Council directed the City Manager, the SJPD and the IPA to “develop a revised complaint process that determines [the] classification [of complaints] based upon objective criteria and definitions for

complaint categories.” The intent of the revision was to streamline and improve the complaint process. In accordance with Council direction the City Manager assembled a Revised Complaint Process Working Group (Working Group) for that purpose; the group included staff from the City Manager's Office, the SJPD and the IPA. For several months, the Working Group met to develop a revised complaint process.

On January 28, 2008, the City Manager presented its report on the new complaint process to City Council. The IPA submitted a memorandum outlining some concerns with the revisions. After much discussion and public comment, the City Council moved to receive the City Manager's presentation including the recommendation that the proposed changes be implemented.⁹ The Council also directed that the City Manager return in one year with a progress report on the performance of the revised process and present any proposed changes.

The Revised Complaint Process (RCP) went into effect on July 1, 2008. The IPA and IA worked together to ensure uniformity in approach and application of the RCP changes. Data available under the new process is not yet sufficient to measure the impact of the revisions. Data from the old and new processes cannot be easily compared. The process has been simplified by reducing the number of allegations and classifications available; the effect on the complaint process has yet to be fully understood. This section describes some of the significant

⁹Council action was noted as “on a call for the question, the motion carried, the presentations were received; Staff's recommendation to begin in March of 2008 the implementation of the protocols/procedures (as outlined in the January 18, 2008 City Manager's Report), as modified by the Police Chief's PowerPoint presentation dated January 29, 2008, and the incorporation of the memorandum from the City Attorney dated January 25, 2008 was approved and the Administration was directed to return in one year with a progress report on implementation.” City Clerk Minutes for January 29, 2008 City Council meeting.

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changes that occurred in July 2008, and identifies issues that may be monitored by the IPA for discussion in future reports.¹⁰

A. CHANGE: The Definition of a Complaint (Complaint vs. Allegation)

Prior to July 1, 2008, the crux of the process was the filing of a complaint. A complaint was defined in a straight-forward manner as “an act of expressed dissatisfaction which related to Department operations, personnel conduct or unlawful acts.”¹¹ When a civilian reported a complaint through IA or the IPA, the concerns articulated by the individual were identified and listed as allegations. An investigation into the allegations of the complaint was conducted by IA and findings were made based on the facts and evidence established during the investigation. If an allegation was sustained, discipline could be imposed against the officer by the police department.

The RCP changed the focus of the Internal Affairs process from complaints to allegations and from any conduct to only that conduct which could result in discipline. Rather than filing a complaint against an officer for an act of expressed dissatisfaction, under the RCP a person files an allegation¹² of misconduct against an officer. Those allegations are then screened by IA to determine whether any discipline could be imposed on the officer if the allegations were proven true. Only when the conduct could result

in discipline is a CONDUCT COMPLAINT initiated. If the allegation does not meet the threshold, it is classified as a NON-MISCONDUCT CONCERN; a NON-MISCONDUCT CONCERN is deemed to be a non-complaint. Misconduct which cannot result in discipline would not trigger a complaint. The straight-forward definitions were made more complex. See **Illustration 2-A**.

B. CHANGE: The Classification Process

With the implementation of the RCP, classification now separates expressions of dissatisfaction into complaints and non-complaints. Only misconduct, which if proven to have occurred may lead to discipline, is classified as a complaint. This determination is made early in the process based on preliminary information. Other expressions of dissatisfaction are defined to be “not a complaint.” In other words, for each allegation, IA asks the following question: If it is proven that the police officer took this action, can he/she be disciplined for it? If so, the matter is classified as a CONDUCT COMPLAINT. If not, the matter is classified as a NON-MISCONDUCT CONCERN or a POLICY complaint.

During the revision process the IPA expressed reservations about the NON-MISCONDUCT CONCERN classification noting that this classification could be equated with the INQUIRY classification in which investigation was limited and officer names were not retained. However, unlike the INQUIRY classification, when an officer has received a

¹⁰In 2009, IA and IPA staff have continued to discuss items of concern and to implement informal solutions not reflected in this report which only covers activity during the 2008 calendar year. The IPA anticipates that some of those items and solutions will be included in the Administration’s report on the RCP which will be presented to Council in August or September 2009.

¹¹2007 edition SJPD Duty Manual §C1703.

¹²SJPD Duty Manual [2008 Revision] §C1705 Allegation: An unproven accusation that a member of the police department violated Department or City policy, procedure, rules, regulations or the law.

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NON-MISCONDUCT CONCERN the corresponding protocol includes notification of the subject officer’s supervisor, and a request that the matter be raised with the officer.¹³ Before closing the file, an IA supervisor confirms that the issue of concern has been discussed. Though not available to the IPA, a record of the issue and the officer’s name is maintained by IA for identification of possible training or procedure changes.

A NON-MISCONDUCT CONCERN results in both the officer and his/her supervisor being advised that a member of the public raised a concern about the officer’s conduct.¹⁴ If tracked and recorded by IA, this information can be used as a foundation for training and for early intervention if merited.

Illustration 2-A: Comparison of Definitions – Old and New

Old Process	New Process
Complaint is defined as “an act of expressed dissatisfaction which relates to Department operations, personnel conduct or unlawful acts.” SJPD Duty Manual § C1703 (2007 Edition)	<i>Complaint</i> is defined as “an expression of dissatisfaction that either contains an allegation which, if true, demonstrates misconduct that is later classified as a Conduct Complaint, or contains an allegation regarding a City/Department policy that the citizen believes to be inappropriate or not valid, that is later classified as a Policy Complaint.” SJPD Duty Manual § C1705 (2008 Revision)
Misconduct — Not previously defined	<i>Misconduct</i> is defined as “an act or omission by a Department member that is a violation of Department or City policy, procedure, rules, regulations or the law, which if proven true may result in disciplinary action.” SJPD Duty Manual § C1705 (2008 Revision)
Allegation — Not previously defined	<i>Allegation</i> is defined as “an unproven accusation that a member of the Police Department violated Department or City policy, procedure, rules, regulations or the law.” SJPD Duty Manual § C1705 (2008 Revision)

¹³The notification includes a summary of the individual’s concerns.

¹⁴Notification of a supervisor by Internal Affairs, and a confirming response before a case is closed, is presently an unwritten component of the NON-MISCONDUCT CONCERN classification. To ensure consistency within the IA Unit and among commanders of the division, the IPA suggests that supervisor notification and response be a documented outcome of the NON-MISCONDUCT CONCERN classification. A documentation protocol is being discussed.

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POLICY COMPLAINT

When there is an allegation regarding a current Department/City policy that was properly implemented by a Department member, but which the complainant believes is inappropriate or not valid, the matter will be classified as a POLICY complaint. A POLICY complaint is not a complaint against an individual officer.

- No allegation or officer names are recorded.
- A POLICY complaint is recorded and forwarded to the SJPD Research & Development Unit for review.

Examples:

- Due to a lack of resources officers: 1) did not respond to a disturbance report of loud music or 2) did not investigate a report of property theft.
- Property of a prisoner was disposed of according to Department policy but the complainant did not receive notice because he was in jail on another charge.

Under the current process IA does not provide the IPA with notification of matters classified as NON-MISCONDUCT CONCERN. Although the NON-MISCONDUCT CONCERN classification is “not a complaint” and thus these cases are outside the audit authority of the IPA, the IPA does retain the ability to challenge the classification. This ability is effective only if the IPA receives timely notification of the matter classified as a NON-MISCONDUCT CONCERN and the supporting documentation. Lack of timely notification and supporting documentation raise concerns that the IPA’s mandate to ensure community concerns are handled fairly and objectively may be compromised.¹⁵

During the second half of 2008, 102 complaints were classified as a NON-MISCONDUCT CONCERN.

A larger sampling of cases, classified as NON-MISCONDUCT CONCERN and reviewed by the IPA, will provide a more accurate assessment of the impact of the change of this classification on the integrity of the complaint process.

C. ALLEGATIONS: Revisions and Definitions Compared

The RCP working group spent time crafting titles and descriptions for allegations. During the process the IPA raised issues for clarification and expressed concerns about the revisions. The new process eliminated, combined, renamed and redefined the previous thirteen allegations. Eight allegations were identified and renamed by the RCP Working Group with the expectation of a more streamlined process. **Illustration 2-B** presents a comparison of the changes.

¹⁵In 2009 IA and the IPA discussed devising a process that provides the IPA with notice of cases placed in the NON MISCONDUCT CONCERN classification.

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Illustration 2-B: Allegation Titles – Old and New

Old Allegations	New Allegations ¹⁶
Unlawful Arrest	Arrest or Detention
Unlawful Search	Search or Seizure
Unnecessary Force	Force
Rude Conduct	Courtesy
Failure to Take Action	Neglect of Duty
Unofficer-like Conduct	Conduct Unbecoming an Officer
Discrimination Harassment Racial Profiling	Bias-Based Policing
Improper Procedure Excessive Police Service Missing/Damaged Property Delayed/Slow Response	Procedure <i>May be used to denote other previously identified allegations listed to the left</i>

1. CHANGE: Value Laden Descriptors

The RCP removed the “value-laden descriptors” which some suggested could potentially bias the investigation. For example, descriptors such as “unnecessary” and “unlawful” were removed from *Force* and *Search* to provide a more neutral definition of the allegations.

The IPA expressed disagreement with the title changes during the process. The IPA believed that naming allegations in neutral terms was confusing. For example, an allegation of *Force* or *Search* fails to adequately communicate the alleged misconduct reported by an individual. When a person calls about an officer’s conduct, that person does not complain that force was used; generally the person complains that the amount of force was “unnecessary” or “excessive.” A person generally does not complain about an officer’s courtesy – rather, the person complains that the officer was rude.

2. CHANGE: Procedure Allegation

Under the RCP a number of separate allegations have been grouped together as *Procedure*. The RCP eliminated the allegations of *Missing/Damaged Property*, *Excessive Police Service*, and *Delayed/Slow Response*, combining them under the grouping of *Procedure*. The *Procedure* allegation now refers to all such conduct without distinction.

The IPA objected to the removal of the *Missing/Damaged Property* allegation. In the past this allegation has involved conduct such as an officer’s failure to return a driver’s license after issuing a citation, an officer’s damaging the interior of a car during a search, or an officer’s failure to properly gather and secure the property of a homeless person who has been arrested. The elimination of this specific allegation raises concerns regarding the proper investigation of property claims.

¹⁶Two new allegations not shown in this illustration were created under the RCP: *Workplace Discrimination* and *Workplace Harassment*. Both allegations are Department Initiated, related only to Department employees. No IPA review is authorized. There were no equivalent allegations under the former process.

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The *Procedure* allegation has become so broad that it is less effective for the purpose of tracking specific community concerns. The IPA will monitor complaint summaries to track the investigation of *Procedure* allegations.

3. CHANGE: Bias-Based Policing Allegation

Bias-Based Policing is the new allegation designed to cover any action by a Department member involving the public that is improperly based on legally-protected classifications — including race and gender.¹⁷ The allegations of *Discrimination*, *Racial Profiling* and *Harassment* have been eliminated; *Bias-Based Policing* is now the allegation assigned to capture such conduct. The *Bias-Based Policing* allegation is defined more broadly than the prior strict definition of racial profiling. Under the prior approach an officer engaged in racial profiling only when race was the sole factor motivating his/her conduct. The new definition does not require race to be the sole motivating factor. Under the former process, *Harassment* was the allegation used when persons complained of unjustified repeated and unwarranted contacts by the SJPd. The SJPd Duty Manual now directs that *Harassment* shall be categorized under *Bias-Based Policing* even if the

complainant makes no assertion that the harassing contacts were somehow motivated by race or by another protected class status.

The IPA has suggested that the Duty Manual definition of *Bias-Based Policing* be expanded to correspond with the scope implied by the new definition. The IPA will monitor the use of the *Bias-Based Policing* allegation and its effective use in identifying and addressing a broader range of conduct.

4. CHANGE: Arrest and Detention Allegation

Under the former process, a person could only complain of an *Unlawful Arrest*. The RCP adds a mechanism to address an improper detention. This expansion is a positive development; it enables the investigation of a stop without a subsequent arrest.

5. CHANGE: Courtesy Allegation

The allegation of *Rude Conduct* has been replaced with *Courtesy*. In addition to changing the title of the allegation, the revised process also prompted the SJPd to make significant changes to the definition of the allegation. Department members are no longer directed to be courteous and tactful with the public under the courtesy section of the

Illustration 2-C: Definition of Courtesy – Old and New

Former SJPd Duty Manual §C1308 Courtesy	Revised SJPd Duty Manual §C1308 Courtesy
Department members will be courteous to the public and tactful in the performance of duties. Members will not use coarse, violent, profane or insolent language and will not express any prejudice concerning race, religion, politics, national origin, or similar personal characteristics.	Department members will not inappropriately use profane or derogatory language or use obscene gestures during a contact with a member of the public.

¹⁷Other “protected classes” are religion (religious creed), color, age, marital status, national origin, ancestry, sexual orientation, actual or perceived gender identity, medical condition, or disability.

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Duty Manual. Furthermore, the definition of *Courtesy* no longer prohibits officers from using profane, coarse or insolent language; instead, it directs officers not to inappropriately use profane or derogatory language or obscene gestures during contact with a member of the public. The new definition implies that there can be appropriate use of such language and gestures with the public. The revised definition of *Courtesy* in the RCP lacks any reference to expressions of prejudice concerning race, religion or similar characteristics.

In December 2008 the Department provided additional information about the new definition of

courtesy.¹⁸ The Department explained that the revised definition of “courtesy” is not a dramatic shift from the earlier approach; instead it asserted that courtesy “is inherent” in the values set forth in the Duty Manual’s “General Provision for Professional Conduct and Ethics.” To further ensure that the interpretation of section C1038 was “broadened and clearly understood within the context of the Department’s professional standards,”¹⁹ the department cross-referenced C1308 to two other Duty Manual sections: (1) A1100 General Elements-Vision, and (2) C1404 Conduct Unbecoming an Officer (CUBO). These sections are below.

Duty Manual §A1100 (2007 Edition) General Elements-Vision	Duty Manual §C1404 (2007 Edition) Conduct Unbecoming an Officer (CUBO)
<p>The San Jose Police Department is a dynamic, progressive and professional organization dedicated to maintaining community partnerships which promote a high quality of life for the City’s diverse population. The Department is committed to treating all people with dignity, fairness and respect, protecting their rights and providing equal protection under the law. The Department maintains a commitment to the following values: Integrity, Courage, Excellence, Service, Diversity, Innovation and Respect.</p>	<p>A member's conduct, either on or off duty, which adversely reflects upon the Department will be deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming a police officer. The Chief of Police or an authorized representative will evaluate the conduct in question. This evaluation will include as criteria the nature of the violation. In addition, the following criteria may be considered:</p> <ul style="list-style-type: none"> - The member's tenure with the Department. - The severity of the member's past violations. - The nature and effectiveness of prior corrective action. - The member's past conduct which was beneficial to the Department. - The member's past conduct which did not result in disciplinary measures.

¹⁸ Administration Response to the IPA's 2008 Mid-year Report dated December 11, 2008.

¹⁹Id.

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Concern remains about whether this cross-reference is clear and effective. Section A1100 merely mentions “respect” as one of several values; it is unclear whether an officer would be subject to discipline if his/her conduct was not in conformity with a “value.” Section C1404 refers to conduct which “adversely reflects upon the Department.” In the past, the IPA has not seen allegations that an officer was rude or discourteous captured under CUBO. Instead, allegations that an officer engaged in “conduct unbecoming” tended to reflect conduct of greater severity or significance to the Department. For the sake of clarity, and to provide clear direction to the officers, it may be more effective if the Duty Manual section on courtesy contained a statement that an officer must be courteous to the public and tactful in the performance of duties.

6. CHANGE: The Level of Force Is No Longer Classified

One of the issues monitored by the IPA is an officer’s use of force. Complaints alleging the most serious levels of force often require a longer time to be fully investigated. In 1996 the City Council adopted an IPA recommendation that the single unnecessary force allegation be modified to identify two classifications: *Force I* (reflecting serious bodily injury that requires medical care) and *Force II* which accounted for the remainder of the unnecessary force allegations. The initial purpose of the distinction was to ensure that the most serious complaints received timely investigation and closure — at that time 180 days. The RCP returns the *Force* allegation to a single level. See **Chapter Four** for a more detailed discussion.

D. CHANGE: IPA Review of Department Issued Complaints Limited

The majority of discipline imposed by the SJPD every year results from DEPARTMENT-INITIATED (DI) cases — cases initiated by the Department involving one of its employees. Information on the types of allegations sustained, officers receiving multiple complaints, and discipline imposed in internal complaints should be reported to Council and the community. Given that some in the community are concerned SJPD may not be inclined to hold fellow officers accountable, exploring methods to ensure the community that investigations of DI complaints are fair and objective may be useful.

The RCP made two primary changes: (1) the classification of DI/IPA was eliminated and (2) limited IPA review of DI cases was eliminated.

1. Elimination of DI/IPA Classification

For many years, the IPA and IA recognized DI/IPA as a distinct classification. This classification contained complaint investigations initiated by the Department which had a “citizen nexus.” Complaints had a “citizen nexus” if the allegation arose out of an officer’s interaction with a member of the community. For example, if an officer was being investigated because he inappropriately accessed a person’s criminal history, the complaint could be put into the DI/IPA classification because that person’s privacy rights were violated. As another example, if an officer was being investigated for falsely identifying himself as an undercover officer and inappropriately purchasing gifts for juveniles, the

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complaint could be put into the DI/IPA classification because of the connection with the juveniles. Complaints in the DI/IPA classification were reviewed and audited by the IPA. The IPA audit ensured that the investigation was complete and objective. Review of these cases reduced IPA concern that such cases might not be examined with the same scrutiny as external complaints and that civilian statements might be discounted. The RCP eliminated the DI/IPA classification.

2. IPA Limited Review of DI Complaints Eliminated Entirely

Before the RCP, the IPA had limited access to information in cases within the DI classification. When the Department initiated a complaint, the IPA received a printed face sheet which provided a short summary of the incident, the allegations, the incident location and officer names. When the Department closed the complaint, the IPA

received another printed closing sheet which indicated the findings on each of the allegations and the level of discipline, if any. The IPA included this data in its mid-year and year end reports. The IPA also reviewed the incident summary to determine whether the complaint had a “citizen-nexus” or whether the fact pattern was related to any trends. Data regarding DI complaints, which has been reported since the 1995 IPA Year End Report, became unavailable to the IPA after July 1, 2008. Through an informal arrangement, the IPA was provided composite information on DI cases from July through December 2008 so that the 2008 Year End Report reflects the full calendar year.²⁰ IPA and IA staff met in April 2009 to run various database reports upon which the composite information is based; information on the DI cases contained in this report reflect the April 2009 data runs.

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 information and analysis provided in this report must be in a form that will not disclose the identities of the parties involved.

²⁰Composite information did not contain officer names or a description of the incident.

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FORMER COMPLAINT PROCESS MISCONDUCT ALLEGATION DEFINITIONS

Delayed/Slow Response (DR) allegation indicates an unreasonably slow or delayed response to a call for service.

Discrimination (D) allegation indicates differential or unfair treatment of a person or group on the basis of their race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

Excessive Police Service (ES) allegation indicates 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.

Harassment (H) is alleged when a complainant was harassed either physically, verbally or by gesture on the basis of race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, medical condition, or disability.

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

Missing/Damaged Property (MDP) allegation is used to report incidents of missing or damaged property.

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

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

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

Unofficer-like Conduct (UC) refers to conduct either on or off duty which adversely reflects upon the police department, i.e. violations of the law, 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. SJPD classifies unnecessary force allegations regarding an injury that resulted in the complainant receiving medical attention as Unnecessary Force I; less serious unnecessary force incidents are classified as Unnecessary Force II.

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

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REVISED COMPLAINT PROCESS ALLEGATION DEFINITIONS

SJPD DUTY MANUAL SECTION C1710 [2008 REVISION]

The following definitions of allegations will be used. The purpose of these definitions is to characterize objectively the conduct alleged and avoid using value-laden words that will prejudice an allegation prior to investigation.

Procedure (P) An allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures or guidelines.

Search Or Seizure (SS) An allegation that a search or seizure was conducted by a Department member in violation of the 4th Amendment.

Arrest Or Detention (AD) An allegation that an arrest lacked probable cause or a detention lacked reasonable suspicion.

Bias-Based Policing (BBP) An allegation that a Department member engaged in conduct based on a person's race, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identify, medical condition, or disability.

Courtesy (C) An allegation that a Department member inappropriately used profane or derogatory language or uses an obscene gesture during a contact with a member of the public.

Conduct Unbecoming an Officer (CUBO) An allegation that a member's conduct, either on or off duty, was conduct that a reasonable person would find unbecoming a police officer or could reflect adversely on the Department.

Force (F) An allegation that the amount of force used by a Department member was not objectively reasonable as defined by the SJPD Duty Manual, Section L2602.

Neglect of Duty (ND) An allegation that a Department member neglected his/her duties and failed to take action as required by Department and/or City policies or procedures and/or state or federal law.

Workplace Discrimination (WD) See City Policy Manual Section 1.1.1 and Duty Manual Sections C 1311 – 1316.

Workplace Harassment (WH) See City Policy Manual Section 1.1.1 and Duty Manual Sections C 1311 – 1316.

The definitions of *Discrimination* and *Harassment* only apply to workplace interactions between city employees and to Department Initiated Investigations that arise from allegations of workplace discrimination and harassment. The procedures for reporting and investigating allegations of *Workplace Discrimination* and *Harassment* are found in Sections C 1313 – 1316 of this [SJPD Duty] Manual.

Discrimination or *Harassment* by Department members toward members of the public shall be characterized as an allegation of *Bias- Based Policing (BBP)* that will be reported and investigated by the Internal Affairs Unit.

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FORMER PROCESS COMPLAINT CLASSIFICATIONS

SJPD DUTY MANUAL SECTIONS C1700 et.seq. [2007 EDITION]

COMPLAINT DEFINED: A complaint is an expressed dissatisfaction with SJPD which relates to Department operations, personnel conduct, or unlawful acts. A complaint involves an internal SJPD administrative investigative process which can result in discipline. The complaint process is separate and distinct from criminal charges which are filed by the District Attorney's office, and the claim process which is handled by the City Attorney. There are seven classifications of complaints used by the SJPD:

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 Department policies, procedures, rules or regulations. Formal complaints receive the highest level of investigation and include interviews of subject officers.

- **External Civilian-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.

Command Review (CR) Complaint involves allegations of minor transgressions on the part of the subject officer. The complaint is reviewed in a meeting with the subject officer by his/her supervisor and the IA commander (or designee). The process does not imply that the officer has committed the transgression described in the complaint. Officers are screened for prior similar complaints and the officer's name is retained.

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 another judicial entity is available to process the concerns of the complainant.

Procedural investigations do not include interviews of subject officers.

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 with which the complainant disagrees.

Inquiry (IQ) complaints are resolved to the satisfaction of the complainant without requiring a more extensive investigation. Complainants may be referred to a sergeant to discuss the incident. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. Officer's names are not tracked in cases classified as inquiries.

No Boland (NB) Following a U.S. Supreme Court decision in May 2006, this disposition is no longer used. Previously, a complaint was closed within 30 days from the date the case was received when a complainant failed to sign the Boland Admonishment. California Penal Code §148.6 required that complainants sign a Boland Admonishment form informing them that they could be prosecuted for a misdemeanor violation if they knowingly filed a false complaint.

Citizen Contacts (CC) are communications 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.

CHAPTER TWO | THE COMPLAINT PROCESS

2008 REVISED COMPLAINT PROCESS COMPLAINT CLASSIFICATIONS SJPD DUTY MANUAL SECTIONS C1706-1708 [2008 REVISION]

NON-MISCONDUCT CONCERN DEFINED: During the pre-classification status, if a person alleges or raises an issue that does not rise to the level of violation of Department/City policy, procedure, rules, regulations, or the law, the Department will classify the concern as a Non-Misconduct Concern.

Objective Criteria contains the following: Perception or question of Department member's conduct that is not an allegation regarding a violation of Department/City policy, procedure, rules, regulations, or the law; not a misconduct allegation; or an allegation of conduct that does not rise to the level of misconduct; and not a complaint.

CONDUCT COMPLAINT - DEFINED: When a member of the public files an allegation against a Department member and the Department determines that the allegation contains appears to contain misconduct, the allegation will be classified as a Conduct Complaint. The initial investigation determines that the facts stated in the allegation are such that, if sustained, would amount to a significant violation of the law or of the Department policies, procedures, rules, or regulations, i.e., one that could result in disciplinary action.

Objective Criteria contains the following: Personnel related allegation of misconduct must be related to action(s) or inactions by a member of the Police Department.

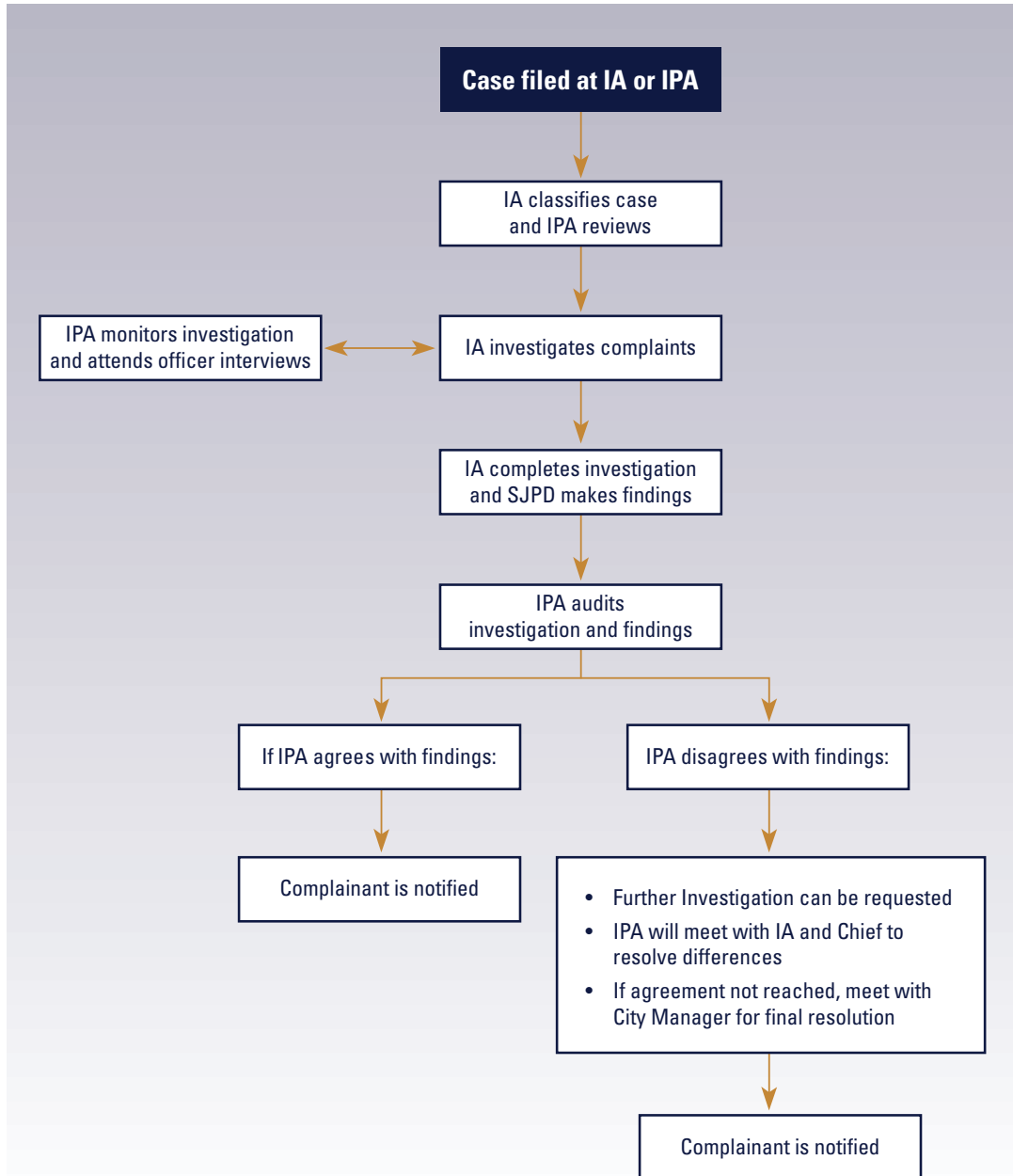
POLICY COMPLAINT - DEFINED: When there is an allegation regarding a current Department/City policy that was properly implemented by a Department member, but which the complainant believes is inappropriate or not valid, the Department will use the classification of Policy Complaint.

Objective Criteria contains the following: Non-Personnel related; allegation regarding a City/Department policy that the citizen believes to be inappropriate or not valid.



YEAR END STATISTICS

The Complaint Process Flow Chart



Chapter Three



CHAPTER THREE | YEAR END STATISTICS

I. Background

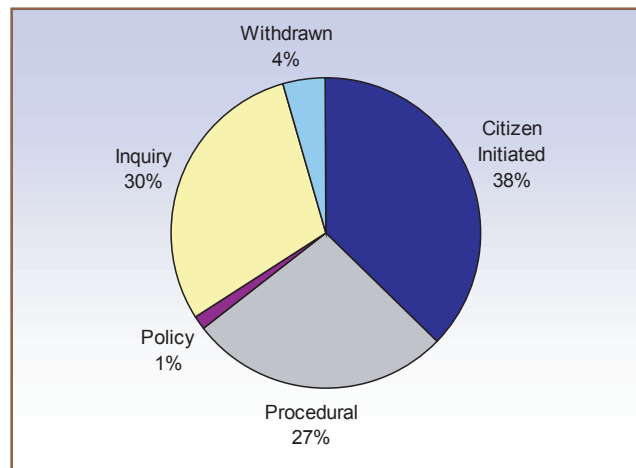
In 2008, 186 persons contacted the IPA and 383 persons contacted IA with concerns about police officer conduct. In total, 569 concerns about the conduct of San Jose police officers were raised. **Table 1** in **Appendix C** provides detail about the number and classification of concerns filed by members of the community. Due to revisions to the complaint process implemented beginning July 1, 2008, data for the first and second halves of the year is sometimes presented separately within this chapter. Statistical information for both halves of the year is presented together where possible.

A. January – June 2008:²¹

During the first half of 2008, 272 complaints were received from members of the public. Of the 272 complaints filed, 101 were classified as CITIZEN-INITIATED²² complaints; the investigation of CITIZEN-INITIATED complaints included interviews of the subject officer and witness officers. Seventy-four complaints were classified as PROCEDURAL. Complaints in the PROCEDURAL classification received an abbreviated investigation; subject officers and witness officers were not interviewed. Eighty-one complaints were classified as INQUIRY – 30%²³ of all complaints received between January and June 2008. In the past, the IPA raised issues regarding the INQUIRY classification and the number of matters classified as INQUIRY. **Table 2**

in **Appendix C** provides detail on the classification of matters received from January to June 2008.

Illustration 3-A: Classification Breakdown – January - June 2008



B. July – December 2008:

During the second half of 2008, 195 complaints were received from members of the public and were processed under the Revised Complaint Process (RCP).²⁴ One hundred ninety (190) were classified as CONDUCT COMPLAINTS. Investigations of CONDUCT COMPLAINTS under the RCP may or may not include an interview of the subject or witness officers. Five complaints were classified as POLICY complaints.²⁵ In addition to the 195 complaints received, there were 102 matters which were classified as NON-MISCONDUCT CONCERN. If an allegation about an officer's conduct is not one which would lead to officer

²¹The IPA 2008 Mid-Year report contains additional narrative and tables comparing the first six months of 2008 with that same six-month span for prior years.

²²CITIZEN-INITIATED complaints have also been called "formal" complaints.

²³The number and percentage of complaints classified as INQUIRIES decreased at mid-2008 compared to the same period in 2006 and 2007.

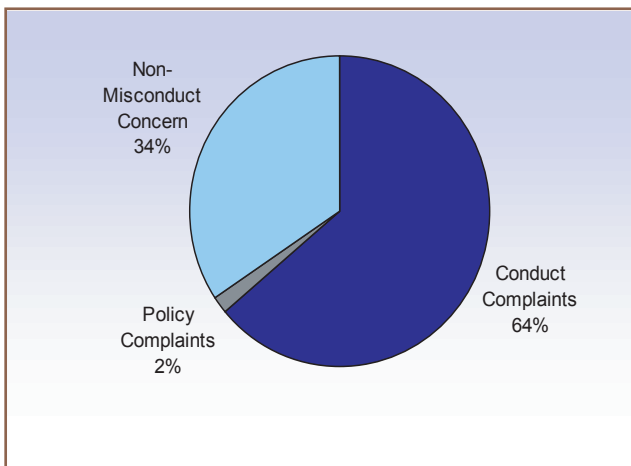
²⁴For a discussion of the Revised Complaint Process, see **Chapter Two**.

²⁵A POLICY complaint expresses dissatisfaction with an SJPD policy; it is not a complaint about an individual officer's conduct. See text box on page 16.

CHAPTER THREE | YEAR END STATISTICS

discipline, the matter is no longer defined as a complaint under the RCP. Thus, of the 297 matters raised by persons contacting the IPA or IA in the second half of 2008, only 190 cases, 64%, were deemed to arise from circumstances in which an officer’s conduct could result in discipline. **Table 3** in **Appendix C** provides detail on the classification of matters received from July to December 2008.

Illustration 3-B: Classification Breakdown – July - December 2008



II. Department Initiated Cases

The Department initiated 56 cases against San José police officers in 2008. Under the RCP described in **Chapter Two**, the Department no longer considers these matters to be “complaints” and instead refers to them as investigations. Information about these investigations is no longer available to the IPA; the IPA was provided composite data for 2008 only under an informal agreement. This is significant because the

majority of discipline imposed by the SJPD every year results from department-initiated cases. Information on the types of allegations sustained, officers receiving multiple complaints, and discipline imposed in internal complaints should be reported to Council and the community.

III. Reported Concerns

Overall, the number of concerns reported to IA and the IPA has increased over the last five years. The total number of matters designated as external complaints decreased from 491 in 2007 to 467 in 2008.²⁶ This decrease may be due to the creation of the NON-MISCONDUCT CONCERN category which, by department-created definition, are not complaints. See **Table 4** in **Appendix C** for a five-year overview of total matters received.

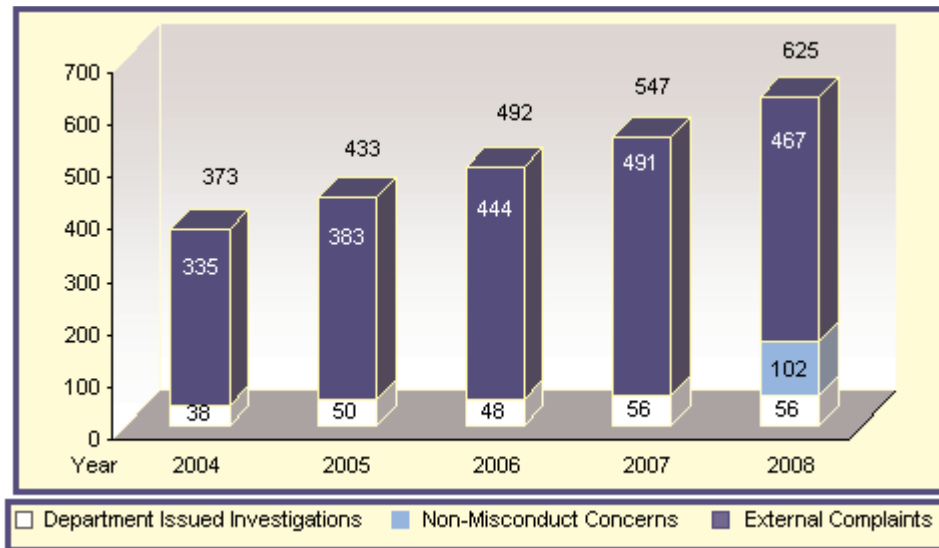
Police Contacts

Allegations of police misconduct should be considered with the understanding that most San José police officers successfully resolve situations with no issues of complaint. In 2008, members of the SJPD handled 436,855 calls for service from the public. These contacts can cover a wide range of calls from responding to life threatening situations, to issuing traffic citations and responding to false alarms. Citizen-to-police contacts which resulted in making an arrest or issuing a criminal citation numbered 35,218, 8% of all citizen-to-police contacts in 2008. These numbers are consistent with the overall low crime rate in San José.

²⁶External complaints are matters filed by members of the public and classified as complaints. These include the following under the former complaint process: CITIZEN-INITIATED, COMMAND REVIEW, PROCEDURAL, POLICY, INQUIRY and WITHDRAWN. These also include the following under the RCP: CONDUCT COMPLAINT and POLICY.

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Illustration 3-C: Five-Year Overview of Total Matters Received



IV. Complaints in Perspective

There are many factors that can influence the number of complaints reported; these factors include complaint definitions, outreach efforts by the IPA and the SJP, the number of police contacts and arrests, increasing population levels, types of police calls, and police tactics. The four charts in **Illustration 3-D** present comparative data on increases in population, calls for service, and numbers of complaints over the last four years. Complaints reflect only matters received by the IA or IPA through the police misconduct complaint process; these numbers do not reflect matters alleging improper police conduct which have been filed as civil claims through the legal system.²⁷ The complaint rate in relation to population and calls for service decreased in 2008. The revised process limits “complaints” to those cases in which the allegations may lead to

discipline (467); all other matters are deemed to be NON-MISCONDUCT CONCERNS (102) or Department-Initiated investigations (56).

V. Allegations

An allegation is an unproven accusation that a police officer violated a Department or City policy, procedure, rule, regulation or the law.²⁸ A complaint may have a single allegation — for example, a person may complain that an officer discriminated against him. Alternatively, a complaint may include multiple allegations — a person may complain that an officer discriminated against him, was rude and used unnecessary force. During the 2008 calendar year, 523 complaints²⁹ containing 1,147 allegations were received. See **Table 5** in **Appendix C** for the numbers and types of allegations received in 2006, 2007 and 2008.

²⁷ Examples of these civil matters are claims filed with the City Clerk through the Government Tort Claims Act or lawsuits filed in the state or federal courts.

²⁸ SJP Duty Manual Section C1705 [2008 Revision].

²⁹ These 523 complaints are comprised of 467 external cases filed by individuals during 2008 and 56 department-initiated investigations.

CHAPTER THREE | YEAR END STATISTICS

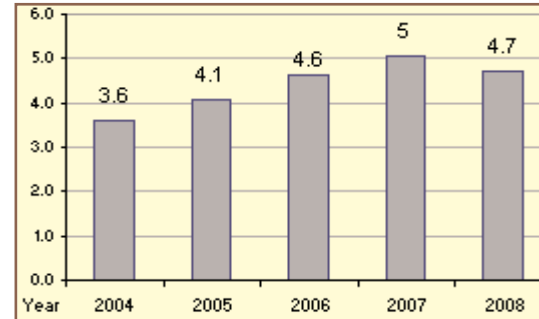
Illustration 3-D: Complaints in Relation to City of San José Population and SJPD Calls for Service

Complaints in Relation to Population *

Year	San Jose City Population	% Population Change	External Complaints Received	% Complaint Change	Complaints per 10,000 Residents
2004	931,232	N/A	335	N/A	3.6
2005	941,116	1%	383	14%	4.1
2006	957,915	1.8%	444	16%	4.6
2007	973,672	1.6%	491	11%	5
2008	989,496	1.6%	467	-5%	4.7

* Population data: CA Department of Finance. This report uses the 2000 Census for other population statistics; however the 2000 Census was not used for this chart because it does not provide a break-out of the population by each calendar year.

Complaints Per 10,000 Residents

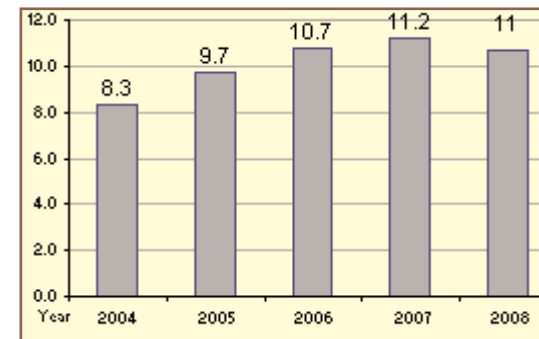


Complaints in Relation to SJPD Calls for Service*

Year	Calls for Service	% Change	External Complaints Received	% Complaint Change	Complaints per 10,000 Calls for Service
2004	403,963	N/A	335	N/A	8.3
2005	393,196	-2.7%	383	14%	9.7
2006	413,760	5.2%	444	16%	10.7
2007	436,624	5.5%	491	11%	11.2
2008	436,855	0.1%	467	-5%	11

* Source: SJPD

Complaints Per 10,000 Calls for Service



The RCP implemented mid-year 2008 eliminated some allegations and added or redefined others. The allegations in cases received between January and June were identified under one process; during this time frame, the three most common allegations were *Improper Procedure*, *Rude Conduct* and *Unnecessary Force*. Allegations received between July and December were classified under the RCP; during these six months, the three most common allegations were *Procedure*, *Force* and *Courtesy*. The RCP eliminated the distinction between *Class I Force* and *Class II Force* allegations; *Force* allegations are no longer distinguished by the seriousness of the injury alleged.

The allegations most frequently reported in the 1,147 external and internal complaints received in 2008 were:

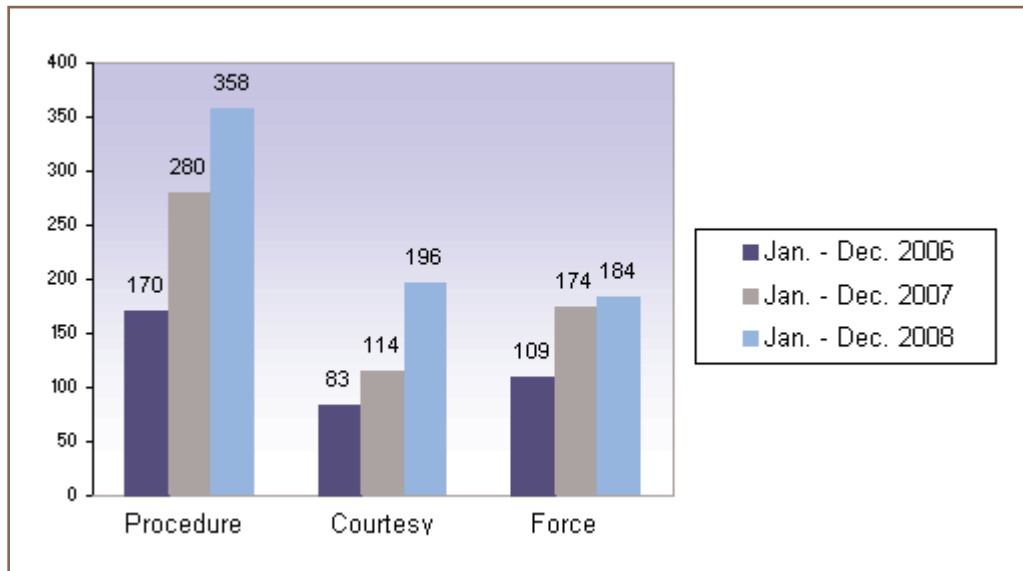
- *Improper Procedure/Procedure* has been the allegation most often cited in all cases for the last three years.³⁰ A complaint can contain one or several improper procedure allegations depending on the complexity of the incident. In 2008 there were 358 *Improper Procedure/Procedure* allegations comprising 31% of all allegations. The percentage of *Improper Procedure/Procedure* allegations in investigated complaints has remained steady over the last four years at approximately 30%.

³⁰See **Table 5** in **Appendix C** for the numbers and types of allegations received in 2006, 2007 and 2008.

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- Unnecessary Force/Force allegations in investigated complaints increased slightly between 2007 and 2008 but decreased as a percentage relative to the total number of allegations. In 2008 there were 184 *Unnecessary Force/Force* allegations, 16% of all allegations received. In 2007 there were 174 *Unnecessary Force* allegations, 19% of all allegations received.
- Rude Conduct/Courtesy allegations in investigated complaints increased over 2007 numbers. In 2007 there were 114 *Rude Conduct* allegations, 13% of all allegations received. In 2008 there were 196 *Rude Conduct/Courtesy* allegations, 17% of all allegations received.

Illustration 3-E: Most Frequent Allegations Investigated – A Three Year Overview



Comparative Table Of SJPD Calls For Service And Arrests		
Year	Calls for Service	Arrests
2004	403,963	26,500
2005	393,196	31,062
2006	413,760	33,995
2007	436,624	35,998
2008	436,855	35,218

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VI. Findings

A case is considered closed when IA completes its investigation and findings are made on the allegations. The possible findings are summarized below; more precise language is provided in **Appendix G**.

Officer discipline is possible only if there is a sustained finding on an allegation. The standard of evidence used by IA is “preponderance of evidence” and so, for a sustained finding, the evidence must indicate that it is more likely than not that a violation occurred.

If a closed case includes one sustained allegation against any officer, the case is recorded as a “sustained complaint.”³¹ In 2008, 19 external complaints were sustained; this reflects a 5% sustained rate.³² In contrast, 55 of the 71 internal DEPARTMENT-INITIATED cases were closed with at least one sustained allegation – a 77% sustained rate.

There is a notable difference in the number of sustained findings between external cases (those originated by a member of the public) and internal cases (those initiated by the Department). In 2008 IA made findings on 1,379 allegations in external cases. The three most common findings were “exonerated,” “not sustained,” and “within

Findings	Corresponding IA investigation showed that:
Sustained	The evidence clearly proved the allegation.
Not Sustained	There was insufficient evidence to prove or disprove the allegation.
Exonerated	The evidence showed that the act upon which the allegation was based did occur but the officer’s conduct was justified and proper.
Unfounded	The investigation proved that the act complained of did not occur or that the named officer was not involved in the act.
No Finding	The complainant failed to provide necessary information and/or is not available to clarify an important issue or the subject officer is no longer employed by SJPD.
Withdrawn	The complainant affirmed the desire to withdraw his/her complaint.
Within Procedure *	The officer’s conduct was reasonable and no factual basis supports the allegation.
No Misconduct Determined *	There is no independent information to resolve a key factual dispute and another forum exists to address complainant’s concerns.
Command Review *	No determination was made on whether the acts upon which the allegation was based did or did not occur; issues are addressed informally through the officer’s chain-of-command.

*Findings of Within Procedure and No Misconduct Determined applied only to complaints classified as PROCEDURAL under the former process. Command Review was eliminated as a finding under the RCP.

³¹A case may have multiple allegations and several subject officers depending on the complexity of the incident.

³²The sustained rate in external cases is calculated based upon the number of sustained complaints from those cases classified as CITIZEN-ISSUED, CONDUCT COMPLAINT, COMMAND REVIEW, and PROCEDURAL.

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Illustration 3-F: Five-Year Overview of Sustained Complaints

YEAR/TYPE OF COMPLAINTS	Closed Complaints	Sustained Complaints	Sustained Rate
2004/ External Complaints	192	18	9%
2004/ Internal Complaints	24	22	92%
2005/ External Complaints	110	6	5%
2005/ Internal Complaints	37	31	84%
2006/ External Complaints	116	11	9%
2006/ Internal Complaints	38	37	97%
2007/ External Complaints	239	14	6%
2007/ Internal Complaints	37	32	86%
2008/ External Complaints	348	19	5%
2008/ Internal Complaints	71	55	77%

procedure.” Only 45 allegations resulted in a sustained finding – 3% of the external allegations investigated and closed in 2008. Sustained findings were made on allegations of *Improper Procedure/Procedure*, *Missing/Damaged Property*, *Rude Conduct/Courtesy*, and *Unofficer-Like-Conduct/CUBO*. Of 1,379 allegations, 179 or 13% were determined to be “unfounded”; this finding means that the investigation conclusively proved either that the acts complained of did not occur or that the officer named in the allegation was not involved. See **Table 6** in **Appendix C** for detail on external allegations and corresponding findings.

In DEPARTMENT-INITIATED cases, 70% of the allegations investigated and closed were sustained. Sustained findings were made on allegations of *Improper Procedure/Procedure*, *Missing/Damaged Property*, and *Unofficer-Like-Conduct/CUBO*. Fourteen percent of the allegations were deemed to be “not sustained,” 7% were closed as “exonerated” and 2% were closed as “unfounded.” See **Table 7** in **Appendix C** for detail on allegations and corresponding findings in Department-Initiated investigations.

VII. Complaints Closed and Audited

Once IA completes its investigation and enters a finding on each allegation, the case is forwarded to the IPA for audit.³³ In 2008, 368 complaints were closed by IA and forwarded to the IPA. The IPA completed audits on 338 complaints.³⁴ The IPA audits the investigation of civilian complaints about police misconduct completed by the IA Unit. The purpose of an audit is threefold:

- to ensure that IA unit investigations are complete, thorough, objective and fair;
- to increase public confidence in the complaint process; and,
- to accumulate data used for mid-year and year end reports to Council.

The IPA does not have the authority to audit investigations initiated by the department – only those initiated by a member of the public. The IPA is mandated by the municipal code to audit:

- All force complaints; and,
- No less than 20% of other complaints.

The IPA does not have jurisdiction over complaints about SJPd employees who are not officers.

³³There are instances in which no finding is made on an allegation. Generally no finding occurs for one of the following reasons: (1) Unable to contact complainant or witness, (2) Complainant was uncooperative, (3) The identity of the officer could not be determined, (4) Complainant withdrew the complaint, or (5) Officer resigned or retired from the SJPd before the investigation was completed.

³⁴See **Table 8** in **Appendix C**.

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VIII. Issues Reviewed During Audit

Each closed IA case file includes an investigation document containing a summary of the incident, findings on each allegation, and a written analysis supporting those findings. The investigation document may contain statement summaries of persons interviewed – complainants, civilian witnesses, officer witnesses or subject officers.

The investigation file may also contain supporting documentation such as police reports, medical records, radio event chronologies, or photographs.

When the case is audited, IPA staff look for those key factors mandated by the municipal code – namely was the investigation complete, thorough, objective and fair. A number of issues are reviewed.

Issues Reviewed During IPA Audit	
Timeliness / tolling	<ul style="list-style-type: none"> Was the investigation completed in a timely manner?
Classification	<ul style="list-style-type: none"> Was the case properly classified?
Presence/absence of allegations	<ul style="list-style-type: none"> Do the listed allegations adequately capture the concerns voiced by complainant? Were any allegations removed? If so, why?
Presence/absence of supporting documentation	<ul style="list-style-type: none"> If pertinent, did the investigator obtain and review documentation such as: <ul style="list-style-type: none"> CAD³⁵ Medical records Photographs Police reports/citations Taser downloads Use of force response reports
Presence/absence of interviews conducted by Internal Affairs	<ul style="list-style-type: none"> Witnesses – what efforts were taken to identify and contact witnesses? Witness officers – what efforts were taken to identify and interview officers who witnessed the incident? Subject officers – what efforts were taken to identify and interview subject officers?
Presence/absence of logical objective application of policy to the facts	<ul style="list-style-type: none"> What is the policy/duty manual section which governs the conduct in question? Is this authority applicable to the case or is other authority more pertinent? Does the analysis apply all the factors set forth in the authority to the facts?
Presence/absence of objective weighing of evidence	<ul style="list-style-type: none"> What weight was given to officer testimony? Why? What weight was given to civilian testimony? Why? Does the analysis use a preponderance standard? Does the analysis logically address discrepancies?

³⁵CAD: Computer Aided Dispatch logs inputted information from 911 calls, officers assigned to the call, and information on the call location and status.

CHAPTER THREE | YEAR END STATISTICS

IX. Audit Outcomes

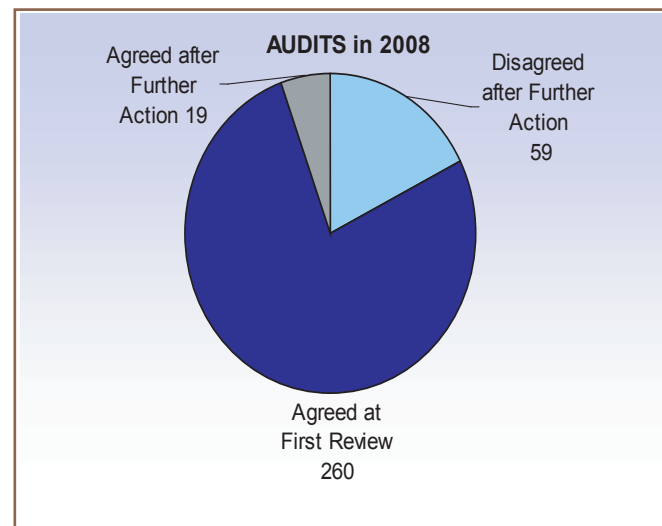
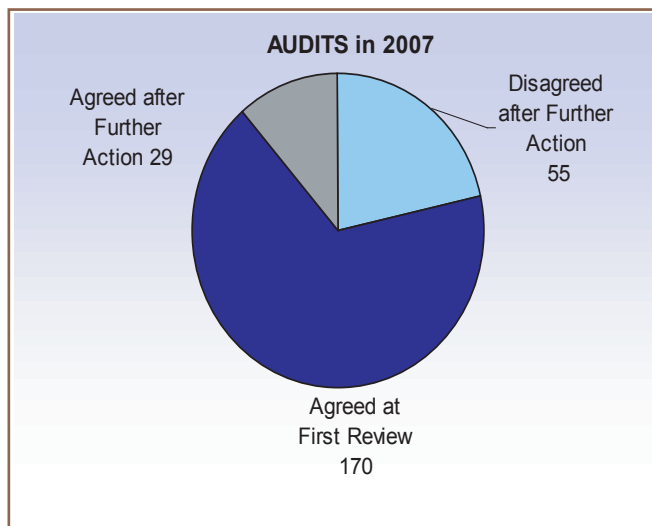
If there is disagreement on how a complaint was investigated, the IPA has an informal option of contacting the IA investigator to discuss concerns. If informal dialogue does not resolve the issue, the IPA prepares a formal memorandum which is presented to the Chief of Police; this memorandum details the IPA concerns and supporting analysis. If no consensus can be reached with the Chief of Police, the IPA may write a formal memorandum to the City Manager for final resolution.

IA is responsible for informing the complainant in writing that his or her case has been closed. Shortly thereafter, the IPA sends a second closing letter explaining that the case was audited and confirming that it is now closed.

The audit/closing process results in one of three recorded outcomes for the IPA: “agreed,” “agreed after further action,” and “disagreed.” Below are the outcomes in the cases audited in 2007 and 2008.

IPA Audit Determination	Explanation	2007 Audit	2008 Audit
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	170	260
Agreed After Further Action	IPA requested and reviewed additional supporting documentation or requested analysis be re-examined.	29	19
Disagreed	IPA did not believe that the IA investigation was thorough, complete or objective.	55	59
Total Complaints Audited		254	338

See **Table 9 in Appendix C** for detail on audit determinations in investigated cases.



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X. Discipline Imposed

In 2008, 80 officers received discipline as a result of the complaint process. Discipline was imposed on 22 officers in external CITIZEN-INITIATED cases and on 58 officers in internal DEPARTMENT-INITIATED cases. See **Illustration 3-G**.

The type of discipline imposed most often was training and/or counseling. Documented Oral

Counseling and/or training were imposed on 50% of all officers who received discipline. Letters of reprimand were issued in two DEPARTMENT-INITIATED cases and in two CITIZEN-INITIATED cases. Suspensions were imposed on 17 officers — 22% of the officers who received discipline.

Suspensions ranged between ten hours and six months. In three cases the officer retired before discipline; in four cases the officer resigned before discipline.

Illustration 3-G: Types of Discipline Imposed on Subject Officers

DISCIPLINE IMPOSED	2007				2008			
	Officers in External Complaints	Officers in Internal Complaints	Total	%	Officers in External Complaints	Officers in Internal Complaints	Total	%
Training				0%	2	1	3	4%
Training & Counseling	3	1	4	8%	2	3	5	6%
Counseling				0%				0%
Documented Oral Counseling (DOC)	9	20	29	55%	7	9	16	20%
DOC & Training				0%		16	16	20%
Letter of Reprimand	1	6	7	13%	2	2	4	5%
10-Hour Suspension		1	1	2%	1	5	6	8%
20-Hour Suspension		2	2	4%	1	1	2	3%
30-Hour Suspension		2	2	4%	1	1	2	3%
40-Hour Suspension		1	1	2%		4	4	5%
60-Hour Suspension				0%	0	1	1	1%
100-Hour Suspension		1	1	2%				0%
120-Hour Suspension	1		1	2%				0%
160-Hour Suspension				0%	1		1	1%
30-Day Suspension	1		1	2%				0%
6-Month Suspension				0%	1		1	1%
Letter of Reprimand & Settlement Agreement				0%	2	6	8	10%
Settlement Agreement				0%		3	3	4%
Administrative Leave				0%		1	1	1%
Termination	1	1	2	4%				0%
Retirement before Discipline		1	1	2%	1	2	3	4%
Resigned before Discipline	1		1	2%	1	3	4	5%
Total Discipline Imposed	17	36	53	100%	22	58	80	100%

USE OF FORCE ANALYSIS

Chapter Four

This chapter provides information and data about complaints alleging that San José police officers used unnecessary or excessive force. Because Force Cases present some of the most serious issues of potential police misconduct, the IPA is required to audit all Force Case investigations conducted by Internal Affairs (IA). Within this chapter, a “Force Case” is a complaint which includes one or more allegations of improper use of force by a San José officer. Unless a distinction is noted, a *Force* allegation will include both *Unnecessary Force* allegations and *Force* allegations.

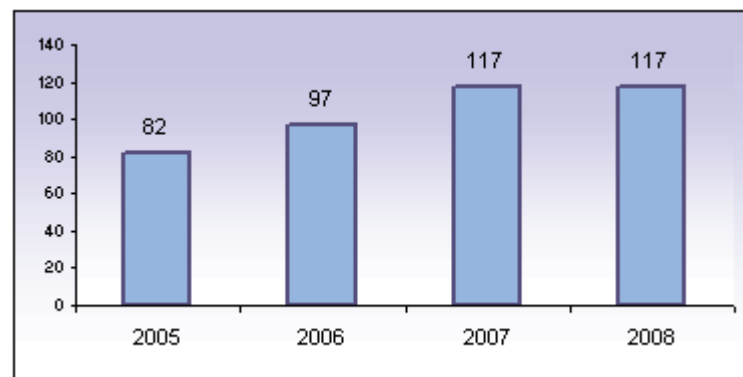
An investigation of a Force Case must examine whether the officer used objectively reasonable force as defined in the San José Police Department (SJPD) Duty Manual. Police officers are allowed to use force in the performance of their duties when they are compelled to overcome resistant or combative individuals 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.

I. Force Cases and Allegations

A. Force Cases

Twenty-two percent of the complaints filed in 2008 contained one or more *Force* allegations. Unlike prior years, all were filed by a member of the public; there were no internal cases initiated by the Department in which *Force* was alleged.

Illustration 4-A: Force Cases Filed from 2005 through 2008



CHAPTER FOUR | USE OF FORCE ANALYSIS

Illustration 4-A shows a four-year overview of the number of Force Cases filed. Although the number of Force Cases has increased since 2005, the percentage of Force Cases relative to all complaints has remained relatively steady.³⁶

Illustration 4-B shows the classification of Force Cases filed in 2007 and 2008; 117 complaints containing *Force* allegations were filed in each of those years.

Of the 117 Force Cases filed in 2007, 79% were formally investigated — meaning that the subject officer was interviewed at Internal Affairs. INQUIRY complaints containing *Force* allegations decreased in 2007. Thus, 2007 reflected a positive change; more officer names were tracked in Force Cases and more officers were being interviewed relative to prior years resulting in increased information regarding these investigated complaints.

While 2007 data reflected a positive trend, 2008 data reflect a year of change. Many of the Force Cases filed in 2008 were classified under the new complaint process implemented in July 2008. The available data shows that 41 cases were formally investigated under the former process - about 35% of the total Force Cases. Sixty Force Cases were classified after July 2008 as CONDUCT COMPLAINTS, a classification that does not indicate whether any subject officer was interviewed.

B. Force Allegations

From 1997 to mid-2008, the Internal Affairs Unit divided allegations of *Unnecessary Force* into two categories: *Class I* and *Class II*. *Class I* Force Cases were the most serious; these cases entailed allegations of *Force* which caused serious bodily injury requiring medical care.³⁷ The *Force* allegations were divided so that investigations of *Class I* Force Cases could be prioritized and expedited. It was anticipated that *Class I* Force Cases would be resolved within 180 days.

Illustration 4-B: Classification of Force Cases Filed in 2007 and 2008 *

COMPLAINTS CLASSIFICATION	2007		2008	
	#	%	#	%
Citizen-Initiated Complaints	93	79%	41	35%
Conduct Complaints	N/A	N/A	60	51%
Department-Initiated Complaints	1	1%	0	0%
Procedural Complaints	14	12%	10	9%
Policy Complaints	0	0%	0	0%
Inquiry Complaints	7	6%	4	3%
Withdrawn	2	2%	2	2%
Total UF Complaints	117	100%	117	100%

* This illustration does not include the NON-MISCONDUCT CONCERN classification; by definition these matters are not considered complaints.

³⁶See **Table 10** in **Appendix C** for details on the classification of Force Cases from 2005 through 2008.

³⁷Serious bodily injury as defined by Penal Code Section 243(f)(4).

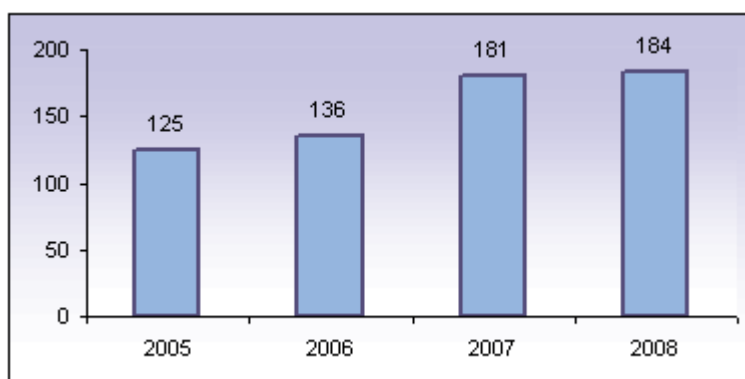
CHAPTER FOUR | USE OF FORCE ANALYSIS

The number of *Force* allegations can be higher than the number of Force Cases because a complaint may contain more than one *Force* allegation. Of the 1,147 allegations contained in all complaints, 184, 16% were allegations of *Force*. The number and percentage of *Force* allegations

has remained steady over the last two years.

Illustration 4-C shows the number of *Force* allegations received from 2005 through 2008. Between January and December 2008, there were 184 allegations of *Force*.

Illustration 4-C: Force Allegations – Four Year Overview



C. Force Cases and the Revised Complaint Process (RCP)

The effect of the RCP is evident in the classification and investigation of Force Cases. Under the prior process three factors were visible to the IPA in the classification process:

- 1) the degree of injury alleged by the complainant;
- 2) the level of investigation to be conducted; and,
- 3) the retention of *Force* allegations.

The RCP eliminated the distinction between the *Class I* and *Class II Force* allegation. The IPA recommended that the distinction between *Class I* and *Class II* be preserved so that complaints involving more serious injuries could be tracked to ensure proper classification and timely

investigation. In general, the *Class I Force* allegation provided a “red flag” which allowed the IPA to notice and take early action on cases alleging serious force.³⁸ For example if, upon routine review of new cases, the IPA saw that an INQUIRY complaint contained a *Class I Force* allegation, IPA staff would examine the case summary and perhaps request additional information be provided. If IPA concerns were not resolved, the IPA could request a change in classification. Likewise, if the IPA saw that a *Class I Force* complaint was placed in the PROCEDURAL classification — one that does not include interviews of subject or witness officers — the IPA could request a change to the CITIZEN-INITIATED classification and attend subject officer interviews.

³⁸Early action tends to be effective in resolving classification issues and in overall use of resources.

CHAPTER FOUR | USE OF FORCE ANALYSIS

When *Class I* and *Class II Force* allegations were distinct, the IPA could determine whether one or more *Class I Force Cases* were approaching time deadlines. Without a mechanism to distinguish serious force from less serious force, it is difficult for the IPA to track whether serious *Force* complaints are investigated promptly.

With the implementation of the RCP, the CONDUCT COMPLAINT classification gives no indication that the subject officer in a *Force Case* will be interviewed in the course of the investigation. Under the former process, the IPA could rely on the expectation that subject officers would be interviewed in CITIZEN-INITIATED cases and would not be interviewed in PROCEDURAL cases. Under the RCP, the IPA will not know until the complaint has been closed that the subject officer was never interviewed and that the case has been closed based only on interviews of citizens and/or written documents (generally police reports and dispatch records).

Under the former process, allegations of *Force* were retained regardless of how the case was classified. Even if the case was closed as INQUIRY with the removal of the officer's name, the shared database retained *Force* allegations along with any other enumerated allegations. The retention of allegations was important because it allowed the IPA to determine whether patterns or trends emerged from aggregate data. Under the RCP, once a case is classified as a NON-MISCONDUCT CONCERN, the officer's name and allegations are

removed. With the implementation of the RCP, identification of *Force* concerns classified as NON-MISCONDUCT CONCERN is more difficult to track.

D. Force Cases by Ethnicity

The IPA attempts to capture the ethnicity of complainants during the initial complaint intake as well as through voluntary surveys. Information on ethnicity was obtained from 447 complainants in 2008; this is not reflective of the total number of 641 individual complainants named in 569 external cases filed because the ethnicity of some persons filing complaints is not available. The information in this section and in **Illustration 4-D** shows the number of investigated *Force Cases*³⁹ by the ethnicity of the complainant based upon those matters filed in 2008 on which ethnicity data is available.

- Hispanic/Latino complainants filed 60% of the *Force Cases* and 29% of the total complaints/cases⁴⁰ filed in 2008 in which ethnicity data is available.
- African-American complainants filed 15% of the *Force Cases* and 12% of the total complaints/cases⁴¹ filed in 2008 in which ethnicity data is available.
- Caucasian complainants filed 13% of the *Force Cases* and 20% of the total complaints/cases⁴² filed in 2008 in which ethnicity data is available.

³⁹Investigated complaints exclude INQUIRIES (under the former complaint process) and NON-MISCONDUCT CONCERNS (under the RCP).

⁴⁰Complaints/cases include cases classified as NON-MISCONDUCT CONCERNS. The term "complainant" refers to persons who filed matters classified as either a "complaint" or a NON-MISCONDUCT CONCERN.

⁴¹See footnote 40.

⁴²See footnote 40.

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Illustration 4-D: Force Cases by Ethnicity *

ETHNICITY FROM COMPLAINANT'S SURVEYS & INTAKE	Total Ethnicity of UF Complainants		Total External Complainants		% of San Jose Population**
	Number	%	Number	%	
African American	20	15%	78	12%	4%
Asian/Pacific Islander	6	4%	18	3%	13%
Caucasian	18	13%	127	20%	36%
Filipino	1	1%	3	0%	5%
Hispanic/Latino	82	60%	188	29%	30%
Native American	0	0%	0	0%	1%
Vietnamese	0	0%	7	1%	9%
Other	8	6%	18	3%	2%
Decline/Unknown Ethnicity	2	1%	202	32%	0%
Complainant's Response to Surveys/Intake	137	100%	641	100%	100%

* Information on ethnicity of complainants is obtained during intake and from voluntary surveys. Not all complainants reside within the City of San José.

** Source: U.S. Census Bureau, Census 2000.

The data in this table only reflects the ethnicity of individuals who filed allegations of *Force* and who chose to reveal their ethnicity during the complaint process. It does not reflect the total number of individuals against whom the SJPD used force in 2008 because many of these individuals did not file complaints. The SJPD tracks reportable uses of force by SJPD officers on individuals.

E. Force Cases Closed/Audited in 2008

The IPA audited 99 closed Force Case investigations in 2008. Of these closed investigations, 63 were closed as “agreed at first review,” 11 were closed as “agreed after further action” and 25 were closed as “disagreed.”

The IPA tracks force data both from complaints filed and from audits of closed investigations. In order to determine whether any trends or patterns can be detected from Force Cases the IPA tracks the following information as reported by

the complainant: 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. **Illustration 4-E** and **4-F** contain data that reflect the degree of injury, if any, and physical location of force alleged by a complainant, not the injury level or location reported by the officer or contained in medical reports.

Illustration 4-E 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 require significant medical attention, whereas minor injuries require little or no medical attention. For example, minor injuries can involve minor abrasions, bruising or skin irritation from the use of chemical agents.

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Data from cases closed in 2008 show that minor injuries continue to account for the highest percentage of injury levels; in 2008 there were 50

Force allegations which resulted in minor injuries. For a four-year overview of complainant’s level of injury, see **Table 11** in **Appendix C**.

Illustration 4-E: Complainant’s Level of Injury

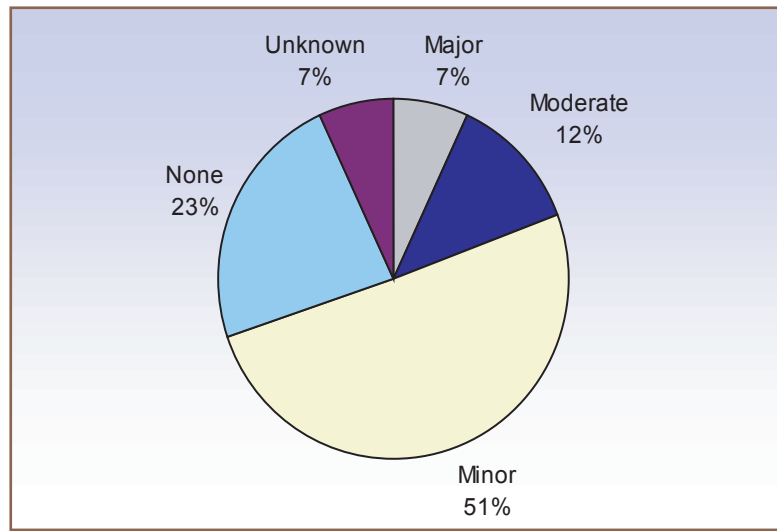


Illustration 4-F provides data reflecting the part of the complainant’s body that was impacted by the alleged force. The IPA tracks this data to determine if any trends exist in Force Cases. The areas of the body are divided into five categories: head, torso, limbs, multiple body parts and unknown. Alleged force can impact more than

one body area. The IPA closely monitors the number of allegations citing head injuries, as force to the head has the greatest potential to cause serious injuries.

Illustration 4-F: Location of Force Applications – Four-Year Comparison

LOCATION OF FORCE APPLICATIONS	2005		2006		2007		2008	
	Number	%	Number	%	Number	%	Number	%
Head	11	16%	16	18%	23	19%	27	22%
Torso	30	43%	31	34%	18	15%	24	20%
Limbs	24	34%	35	38%	36	31%	30	25%
Multiple Body Parts	3	4%	6	7%	36	31%	38	31%
Unknown	2	3%	3	3%	5	4%	3	2%
Total	70	100%	91	100%	118	100%	122	100%



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Illustration 4-G: Type of Forced Allegation – Four-Year Comparison

TYPE OF UNNECESSARY FORCE	2005		2006		2007		2008	
	Number	%	Number	%	Number	%	Number	%
Baton	9	11%	11	10%	19	12%	13	7%
Canines	1	1%	0	0%	0	0%	2	1%
Car	1	1%	6	5%	0	0%	1	1%
Chemical Agent	6	7%	3	3%	6	4%	3	2%
Gun	2	2%	1	1%	2	1%	3	2%
Feet	4	5%	3	3%	6	4%	12	7%
Ground	14	17%	17	15%	13	8%	30	17%
Hands	29	35%	43	38%	64	41%	73	41%
Handcuffs	5	6%	5	4%	14	9%	6	3%
Knee	5	6%	9	8%	8	5%	16	9%
Taser	7	8%	10	9%	13	8%	12	7%
Object	0	0%	0	0%	2	1%	1	1%
Other	0	0%	4	4%	10	6%	4	2%
Unknown	0	0%	1	1%	1	1%	2	1%
Total	83	100%	113	100%	158	100%	178	100%

Data about the types of force used is collected to track the frequency as shown in **Illustration 4-G**. The number of types of force alleged is greater than the total number of Force Cases 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 force. For example, a complainant may allege that one officer struck him with a baton, and another officer hit him with fists and slammed him against a wall. This example would account for three different types of *Force* allegations against multiple officers in one complaint. **Illustration 4-G** reflects the types of *Force* alleged by the complainant not necessarily those confirmed through the investigation.

Illustration 4-G shows that the aggregate total of the different types of *Force* allegations has increased from 83 in 2005 to 178 in 2008.⁴³ The use of hands was the type of force reported most frequently over

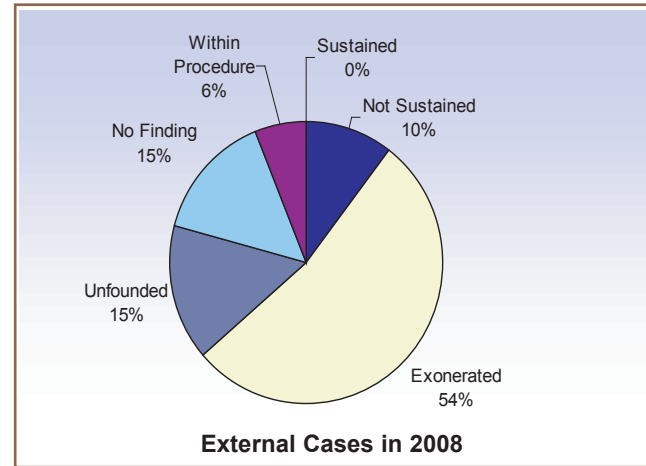
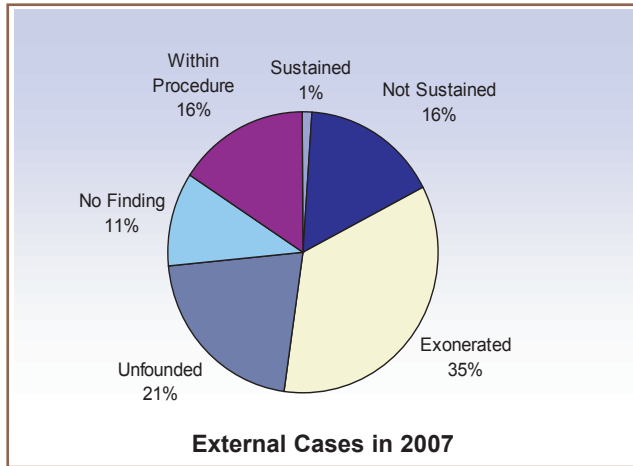
the last four years ranging from 35 to 41% of force applications. In 2008 the next two types of *Force* alleged were use of the ground and use of knees. The use of a Taser and the use of a baton were the fourth most frequently alleged types of *Force*.

Illustration 4-H provides general information concerning the disposition of *Force* allegations in closed complaints in 2007 and 2008. No *Force* allegations were sustained in 2008. The majority of the *Force* allegations were closed with a finding of “exonerated” meaning that the investigations determined that the level and type of force used by the officers were reasonable and justified. Fifteen percent of the *Force* allegations were closed as “no finding” and the same percentage was closed as “unfounded.” **Table 12** in **Appendix C** provides a detailed table showing the disposition of *Force* allegations in external cases from 2005 to 2008.

⁴³This increase in types of force recorded may reflect that fewer cases containing *Force* allegations were classified as INQUIRY and more cases were classified into categories which were investigated and which received an IPA audit. Details describing the type of *Force* used is obtained only through audits of investigated complaints.

CHAPTER FOUR | USE OF FORCE ANALYSIS

Illustration 4-H: Disposition of Force Allegations in External Cases in 2007 and 2008



II. Officer-Involved Shooting and Fatal Critical Incident

There were no officer-involved shootings in 2008. If an officer-involved shooting incident occurs, the IPA has enumerated responsibilities. Information about officer-involved shooting incidents and the responsibility of the IPA in the review of such incidents is outlined in this section.

The use of deadly force is the most serious type of force that can be used by a police officer. The SJPD Duty Manual Section L2638 states, “An officer may discharge a firearm under any of the following circumstances: . . . When deadly force is objectively reasonable 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 community concern and questions arise as to the necessity for the use of lethal force. In recognition of the serious nature of these issues,

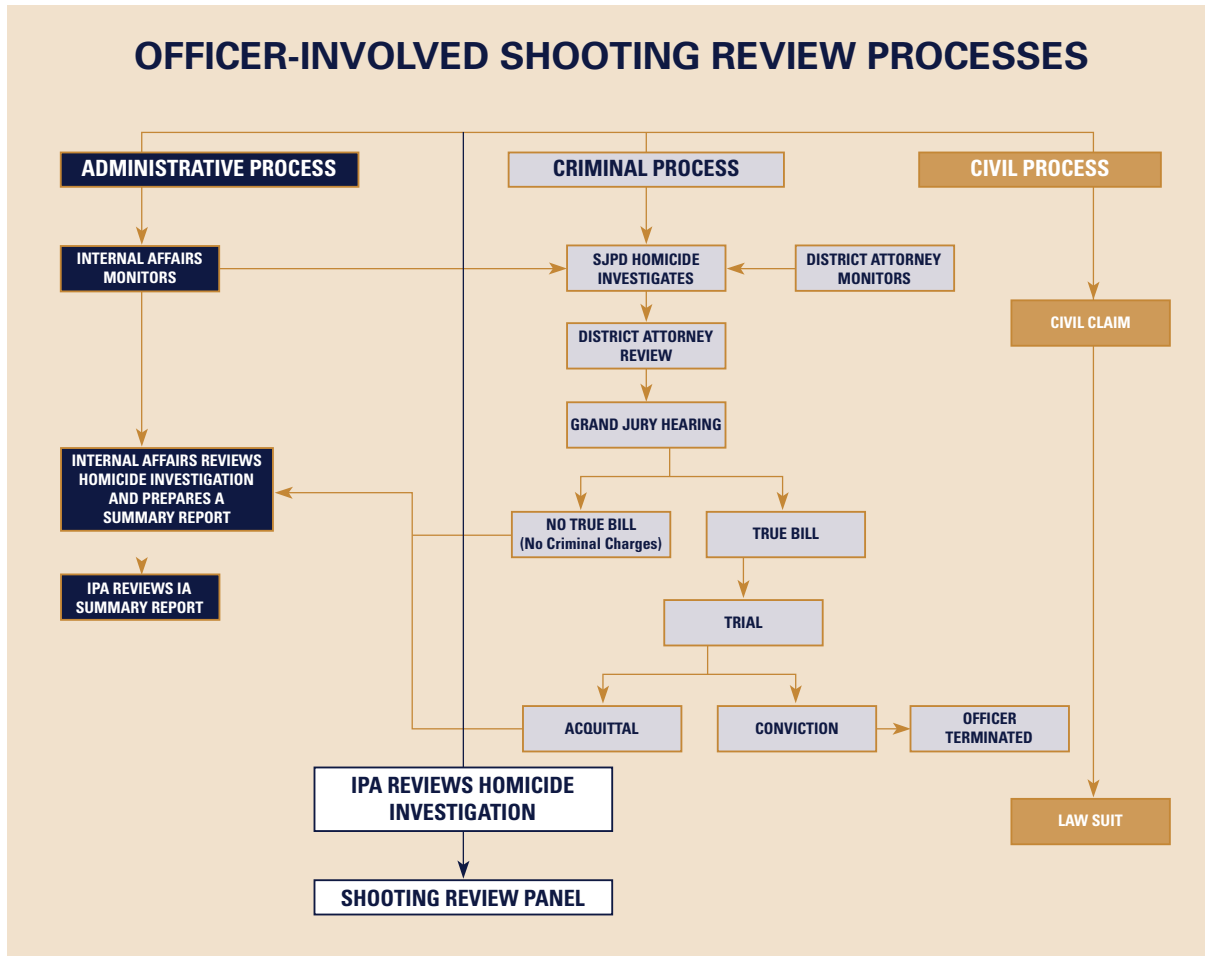
the IPA has been given specific responsibilities regarding such incidents including responding to the scene when these incidents occur and participating on the shooting review panel after review of the SJPD homicide investigation.⁴⁴

Every officer-involved shooting that results in death is subject to an intensive investigation and review process that is outlined in the flow chart in **Illustration 4-I**. 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 department policy.

⁴⁴There were three officer-involved shootings in 2006. Shooting review panels have been conducted on two of the three incidents; there has been no shooting review panel on a fatal November 2006 officer-involved shooting incident. See 2006 IPA Year End Report at page 48 for additional information on these three incidents. There was one officer-involved shooting in 2007. See 2007 IPA Year End Report at page 45 for additional information on this incident.

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Illustration 4-1: Officer-Involved Shooting Review Process



III. 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 2008, 20 San José officers received the 40-hour Crisis Intervention Training (CIT); 55 San José officers received such training in 2007.⁴⁵ The IPA continues

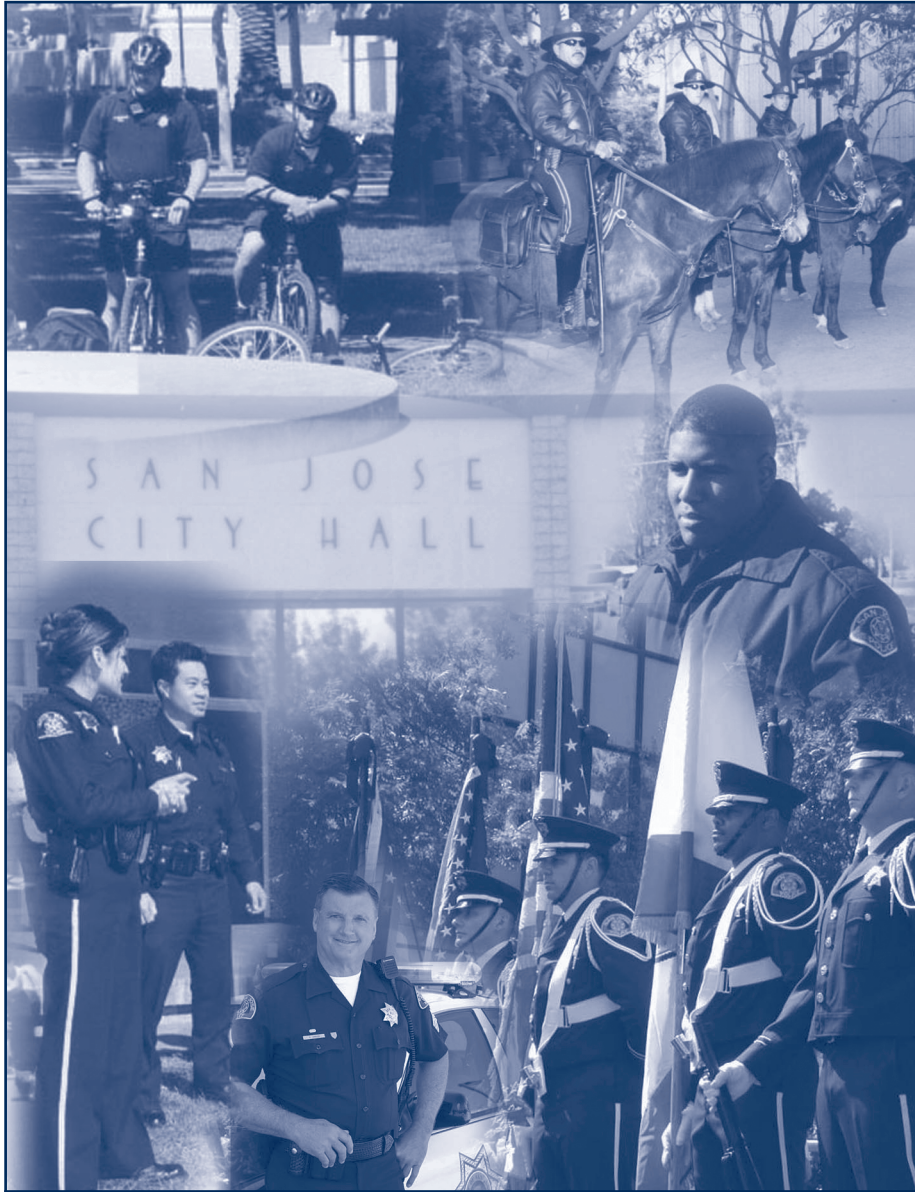
to encourage and support this type of training for SJPD officers to help reduce the need for officers to use force, including deadly force.

Similarly, SJPD continues to require officers to take a four-hour firearms skill training as part of the “Continuous Professional Training” (CPT) Program. Each officer must take this training every 24 months. The SJPD uses the Force-Option Simulator training which utilizes state-of-the-art interactive video simulations of real-life scenarios that require officers to react to life-threatening situations. In 2008, 371 officers received this training.

⁴⁵SJPD also provides this CIT training to emergency call-takers, dispatchers and officers from other law enforcement agencies.



SUBJECT OFFICER DEMOGRAPHICS



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

Chapter Five



CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

In 2008 the Department reported 1383 sworn officers, the largest number of officers since 2000. For the past eight years the SJPD has maintained a force numbering between 1320 and 1399 sworn police officers. The population of San José has increased from 892,558⁴⁶ to more than 1 million residents during the same period. The Department continues to actively recruit the best available candidates to meet Department needs. In 2008 the SJPD conducted two police academies, training 67 new officers.

I. Complaints by Gender of Subject Officers

The gender of San Jose officers named as subject officers in complaints is reflected in **Illustration 5-A**. Thirty-nine subject officers were female, 10% of all subject officers. The percentage of complaints filed against male officers was 90% which corresponds with the percentage of all male officers in the Department.

Illustration 5-A: Gender of Subject Officers in 2008

GENDER	Subject Officers	%	SJPD Sworn Officers	%
Male	355	90%	1250	90%
Female	39	10%	133	10%
Total	394	100%	1383	100%

II. Ethnicity of Subject Officers in 2008

The SJPD recruiting effort strives to attract officers from all backgrounds and cultures. **Illustration 5-B** provides a general breakdown of the ethnicity of officers employed by the Department as of December 2008, and the ethnicity of the officers named in complaints during the calendar year. The data reveals that the ethnicity of the subject officers in 2008 closely mirrors their total representation in the Department. Caucasian officers were identified as subject officers in 60% of complaints; Caucasian officers comprise 58% of all SJPD officers. The second largest number of complaints named officers identified as Hispanic/Latino; this group comprises 23% of the Department and was named in 23% of all complaints in 2008.

Illustration 5-B: Ethnicity of Subject Officers in 2008

ETHNICITY	Subject Officers	%	SJPD Sworn Officers	%
Native American	5	1%	8	1%
Asian American/Pacific Islander	32	8%	127	9%
African American	14	4%	64	5%
Filipino American	12	3%	35	3%
Hispanic/Latino	89	23%	320	23%
White	238	60%	799	58%
Not Available	4	1%	30	2%
Total	394	100%	1383	100%

⁴⁶CA Department of Finance.

CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

III. Years of Experience of Subject Officers

The number of years an officer has been with the SJPD and the number of officers named in complaints suggest that officers in their first four years of experience are named in the largest number of complaints. **Illustration 5-C** provides a breakdown of subject officers and their years of experience.

Illustration 5-C: Years of Experience of Subject Officers in 2008

YEARS OF EXPERIENCE	Total Subject Officers	%	Total SJPD Sworn Officers	%
0- 1	31	8%	141	10%
2- 4+	81	21%	154	11%
5- 6+	41	10%	69	5%
7- 10+	71	18%	247	18%
11- 15+	82	21%	338	24%
16+	88	22%	434	31%
	394	100%	1383	100%

IV. Subject Officers Named in One or More Complaints

The data collected by IA and the IPA records officers named in complaints during the year; not all complaint types include officer names. In 2008, 394 officers were named in complaints – 28% of all SJPD officers. Of these officers, 96 were named in more than one complaint. **Illustration 5-D** presents a five-year overview of the number of times an individual officer was named in a complaint.

Complaints contain allegations ranging in severity from *Rude Conduct* to *Force* and may be closed with findings of unfounded, exonerated, not sustained or sustained. While it is important to track multiple complaints against a single officer,

it is important to remember that most complaints do not result in a sustained finding. The consequences of receiving multiple complaints can range from an officer receiving early warning intervention counseling to officer termination.

SJPD started the Intervention Counseling program as an "Early Warning System" to address minor allegations of misconduct at an early stage. Early intervention provides the Department with a tool to identify potential problems and provide timely guidance to officers. A more detailed description of the "Early Warning System" is provided in the text box on page 49.

There were no early intervention sessions during the first six months of 2008. Between July-December 2008 counseling sessions were held with 14 officers.

CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

Illustration 5-D: Five-Year Overview of Complaints Received by Individual Officers *

OFFICERS RECEIVING	NUMBER OF OFFICERS				
	2004	2005	2006	2007	2008
1 Complaint	171	188	177	257	298
2 Complaints	33	30	35	59	67
3 Complaints	4	3	5	18	16
4 Complaints	1	2	0	3	10
5 Complaints	0	0	0	1	2
6 Complaints	0	1	0	0	1
7 Complaints	0	0	0	0	0
8 Complaints	0	0	0	1	0
Total Number of Officers Receiving Complaints	209	224	217	339	394

* Subject officer names are not retained in complaints classified as INQUIRY, NON-MISCONDUCT CONCERN, POLICY, CITIZEN CONTACT OR WITHDRAWN, or complaints closed with a finding of Exonerated, Unfounded, or No Misconduct Determined.

Complaint Intervention Programs — An Early Warning System

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 or more complaints containing the same allegation or a combination of five complaints of any type within a 12-month period.* Officers meeting these criteria are required to participate in Intervention Counseling. The 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 Counseling Program to work with the supervisor when three or more complaints are filed against members of his/her team within a six-month period. The program is designed to ensure that a supervisor is aware of the patterns of officer behavior that led to the citizen complaints and to suggest strategies that can be implemented by the supervisor to reduce future complaints.

* NON-MISCONDUCT CONCERNS are not tracked under this early warning system.

CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

Continuing Professional Training (CPT)

Police Officers Standards and Training requires that officers continually refresh and review perishable skills; SJPD also provides additional training in areas of interest or concern. Twenty-four hours of CPT are required bi-annually. Every year the SJPD Training Unit provides a minimum of 12 hours of tactical and educational training on a variety of subjects including Force Options Simulator Training, Arrest Control Tactics, Racial Profiling, and Communication Skills.

In 2008:

- 371 officers received Force Options Simulator training,
- 1,372 officers received 12 hours of training including Active Shooter/ Rapid Deployment training,
- 1,158 officers received refresher training in First Aid and CPR.

Critical Incident Training (CIT)

In 1999 the SJPD instituted a training designed to strengthen officer response to incidents involving persons with serious mental illness.

The benefits provided by this 40-hour training include:

- Better trained and educated officers and dispatchers,
- A decrease in the use of force during crisis events,
- Fewer injuries to individuals with mental illness,
- Improved interaction between police and mental health service providers.

More than 400 officers and 90 police dispatchers with the SJPD have completed the CIT academy since 1999. This training is also sought after by other law enforcement agencies; approximately 130 officers from neighboring police departments have received this training from SJPD.

COMMUNITY OUTREACH

Chapter Six

Outreach to the community is an essential function of the Office of the Independent Police Auditor (IPA). As mandated by the City Charter, the IPA conducts outreach to the public about the services of the IPA office. Such outreach makes IPA services visible and accessible to the community. It assists the IPA in assessing the needs of diverse groups and helps to create public confidence in both the IPA and the police misconduct complaint process. This chapter discusses various categories of IPA outreach in 2008 and describes targeted efforts to reach vulnerable populations such as youth, ethnic minorities and immigrants.

I. Outreach Activities

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 activities such as:

- attending community events and resource fairs;
- making presentations to students, neighborhood groups, and community based organizations;
- sending mailings to community members, community based organizations, and others;
- holding community forums;
- participating in television and radio programs; and,
- holding press conferences and media interviews.

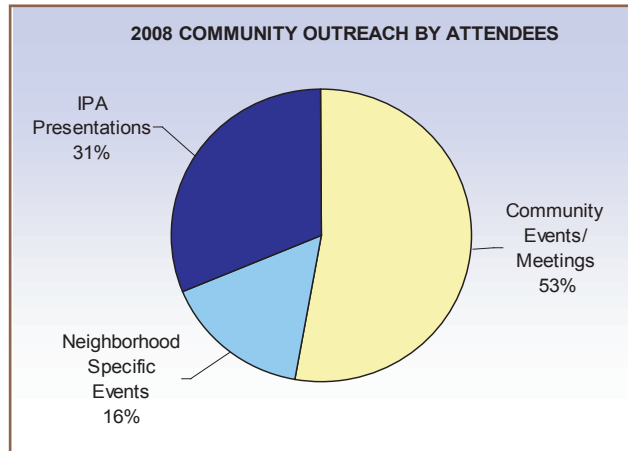


IPAAC Member Alofa Talivaa, Author Brian Copeland, and Barbara Attard, Domestic Violence Walk, City Hall, October 2008.

CHAPTER SIX | COMMUNITY OUTREACH

Through these varied activities, the IPA staff attended 180 events involving approximately 5,824 community members in 2008.⁴⁷ See **Illustration 6-A**.

Illustration 6-A: General Community Outreach in 2008



TYPES OF COMMUNITY OUTREACH	2008			
	Events	%	Attendees	%
Community Events/Meetings	106	59%	3077	53%
Neighborhood Specific Events	14	8%	917	16%
IPA Presentations	46	26%	1830	31%
Media/Press Conferences	14	8%	Unknown	Unknown
Community Outreach Totals	180	100%	5824	100%
Meetings with City Officials	56	N/A	91	N/A

See **Table 13** in **Appendix C** for 2006-2008 data.

A. Community Events/Meetings

The Community Events/Meetings category consists of those events and meetings that have significant community member presence. If the IPA or staff actively participate, or are introduced to the audience, the number of attendees is counted. In 2008 outreach efforts in the Community Events/Meetings category reached 3,077 individuals, 53% of the audience for the year. This category included IPA participation in events such as:

- Annual Domestic Violence Walk (City Hall)
- Disability Awareness Day & Resource Fair (City Hall)
- Women’s Equality Day Breakfast (City Hall)

B. Neighborhood Events

The Neighborhood Events category includes those events that focus on a particular district or on the concerns of residents in a specific neighborhood within the larger San José community. The IPA

⁴⁷This number does not include those individuals who received IPA information through the City’s One Voice program which disseminates materials on behalf of numerous City agencies at community events throughout each year. Although it includes the number of media contacts the IPA had in 2008, it does not reflect the number of individuals reached through those interviews.

CHAPTER SIX | COMMUNITY OUTREACH

participated in 14 such events in 2008 and reached 917 individuals. Examples include:

- Berryessa Art & Wine Festival (District 4)
- National Night Out events at Emma Prusch Park (District 5)
- Gang/Youth Violence Neighborhood Meetings (Districts 3, 5, 7)
- Community Resource Fairs (Districts 1, 2, 7, 9)



Clean Slate Youth Outreach Specialist Juan Avila and IPA Barbara Attard, Emma Prusch Park, National Night Out, August 2008.

C. IPA Presentations - Community

IPA staff conducts presentations to a wide variety of audiences in diverse settings. In 2008, the IPA offered 46 presentations to 1,830 attendees, including:

- College students at San Jose State University (District 3)
- Concerned residents at the Crime & Gang Prevention Summit at City Hall (District 3)
- Hoffman Via Monte Neighborhood Group at the Cornerstone Church (District 10)
- Sons in Retirement Members at their monthly luncheon, Flames Restaurant (District 9)

IPA Presentations to SJPD

Over the last several years, the IPA has provided bi-annual presentations to recruits in the SJPD Academy regarding IPA functions and the misconduct complaint process. The presentations are offered shortly before the new recruits begin their field training on the streets of San Jose. In addition, the IPA provides bi-annual customer service presentations to officers assigned to the SJPD information center on Mission Street. Such outreach creates a positive relationship between the IPA, the community it serves, and police officers. These presentations are included in the total number of IPA presentations in **Illustration 6-A** on page 52.

D. Presentations Evaluations

Attendees at IPA presentations are usually asked to complete a basic evaluation at the close of the presentation in order to assess the overall quality. The evaluations provide information regarding the effectiveness of IPA presentations in fulfilling the IPA's mandate to provide information to the community about IPA services. Attendees are encouraged to note the most interesting or important sections of the presentation and any additional issues they wish were addressed. Through these evaluations, the IPA receives valuable insight into matters of concern to the attendees.

In 2008, 503 individuals returned evaluations at the close of the IPA presentations. The number is much smaller than the total number of attendees at all IPA presentations because some attendees

CHAPTER SIX | COMMUNITY OUTREACH

did not return the evaluations and because a considerable number from outside of the San José area were not surveyed.⁴⁸

The evaluation responses received in 2008 were very positive. Ninety percent of the responders rated the IPA presentation good or excellent. Attendees consistently reported that their knowledge about the IPA office and the police misconduct complaint process increased after attending the presentation. They found the IPA informational materials helpful and the presenter knowledgeable. The evaluation questions and responses by percentage are provided below. The language used on the evaluation tool for youth was slightly different in that it was simplified but still retained the same meaning.



Barbara Attard joined a team of experts in conducting training on internal police investigations and oversight in Abuja, Nigeria, November 2008. The project was a partnership of the CLEEN Foundation and the Open Society Justice Initiative.

- Did today's presentation increase your knowledge about the Office of the Independent Police Auditor?
 - o 99% replied yes
- Did today's presentation increase your knowledge about the complaint process?
 - o 96% replied yes
- Was the presenter knowledgeable about the subject matter?
 - o 98% replied yes
- Were the materials provided helpful?
 - o 96% replied yes
- Overall, how would you rate the presentation? (Excellent, Good, Average or Poor)
 - o Excellent -- 62%
 - o Good -- 28%
 - o Poor -- .4%
 - o No response -- 1.6%

⁴⁸For instance, several hundred individuals at the annual conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE) attended presentations given by the IPA and Assistant IPA but were not given the evaluation forms as the conference uses its own assessment tools.

CHAPTER SIX | COMMUNITY OUTREACH

II. Outreach to Ethnic Minority Community Members, Immigrants & Youth

The IPA has a strong commitment to reaching diverse groups of individuals who may benefit from the services of the IPA office. The IPA has prioritized this outreach; members of ethnic minority groups, immigrants and youth have been the subject of focused efforts over the last several years.

A. Ethnic Minority Community Members & Immigrants

San José is a diverse city comprised of individuals from numerous ethnic backgrounds. In order to ensure that local minority communities are aware of available services, the IPA participated in 71 events involving ethnic minority members or immigrants in 2008, 39% of the 180 total IPA outreach events for the year. They included events such as a Dialogue with Immigrants sponsored by the County Office of Human Relations, a youth forum sponsored by the Filipino Youth Coalition, and numerous La Raza Roundtable meetings. Presentations to young members of minority groups were offered at locations such as the McKinley/Roosevelt After-

School Program and the Bill Wilson Center’s Independent Living Program.



Former District 2 Council Member Forrest Williams, Barbara Attard and Richard Hobbs at reception following Ms. Attard’s receipt of the Don Edwards Civil Liberties Award from the Santa Clara Valley Chapter of the ACLU, May 2008.

B. Youth

The IPA recognizes the importance of educating young people about police practices and informing them about the services of the IPA. Youth-focused outreach occurred in almost all outreach categories: community events/meetings, neighborhood specific events, and IPA presentations. IPA staff participated in 59 events involving youth or those that work with them in 2008, 33% of the total 180 outreach events for the year. Examples are:

Illustration 6-B: Outreach to Ethnic Minority Community Members & Immigrants in 2007 and 2008

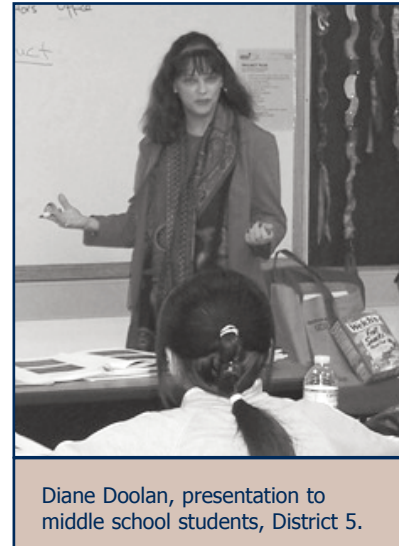
TYPES OF ACTIVITY/EVENT	Ethnic Minority Members & Immigrants 2007		Ethnic Minority Members & Immigrants 2008	
	Events	Attendees	Events	Attendees
Community Events/Meetings	29	1585	41	1422
Neighborhood Specific Events	6	342	6	246
IPA Presentations	47	717	24	635
Ethnic Media	6	Unknown	2	Unknown
Ethnic Minority & Immigrants Totals	88	2644	73	2303
Community Outreach Totals	222	7307	180	5824

CHAPTER SIX | COMMUNITY OUTREACH

- Clean Slate Tattoo Removal Graduation at the Northside Community Center (District 3)
- County Probation Juvenile Resource Fair at Juvenile Hall (District 3)
- Plata Arroyo Park Youth Resource Fair (District 5)
- Youth Revolution Resource Fair at San Jose City College (District 6)

IPA staff continued to use an interactive youth presentation that gives young participants an opportunity to express their concerns about police issues and receive valuable information about what to do (and what not to do) when interacting with police officers. Presentations normally involve groups of 25 or fewer in order to promote meaningful dialogue with young audience members. Of the 46 total presentations offered by the IPA staff in 2008, 25 involved this specialized youth presentation. Locations included:

- Children’s Shelter for Santa Clara County (District 9)
- FLY Evening Reporting Center (District 4)
- Juvenile Hall of Santa Clara County (District 3)
- Luther Burbank School (District 6)
- Oak Grove High School (District 2)



Diane Doolan, presentation to middle school students, District 5.

- Overfelt High School (District 8)
- Shepphard Middle School (District 5)
- Starbird Youth Center (District 1)
- Yerba Buena High School (District 7)

Staff members who serve young people through the Firehouse Community Development Corporation, Eastfield Ming Quong, and the Center for Training and Careers received IPA presentations similar to the specialized youth presentations. Brief presentations were also given to the City’s Youth Commission and members of the Technical Team of the Mayor’s Gang Prevention Task Force.

Illustration 6-C: Outreach to Youth in 2007 and 2008

TYPES OF ACTIVITY/EVENT	Youth 2007		Youth 2008	
	Events	Attendees	Events	Attendees
Community Events/Meetings	10	422	24	627
Neighborhood Specific Events	4	97	4	246
IPA Presentations	44	721	31	722
Youth Media	2	N/A	0	N/A
Youth Totals	60	1240	59	1595
Community Outreach Totals	222	7307	180	5824

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The success of the IPA's targeted youth outreach program is the result of cooperation from a number of local agencies and organizations that help the IPA access at-risk youth in a variety of settings. Examples include:

- Asian Americans for Community Involvement (AACI)
- Catholic Charities
- Girls Scouts of Santa Clara County's "Got Choices" Program
- YWCA's New Options Program

The IPA continues to attend meetings of the Mayor's Gang Prevention Task Force and other youth-focused events in order to cultivate ongoing relationships with key youth service providers throughout the City.

The data reveals that the majority of IPA outreach events occurred in District 3; however, most of the events in that district involved individuals from all council districts. For instance, the 2008 Disability Awareness Day & Resource Fair event was held at City Hall but drew residents from throughout the city. All of the presentations at Juvenile Hall were counted as District 3, the district within which Juvenile Hall is located.

Although the council district of each attendee at public events is unknown, an overview by council district is still a useful tool in reviewing IPA outreach and setting future targets. IPA staff has met with council staff in most districts to discuss Council priorities and outreach goals within each district for the coming year.

III. Outreach by Council District

In 2007 the City Council expressed an interest in viewing IPA outreach by council district in the future. **Illustration 6-D** presents IPA outreach in 2008 by council district. An overview of the distribution of IPA informational materials by district is also available on page 58.



IPA Barbara Attard and Former District 8 Council Member Dave Cortese at dedication of Cesar Chavez Arch, SJSU, September 2008.

Illustration 6-D: IPA Outreach by Council District in 2008

COUNCIL DISTRICTS	%
District 1	2%
District 2	3%
District 3	53%
District 4	4%
District 5	6%
District 6	5%
District 7	4%
District 8	3%
District 9	2%
District 10	1%
N/A *	17%
Total	100%

* N/A or unknown: Includes events, meetings, and presentations that occurred outside of San José. For example, the Bill Wilson Center Luncheon was in Santa Clara, West Valley Community College is in Saratoga, and the annual NACOLE conference was in Ohio.

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IV. IPA Publications

Each year the IPA distributes informational publications at resource fairs, presentations, and community events. IPA publications include the following:

- Brochure describing IPA functions and the complaint process;
- A Student's Guide to Police Practices (Student Guide) in print & CD form; and,
- IPA mid-year and year end reports.

Both the IPA brochure and Student Guide are available in English, Spanish and Vietnamese. IPA publications are also available on the IPA website: www.sanjoseca.gov/ipa/.

A total of 8,081 such materials were distributed by the IPA in 2008 at a wide variety of community outreach events and meetings. In addition, IPA brochures and Student Guides were mailed to all City community centers and libraries.

Illustration 6-E provides an overview of the distribution of IPA publications to community centers and libraries by council district. Because most City community centers and libraries are located in Districts 3 and 5, those districts reflect the largest percentage of IPA publications distributed by mail.

Illustration 6-E: Distribution of IPA Publications to Community Centers & Libraries by Council District in 2008

COUNCIL DISTRICTS	NUMBER OF CENTERS		NUMBER OF LIBRARIES		TOTAL	
	#	%	#	%	#	%
District 1	3	11%	2	11%	5	11%
District 2	2	7%	1	5%	3	6%
District 3	6	21%	3	16%	9	19%
District 4	2	7%	3	16%	5	11%
District 5	5	18%	2	11%	7	15%
District 6	2	7%	2	11%	4	9%
District 7	4	14%	1	5%	5	11%
District 8	2	7%	1	5%	3	6%
District 9	1	4%	2	11%	3	6%
District 10	1	4%	2	11%	3	6%
Total	28	100%	19	100%	47	100%

Note: This table includes a June 2008 mailing of IPA brochures to City of San José community centers and an October 2008 distribution of Student Guides to City libraries. It does not include the mailing of several hundred IPA reports throughout the year as those individual addresses are not tracked by council district.

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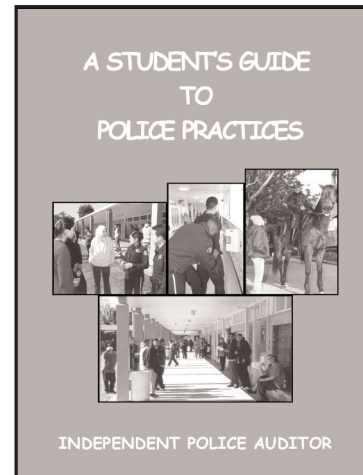
Updated Student Guide

In 2008 the IPA released a newly revised edition of “A Student’s Guide to Police Practices” (Student Guide). Originally released in 2003, the Student Guide is a valuable tool to educate youth about their rights and responsibilities when interacting with police officers. Popular among youth, parents and teachers, the booklet contains basic information 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. Suggestions on how to interact with police officers are also included.

New sections were added to the revised Student Guide addressing important issues affecting today’s youth, such as: gangs, cyberbullying, hate crimes, internet safety, probation searches, dating abuse, and steps to avoid being victimized. The resource section of the guide was expanded to include most agencies that are a part of the Mayor’s Gang Prevention Task Force (MGPTF).

The IPA collaborated with the San José Police Department, several City and County departments, selected agencies and a number of community members on the contents of the updated publication. The re-printing of the Student Guide was funded by the IPA, SJP, Office of the City Manager, and the City’s Department of Parks, Recreation, and Neighborhood Services. Substantive input and financial support of city, county and community based agencies was greatly appreciated as it made the updating and reprinting of the Student Guide

possible. Hundreds of copies, in print and CD form, were disseminated to youth, parents, and teachers in 2008.



V. Media

One of the most effective mechanisms for public outreach is the media. The IPA has made an effort to reach the San José community through newspaper, radio and television interviews. It is not possible to measure the number of individuals reached via the 14 media related interviews and press conferences that the IPA participated in during 2008. IPA issues, quotes, events and presentations received widespread coverage and were mentioned in several local newspapers including the San José Mercury News, the Metro Silicon Valley, and El Observador. Interviews with the IPA were captured on a number of local radio and television programs. In addition to the 14 media interviews and press conferences discussed above, the IPA was mentioned in at least 28 print, radio, television and internet articles in 2008.⁴⁹

⁴⁹The exact number of times the IPA was referred to by the media is unknown since such references are not always communicated to IPA staff for tracking.

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VI. Meetings with City Officials

In order to ensure communication and collaboration with key city officials, the IPA meets regularly with the Mayor, City Council members, the City Manager, City Attorney, SJPD and other City staff. Fifty-six (56) such meetings occurred in 2008 involving 91 individuals. While these meetings are not counted as community outreach, the information is presented in this chapter as it accounts for a considerable amount of IPA activity each year. In addition to the 56 meetings with city officials, the IPA and IPA staff attended 46 other city meetings. Examples include regular meetings of the following groups:

- Recognize Program;
- Public Safety and Neighborhood Services City Service Areas;
- Human Relations Liaisons; and,
- Communications Roundtable.



Council Member Pete Constant, Barbara Attard, Chief Davis, Mayor Reed and IPAAC Member Aila Malik, Press Conference, City Hall, September 2008.

VII. IPA Website

The IPA website www.sanjoseca.gov/ipa/ has become a vital outreach mechanism. It offers IPA outreach materials such as the Student Guide, year end and mid-year reports, information about the complaint process, and general information about civilian oversight of law enforcement. There were 39,336 visitors to the IPA website during 2008 and a total of 492,781 hits or files requested by visitors.⁵⁰



Barbara Attard and long-time IPAAC member Sofia Mendoza.

VIII. Independent Police Auditor Advisory Committee (IPAAC)

To meet the needs of San Jose's large and diverse population, the IPA seeks connections within the community that help to identify police-related issues and disseminate information regarding IPA services. The Independent Police Auditor Advisory Committee (IPAAC) was established in

⁵⁰The number of times a specific visitor views the IPA website during the year equals the number of visitors (39,336). Each file requested by a visitor on the website registers as a hit. There can be several hits on each page.

CHAPTER SIX | COMMUNITY OUTREACH

1999 with the purpose of identifying, mobilizing and coordinating resources to assure maximum public, private, agency and individual commitment to effective police oversight. Members of the advisory committee are invited to participate by the IPA and currently include community leaders, grassroots organizers, and individuals representing business, nonprofit and legal communities in San José, as well as ethnic minorities and youth. The support, advice, and insights offered by the IPAAC have been integral to the success of the IPA. For more information regarding the IPAAC and its members see page iii.



IPAAC Members, Press Conference, City Hall December 2008.

Above: Linda Young Colar, Merylee Shelton, Socorro Reyes McCord and Rev. Jeff Moore.

Below: Dennis Skaggs and Elisa Marina Alvarado.





CASES BY COUNCIL DISTRICT

Chapter Seven provides a discussion of complaints and allegations by the council district in which they occurred.

Historically there has been interest in the breakdown by council district of complaint incident locations. This chapter provides comparative data about cases received and presents information on the distribution of *Force* complaints by council district.

Illustration 7-A reflects the number of complaints/concerns reported to IA and the IPA for the past four years by council district. In 2008 74% of the locations associated with complaints were within San José. The remaining 26% occurred outside City limits or in areas that were not clearly identified.⁵¹ District Three, which includes the downtown area, continued to generate the largest number of complaints. Complaints across the remainder of the City were fairly equally distributed.

Illustration 7-A: 2005 - 2008 Complaints/Concerns Reported by Council District *

COUNCIL DISTRICTS	2005	%	2006	%	2007	%	2008	%
District 1	15	3%	9	2%	15	2%	19	3%
District 2	25	5%	21	4%	30	5%	28	4%
District 3	123	25%	143	26%	204	34%	156	25%
District 4	19	4%	21	4%	24	4%	29	5%
District 5	42	9%	38	7%	48	8%	39	6%
District 6	35	7%	49	9%	60	10%	58	9%
District 7	37	8%	41	7%	47	8%	53	8%
District 8	21	4%	24	4%	18	3%	22	4%
District 9	17	3%	26	5%	25	4%	31	5%
District 10	21	4%	22	4%	34	6%	29	5%
Unknown/Outside of City Limits	132	27%	165	30%	103	17%	161	26%
Total Cases Received *	487	100%	559	100%	608	100%	625	100%

* Includes all cases received regardless of classification.

⁵¹The distribution identifies the location where the incident occurred, not necessarily where the complainant resides. The category Unknown/Outside City Limits represents incidents in which the location could not be identified or did not occur within the City of San José.

Chapter Seven



CHAPTER SEVEN | CASES BY COUNCIL DISTRICT

I. Impact of the Revised Complaint Process

For many years, matters were classified into one of seven categories: CITIZEN-INITIATED, DEPARTMENT-INITIATED, COMMAND REVIEW, PROCEDURAL, INQUIRY, POLICY, and CITIZEN CONTACTS.⁵² The RCP classifies the incidents into four redefined categories. In addition, the RCP retained some former allegations, eliminated others, and expanded one to include a wider variety of conduct. In the past the IPA Year End report has provided comparison of the classification of cases by council district. Following the changes made by the RCP in July 2008, meaningful comparison of past years is limited; that data is not provided in this report. Information about complaint classifications in general can be found in **Chapter Three**.

II. Unnecessary Force Complaints by Council District

As reported in **Chapter Four**, the RCP eliminated the distinction between the allegations *Unnecessary Force Class I* and *II*. After July 2008 a single category of *Force* was created. A Force Case is a matter that contains one or more allegations of *Force*. **Illustration 7-B** provides a two-year comparison of the numbers of investigated Force Cases.

A total of 117 cases containing a *Force* allegation were filed in 2008, the same number reported in 2007. (For a detailed discussion of this comparison see **Chapter Four**.)

Illustration 7-B: Two-Year Comparison of Force Cases Reported By Council District

COUNCIL DISTRICTS	2007		2008	
	Total Cases	%	Total Cases	%
District 1	2	2%	2	2%
District 2	4	3%	4	3%
District 3	50	43%	40	34%
District 4	7	6%	4	3%
District 5	8	7%	11	9%
District 6	8	7%	11	9%
District 7	7	6%	9	8%
District 8	3	3%	4	3%
District 9	4	3%	7	6%
District 10	11	9%	4	3%
Unknown/Outside of City Limits	13	11%	21	18%
Total UF Complaints Received	117	100%	117	100%

⁵²CITIZEN CONTACTS reflect matters that do not involve SJPD officers.

CONCLUSION

The 2008 IPA Year End Report discusses changes in the police misconduct complaint process in San José. At the direction of council and following an IPA recommendation in the 2006 IPA Year End Report, the IPA joined the City Manager and the SJPD in developing a Revised Complaint Process (RCP) based on objective criteria. It was implemented in July 2008 and a report-back to the City Council containing a full-year analysis is expected in mid-2009.

Key changes to the complaint process are highlighted in this 2008 IPA Year End Report. The RCP redefines the term “complaint” and changes the definitions of allegations and complaint classifications. A new classification entitled NON-MISCONDUCT CONCERN has been added. The Courtesy allegation has been modified; the allegations of *Racial Profiling*, *Discrimination* and *Harassment* have been combined under the new allegation of *Biased Based Policing*. As the RCP develops in the coming year the IPA will monitor the impact of these changes on the intake and investigation of community concerns.

As a result of the changes implemented in mid-2008, this Report reflects six months of data gathered under the former complaint process (January - June) and six months of data collected using the RCP (July-December.) Data about the types of misconduct alleged, findings rendered and discipline imposed under a combination of both processes is presented. In total, the IPA audited 338 complaints closed during 2008. The most frequently reported concerns continue to be allegations of *Procedure*, *Courtesy*, and *Force*.

Another significant event in 2008 was the action of the City Council to direct the City Manager to initiate a task force charged with addressing public intoxication arrests. The IPA prepared a report for Council about complaints that included allegations of public intoxication arrests. Representatives of community stakeholder groups, including the IPA, were invited to participate in the Public Intoxication Task Force and discuss concerns about procedures and practices related to arrests for public intoxication as well as the feasibility of non-criminal alternatives.

Though busy with complaint intakes and investigation audits, the IPA staff continued to conduct community outreach by participating in 180 community events reaching more than 5,800 individuals. Significant revisions and updates were added to the Student Guide to Police Practices and it was disseminated at outreach events and presentations throughout San José.

The challenges that accompany increased population and changing demographics reinforce the need for professional and trustworthy law enforcement and for fair and effective oversight. The Office of the Independent Police Auditor is committed to fulfilling its mandated duties and instilling confidence in the complaint process through community outreach and objective review of police misconduct investigations. The IPA anticipates continuing to work cooperatively with SJPD to ensure that revisions made to the complaint process reflect the goals and objectives established in 2008.

Conclusion

APPENDIX A

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

SAN JOSÉ 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:

APPENDIX A

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

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.
- 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 JOSÉ 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 § 832.5 AND § 832.7****§ 832.5. Citizen's complaints against personnel; investigation; retention and maintenance of records; removal of complaints; access to records**

- (a)
 - (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.
 - (2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.
- (b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.
- (c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.
 - (1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.
 - (2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.
 - (3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.
- (d) As used in this section, the following definitions apply:
 - (1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.
 - (2) "Unfounded" means that the investigation clearly established that the allegation is not true.

APPENDIX B

CALIFORNIA PENAL CODE §832.5 AND §832.7

- (3) “Exonerated” means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

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

ADDITIONAL STATISTICAL INFORMATION

Table 1: Classifications of External Matters Received

EXTERNAL COMPLAINTS	2007				2008			
	IPA	IA	Total	%	IPA	IA	Total	%
Citizen-Initiated Complaints	68	132	200	41%	37	64	101	22%
Conduct Complaints	0	0	0	0%	67	123	190	41%
Command Review Complaints	1	0	1	0%	0	0	0	0%
Procedural Complaints	29	55	84	17%	29	45	74	16%
Policy Complaints	5	0	5	1%	3	6	9	2%
Inquiry Complaints	48	139	187	38%	16	65	81	17%
Withdrawn	7	7	14	3%	4	8	12	3%
Total	158	333	491	100%	156	311	467	100%
Citizen Contacts (Not complaints vs. SJPD)	48	13	61	N/A	7	18	25	N/A
Non-Misconduct Concern	0	0	0	N/A	30	72	102	N/A

Table 2: Classifications of External Matters Received from January - June 2008

EXTERNAL COMPLAINTS	January - June 2008			
	IPA	IA	Total	%
Citizen-Initiated Complaints	37	64	101	22%
Command Review Complaints	67	123	190	41%
Procedural Complaints	0	0	0	0%
Policy Complaints	29	45	74	16%
Inquiry Complaints	3	6	9	2%
Withdrawn	16	65	81	17%
Total	89	183	272	100%
Citizen Contacts (Not complaints vs. SJPD)	7	18	25	

Table 3: Classifications of External Matters Received from July - December 2008

EXTERNAL COMPLAINTS	July - December 2008			
	IPA	IA	Total	%
Conduct Complaints	67	123	190	64%
Policy Complaints	0	5	5	2%
Total	67	128	195	
Non-Misconduct Concern	30	72	102	34%

Table 4: Five-Year Overview of Total Matters Received

COMPLAINTS RECEIVED	2004	2005	2006	2007	2008
External Citizen-Initiated	335	383	444	491	467
Internal Department-Initiated	38	50	48	56	56
Total	373	433	492	547	523
Non-Misconduct Concern	N/A	N/A	N/A	N/A	102



APPENDIX C

ADDITIONAL STATISTICAL INFORMATION

Table 5: Types of Allegations Received in all Complaints in 2006, 2007 and 2008

ALLEGATIONS RECEIVED	2006		2007		2008	
	#	%	#	%	#	%
Improper Procedure	170	30%	280	31%	221	19%
Rude Conduct	83	15%	114	13%	123	11%
Unnecessary Force	109	19%	174	19%	99	9%
Unlawful Arrest	47	8%	85	10%	51	4%
Unlawful Search	28	5%	66	7%	44	4%
Missing/Damaged Property	21	4%	33	4%	31	3%
Unofficer-like Conduct	26	5%	40	4%	27	2%
Failure to Take Action	20	4%	23	3%	19	2%
Racial Profiling	20	4%	17	2%	18	2%
Discrimination	28	5%	28	3%	17	1%
Excessive Police Service	1	0%	8	1%	17	1%
Policy/Procedural	5	1%	7	1%	4	0%
Harassment	3	1%	13	1%	0	0%
Delayed/Slow in Response	1	0%	0	0%	1	0%
Inquiry (Unclassified)	1	0%	6	1%	0	0%
Procedure	N/A	N/A	N/A	N/A	137	12%
Force	N/A	N/A	N/A	N/A	85	7%
Courtesy	N/A	N/A	N/A	N/A	73	6%
Arrest or Detention	N/A	N/A	N/A	N/A	61	5%
Search or Seizure	N/A	N/A	N/A	N/A	45	4%
Bias Based Policing	N/A	N/A	N/A	N/A	35	3%
Conduct Unbecoming an Officer	N/A	N/A	N/A	N/A	27	2%
Neglect of Duty	N/A	N/A	N/A	N/A	12	1%
Total Allegations	563	100%	894	100%	1147	100%

Table 6: Dispositions of Allegations in External/Citizen-Initiated Cases in 2008

DISPOSITION	ALLEGATIONS																			Total	%	
	AD	BBP	C	CUBO	ES	D	DR	F1	F2	FA	H	IP	MDP	P	RC	RP	SS	UA	UC			US
Sustained									3		29	2		1				10		45	3%	
Not Sustained	3		1	1			1	27			44	21	1	109	1			10	9	228	17%	
Exonerated	9	2	2		7	2	4	141	10	10	87	9	14	7	1	6	92	3	42	448	32%	
Unfounded	2	2	2	1		13	4	38	5	15	43	3	7	23	9		2	7	3	179	13%	
No Finding		3	3		2	2		40	1	2	40	10	8	27	2	2	17	3	13	175	13%	
Within Procedure						2		17	7		99	8	2	4	3		34		14	190	14%	
No Misconduct Determined						5				3	16	4		67	6		2	1	6	110	8%	
Command Review											1			2						3	0%	
Within Policy											1									1	0%	
Total Allegations	14	7	8	2	9	24	0	9	263	29	27	360	57	32	240	22	8	147	34	87	1379	100%

Legend of Allegations

AD= Arrest or Detention	D= Discrimination	H= Harassment	RP= Racial Profiling
BBP= Bias-Based Policing	DR= Delayed/Slow in Response	IP= Improper Procedure	SS= Search or Seizure
C= Courtesy	F1= Unnecessary Force (w/medical)	MDP= Missing/Damaged Property	UA= Unlawful Arrest
CUBO=Conduct Unbecoming an Officer	F1= Unnecessary Force (w/o medical)	P= Procedure	UC= Unofficer like Conduct



APPENDIX C

ADDITIONAL STATISTICAL INFORMATION

Table 7: Dispositions of Allegations in Internal/Department-Initiated Investigations in 2008

DISPOSITION	ALLEGATIONS																	Total	%				
	AD	BBP	C	CUBO	ES	D	DR	F1	F2	FA	H	IP	MDP	P	RC	RP	SS			UA	UC	US	
Sustained										1		46	3	11						19		80	70%
Not Sustained											8									8		16	14%
Exonerated											6									2		8	7%
Unfounded											2											2	2%
No Finding				1		2				1										4		8	7%
Within Procedure																							0%
No Misconduct Determined											1											1	1%
Command Review																							0%
Within Policy																							0%
Total Allegations				1		2				1	1	63	3	11						33		115	100%

Legend of Allegations

AD= Arrest or Detention	D= Discrimination	H= Harassment	RP= Racial Profiling
BBP= Bias-Based Policing	DR= Delayed/Slow in Response	IP= Improper Procedure	SS= Search or Seizure
C= Courtesy	F1= Unnecessary Force (w/medical)	MDP= Missing/Damaged Property	UA= Unlawful Arrest
CUBO=Conduct Unbecoming an Officer	F1= Unnecessary Force (w/o medical)	P= Procedure	UC= Unofficer like Conduct

Table 8: Types of Complaints Audited and Closed in 2008

EXTERNAL COMPLAINTS	2008	
	Closed	Audited
Citizen-Initiated Complaints	182	167
Conduct Complaints	43	23
Citizen Nexus to Internal Complaints	9	6
Command Review Complaints	2	2
Procedural Complaints	112	119
Policy Complaints	6	7
Withdrawn	14	14
Total	368	338

Table 9: IPA Audit Determination in Investigated Cases

AUDIT DETERMINATION IN INVESTIGATED CASES	2006		2007		2008	
	Audits	%	Audits	%	Audits	%
Agreed at First Review	84	64%	170	67%	260	77%
Agreed after Further Action	29	22%	29	11%	19	6%
Disagreed after Further Action	19	14%	55	22%	59	17%
Total Complaints Audited	132	100%	254	100%	338	100%



APPENDIX C

ADDITIONAL STATISTICAL INFORMATION

Table 10: Complaint Filed – Four-Year Overview of Unnecessary Force

YEAR	Total UF Complaints	Total Number of Complaints	% Total Complaints
2005	82	429	19%
2006	97	478	20%
2007	117	547	21%
2008	117	523	22%

Table 11: Four-Year Overview of Complainant's Level of Injury

DEGREE OF INJURY	2005		2006		2007		2008	
	Number	%	Number	%	Number	%	Number	%
Major	2	4%	2	3%	8	9%	7	7%
Moderate	5	11%	7	11%	10	11%	12	12%
Minor	33	73%	37	61%	49	55%	50	51%
None	5	11%	13	21%	12	13%	23	23%
Unknown	0	0%	2	3%	10	11%	7	7%
Total	45	100%	61	100%	89	100%	99	100%

Table 12: Disposition of Unnecessary Force Allegations in External Cases from 2005 to 2008

DISPOSITION	2005		2006		2007		2008	
	Total	%	Total	%	Total	%	Total	%
Sustained	0	0%	1	1%	2	1%	0	0%
Not Sustained	11	9%	8	10%	27	16%	28	10%
Exonerated	74	61%	33	39%	57	35%	145	53%
Unfounded	14	12%	8	10%	35	21%	42	15%
No Finding	14	12%	20	24%	18	11%	40	15%
Within Procedure	8	7%	12	14%	26	16%	17	6%
No Misconduct Determined	0	0%	2	2%	0	0%	0	0%
Total	121	100%	84	100%	165	100%	272	100%

Table 13: General Community Outreach in 2006, 2007 and 2008

TYPES OF COMMUNITY OUTREACH	2006		2007		2008	
	Events	Attendees	Events	Attendees	Events	Attendees
Community Events/Meetings	93	4015	101	4447	106	3077
Neighborhood Specific Events	14	1192	26	1508	14	917
IPA Presentations	40	1468	60	1352	46	1830
Media/Press Conferences	27	Unknown	35	Unknown	14	Unknown
Community Outreach Totals	174	6675	222	7307	180	5824
Meetings with City Officials	46	358	146	1200	56	91



APPENDIX D

NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT CODE OF ETHICS (CODE)

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

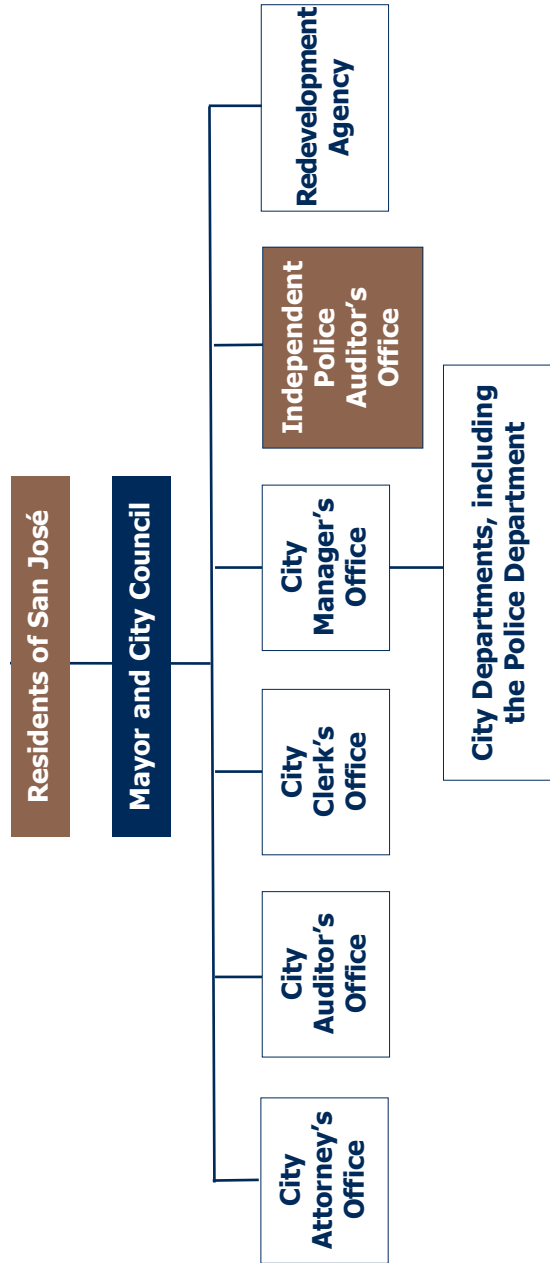
Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

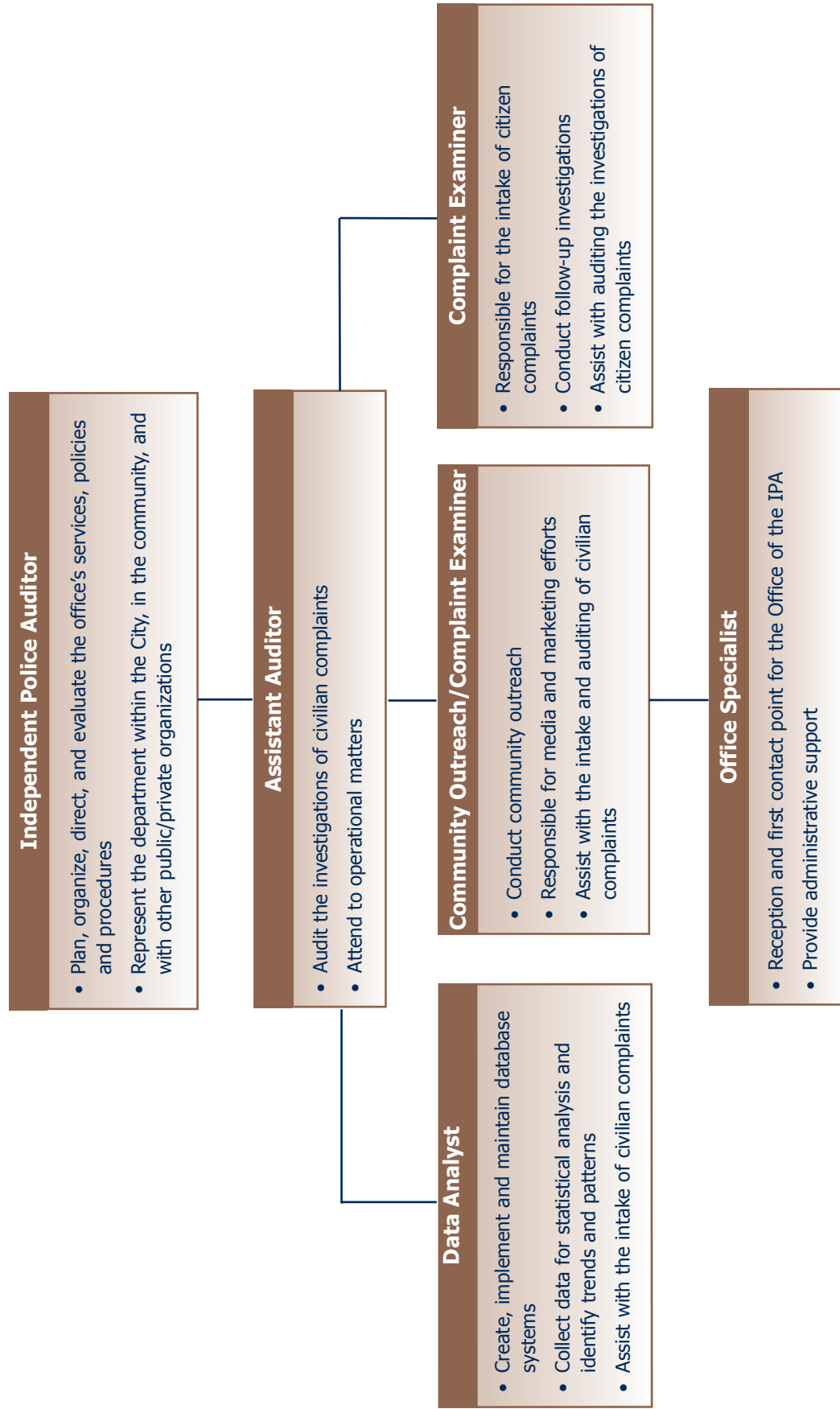


APPENDIX E
CITY OF SAN JOSÉ STRUCTURE



APPENDIX F

OFFICE OF THE INDEPENDENT POLICE AUDITOR STRUCTURE



APPENDIX G

ALLEGATION FINDINGS

Findings	Corresponding IA investigation showed that:
Sustained	The investigation disclosed sufficient evidence to clearly prove the allegation made by the complainant.
Not Sustained	The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made by the complainant.
Exonerated	The act(s) which provided the basis for the allegation occurred, however the investigation revealed they were justified, lawful and proper.
Unfounded	The investigation conclusively proved that either the act(s) complained of <u>did not occur</u> , or that the Department member named in the allegation <u>was not involved</u> in the act(s) which may have occurred.
No Finding	The complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject officer was no longer employed by the Department at the time the investigation was completed.
Withdrawn	The complainant affirmatively indicates the desire to withdraw the complaint.
Other	This finding is used at the direction of the Chief of Police. A complaint that is reported more than one year after the date of occurrence is routed to the Chief for review. A determination not to conduct an investigation due to the passage of time will result in the allegation(s) being closed as Other.
Within Procedure *	The initial intake investigation determined that the Department member acted reasonably and within Department procedure and policy given the specific circumstances of the incident, and that despite the allegation of misconduct there is no factual basis to support the allegation.
No Misconduct Determined *	The initial intake investigation determined that the allegation is a dispute of fact wherein there is no independent information, evidence or witness available to support the complaint and there exists another judicial entity to process the concerns of the complainant.
Command Review *	It is determined that the allegation involves minor transgressions that may be handled by bringing the matter to the attention of the subject member's supervisor and chain of command.

* Findings of Within Procedure and No Misconduct Determined applied only to complaints classified as PROCEDURAL under the former process. Command Review was eliminated as a finding under the RCP.

APPENDIX H

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 H

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 a 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 H

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 H

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
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 and Adopted	2004 Year End Report
	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.		

APPENDIX H

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	<p>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.</p> <p>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.</p>	Amended and Adopted	2004 Year End Report
	<p>The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.</p> <p>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.</p>	Amended and Adopted	2004 Year End Report
2004 Year End Report	<p>The IPA supports continued tracking of TASER use by the SJPD, ongoing analysis of updated information about the use of TASERs, and recommends continued reporting of TASER use by SJPD officers.</p>	Adopted	2005 Year End Report
	<p>The IPA and Internal Affairs (IA) should 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.</p>	Adopted	2005 Year End Report
2005 Mid-Year Report	<p>The IPA should be issued a copy of all Homicide reports and other documents provided to Internal Affairs (IA) in officer-involved shooting cases. The IPA will secure the reports in a locked file and return them to the SJPD after all analysis is completed.</p>	Adopted	2005 Year End Report
	<p>That the SJPD establish written guidelines for TASER use in the Use of Force chapter of the Duty Manual.</p> <p>Amended To: The TASER Usage Guidelines presented to the City Council on November 29, 2005 by the SJPD will be issued to all officers as a Training Bulletin that will become part of the training curriculum. The TASER guidelines will be binding on officers and they will be held accountable to them as they are to policies in the SJPD Duty Manual.</p>	Amended and Adopted	2005 Year End Report
2005 Year End Report	<p>That the SJPD establish an expanded shooting at vehicles policy.</p> <p>Amended To: The SJPD staff is directed to consider establishing an expanded Shooting at Vehicles Policy and report back to the City Council.</p>	Amended and Adopted	2005 Year End Report Policy change implemented April 2007
	<p>That the SJPD continue to train officers to wait for backup, when practical, in situations where there are reasonable objective indicators that the situation could escalate to violence.</p>	Adopted	2005 Year End Report
2006 Year End Report	<p>That the Mayor and City Council:</p>		
	<p>a) Direct the City Manager to direct the SJPD to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA;</p>	Several directives adopted in response to (a). Item (b) not adopted	Changes to complaint process accepted January 2008
	<p>b) Grant the IPA concurrent authority over the classification of complaints.</p>		
	<p>That the Mayor and City Council:</p>		
	<p>a) Direct the City Manager to direct the SJPD to conduct administrative investigations in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury;</p>	Further action requested	Council approved the formation of an SJPD in-custody death review panel in January 2008.
	<p>b) Mandate that the IPA review the administrative investigation in all such cases.</p>		
	<p>That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:</p>	No Council action on this item	
	<p>a) Investigation of community-initiated complaints which IA did not investigate;</p>		
	<p>b) Investigation of critical incidents in which any SJPD action resulted in death or serious bodily injury and the SJPD did not conduct an administrative investigation;</p>		
	<p>c) Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.</p>		

APPENDIX H

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
2007 Year End Report	That the Mayor and City Council direct the City Manager to direct the SJPD to enter misconduct complaints into the shared database contemporaneous with the date of SJPD knowledge of the complaint to ensure accurate recording, reporting and tracking of all complaints.	No Council action on this item	
	That the Mayor and City Council direct the City Manager to direct the SJPD to to revise its policies to ensure that written notice is given of the property return/auction/disposal process to the owner at the time that property is booked.	In progress	Council directed the City Mannager to direct the SJPD to review and potentially revise its policies
	That the Mayor and City Council direct the City Manager and the City Attorney to standardize the processes used by San José City departments to provide notice to owners of the intention to tow a vehicle for violation of San José Municipal Code §11.56.020.	Adopted	2007 Year End Report
2008 IPA 647(f) Report	That the Council take action to direct the City Manager to direct the SJPD to institute a policy that an officer making an arrest for 647(f) must complete a chemical test on that person.	In progress	Council directed the City Manager to initiate a task force charged with addressing the issue of public intoxication arrests.