

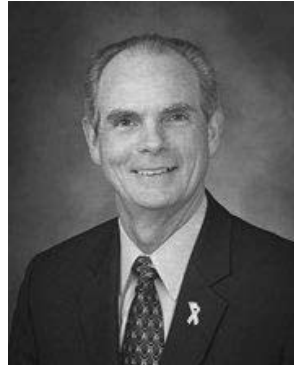


2011 IPA Year End Report



Office of the Independent Police Auditor
City of San José

San José Mayor & City Council



Mayor Chuck Reed

408-535-4800

mayoremail@sanjoseca.gov



Pete Constant

District 1

408-535-4901

District1@sanjoseca.gov



Pierluigi Oliverio

District 6

408-535-4906

Pierluigi.oliverio@sanjoseca.gov



Ash Kalra

District 2

408-535-4902

District2@sanjoseca.gov



Madison Nguyen

Vice Mayor

District 7

408-535-4907

District7@sanjoseca.gov



Sam Liccardo

District 3

408-535-4903

District3@sanjoseca.gov



Rose Herrera

District 8

408-535-4908

rose.herrera@sanjoseca.gov



Kansen Chu

District 4

408-535-4904

District4@sanjoseca.gov



Donald Rocha

District 9

408-535-4909

District9@sanjoseca.gov



Xavier Campos

District 5

408-535-4905

District5@sanjoseca.gov



Nancy Pyle

District 10

408-535-4910

District10@sanjoseca.gov

2011 IPA Year End Report



Issued April 2012

by

Judge LaDoris H. Cordell (Ret.)

Independent Police Auditor

and Staff

Independent Police Auditor & Staff



Judge LaDoris H. Cordell (Ret.)

Independent Police Auditor



Shivaun Nurre

Assistant IPA



Vivian Do

IPA Senior Analyst



Diane Doolan-Diaz

IPA Senior Analyst



Jessica Flores

Office Specialist



Brenna Silbory

IPA Analyst II

The Office of the Independent Police Auditor

Creation of the Office of the Independent Police Auditor

The Office of the Independent Police Auditor was established by the San José City Council in 1993 with the enactment of a city ordinance codified in the San José Municipal Code. Thereafter, on November 6, 1996 the voters of San José amended the City Charter to establish the Office of the Independent Police Auditor as a permanent arm of city government. (Please see Appendix A for Municipal Code Section 8.04.010 and City Charter section 809.)

In the seventeen years that the IPA office has existed, there have been four Independent Police Auditors: Teresa Guerrero-Daley (1994-2005); Barbara J. Attard (2005-2008); Shivaun Nurre, Interim IPA (2009-2010); and Judge LaDoris H. Cordell (Ret.), the current IPA, appointed in April 2010.

Mission of the Office of the Independent Police Auditor

The mission of the Office of the Independent Police Auditor is four-fold: (1) to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations; (2) to conduct outreach to the San José community; (3) to propose thoughtful policy recommendations to the City Council; and (4) to strengthen the relationship between the San José Police Department and the community it serves.

Independence of the Police Auditor

Pursuant to San José Municipal Code section 8.04.020, the Independent Police Auditor shall, at all times, be totally independent such that requests for further investigations, recommendations and reports shall reflect the views of the Independent 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 San José Municipal Code section 8.04.020. (Please see Appendix A for Municipal Code section 8.04.020.)



City of San José Organizational Chart

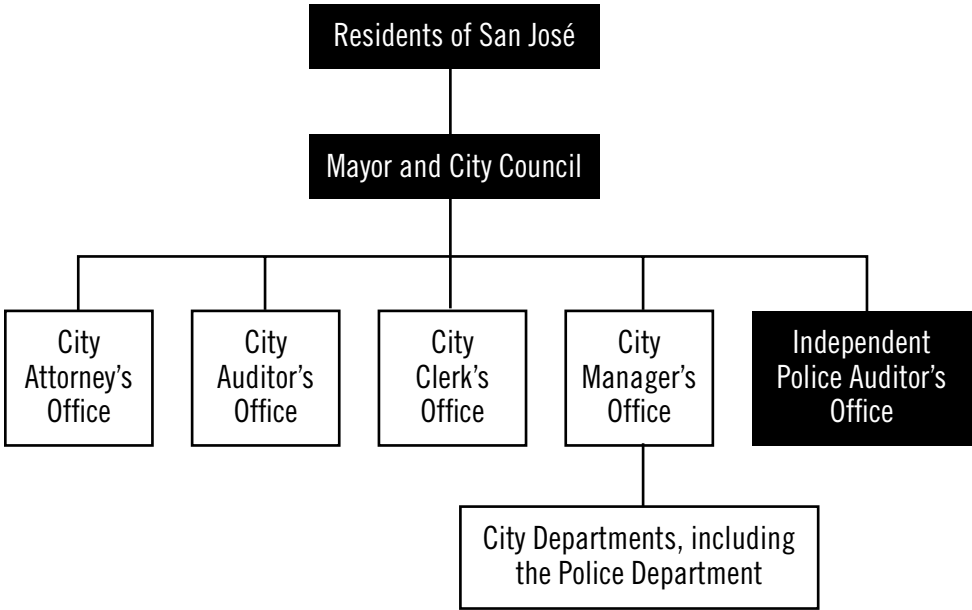


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Chapter One: Overview

2011 was a year of innovation, accomplishment and challenge for the Office of the Independent Police Auditor. While the specific authority of the Independent Police Auditor is memorialized in section 809 of the San José City Charter, in 2011 our office utilized creative and novel approaches to fulfilling our mandates.

We **expanded our outreach efforts** to reach a record number of San José residents. In doing so, we looked beyond our targeted audiences and venues to include those who are not traditionally the focus of our outreach efforts, but who could benefit from the information we distribute. 2011 saw a dramatic **26% increase in the number of complaints** and concerns filed by members of the public alleging police misconduct. This increase is a direct consequence of the expanded outreach efforts of our office. Not surprisingly, the percentage of complaints filed at our office (rather than at the Internal Affairs Unit) rose as well, up 5% from 2010. Indeed, there has been a **steady rise** in the number of individuals who brought their complaints to the IPA office and a comparable decline in those who went to the Internal Affairs Unit to complain. See Illustration 4-A for the intake percentages from 1995 to 2011 for the IPA Office and Internal Affairs Unit.

On February 24, 2011, Judge Cordell had the honor of **administering the oath of office to the newly-appointed Chief of Police, Chris Moore**. This swearing-in not only symbolized the respectful and civil relationship between Chief Moore and our office, but it served as a catalyst for an **unprecedented level of cooperation** among SJPD leadership, the Police Officers Association, the Internal Affairs Unit and the Office of the Independent Police Auditor in 2011.



Judge Cordell administers oath of office to Chief Moore.

In 2011 the **IPA-SJPD Mediation Program** held its first five mediations. This entirely **cost-free** program is the **first of its kind in the nation** to use volunteer retired judges as mediators. The mediation program is the result of a unique collaboration between the IPA Office and the SJPD. It has improved communication between officers and civilian complainants, discouraged stereotyping, and is a small, but significant step toward improving police-civilian relationships. Read more about the IPA-SJPD Mediation Program at page 11 of this Report.

One of the IPA's mandates is to make recommendations to improve SJPD practices and procedures. It is this aspect of our work that, arguably, has the most enduring impact. In 2011 our office's **thirty recommendations** were **nearly triple the number that we made the previous year**. Most of our recommendations are generated from complaints about police misconduct filed by members of the public. Concerns raised by individuals frequently lead us to examine police practices and, when appropriate, to recommend changes. Among the 2011 recommendations were policies addressing curb-sitting, documentation of pedestrian stops, and certification of officer-



Judge Cordell speaks at community event.
(Photo courtesy of El Observador's Cinthia Rodriguez.)

translators. A discussion of all of the 2011 recommendations is in Chapter Two.

In 2011 we performed the **first-ever audit of the more than one hundred recommendations** our office has made for improving SJPD policies and procedures. These recommendations, 85 of which were adopted by SJPD, spanned the years from 1993 to 2009. The purpose of the audit was to gauge to what extent the SJPD had actually implemented those 85 recommendations. The audit also gave us an overview of the recurring themes over the 16-year period covered by our recommendations. The results of the audit are in Chapter Two.

In 2011 CreaTV, San José's local cable media center, began production of "**The IPA Roadshow.**" Hosted by Judge Cordell, the local television series features interviews of individuals on a variety of law enforcement-related topics. Among the guests scheduled to appear on the show are Police Chief Chris Moore, Sgt. Todd Trayer of the Internal Affairs Unit, members of the Teen Leadership Council, Santa Clara County District Attorney Jeff Rosen, and Superior Court Judge Teresa Guerrero-Daley, San José's first Independent Police Auditor. "**The IPA Roadshow**" **will begin airing in February 2012 on CreaTV's Channel 30.**

The various types of conduct allegations that members of the public may lodge against San José police officers are defined in the SJPD Duty Manual, a volume of police department rules, policies, and procedures. One of these conduct allegations is **Bias-Based Policing (BBP)**. Until 2011 BBP was narrowly defined so that it applied only to an officer's motivation for stopping an individual. The conduct of the officer from the time the stop was made to the time it concluded did not fall under the Bias-Based Policing definition. For years, our office advocated to expand this definition. In 2011, under the leadership of Chief Chris Moore, our recommendation was adopted so that **the definition of BBP now covers all conduct of the officer** during a stop, from beginning to end. The revised definition of BBP is in the Glossary of this Report.

Signed in 2011, the groundbreaking Memorandum of Understanding between our office and the **Mexican Consulate in San José** extended our outreach to Mexican Nationals who seek the services of the Consulate. In 2011, **IPA Senior Analyst Diane Doolan-Diaz conducted monthly outreach at the Consulate.** You can find a complete description of our office's outreach activities throughout the City of San José in Chapter Three.



Mayor Reed (center), Judge Cordell (far right), Al and Carmen Castellano (4th & 5th from right), Deputy City Attorney Sandra Lee (far left) with several TLC members, IPAAC members, and IPA staff in Council Chambers.

Created in April 2011, the IPA's **Teen Leadership Council (TLC)**, **broke new ground** in 2011 when the Castellano Family Foundation and individual members of the City of San José donated nearly \$11,000 to the TLC Fund. This public/private venture will provide the TLC expanded opportunities for civic engagement and leadership development. Read more about the activities of the TLC in Chapter Three.

In 2011 we implemented the **Student Guide Initiative**, a project to distribute our newly-revised "Student Guide to Police Practices" to the 10,600 freshmen in San José's public high schools. With the assistance of the San José Police Officers Association, the IPA Office secured funding for the printing of the revised Student Guides from city officials, the SJPD, and the Dr. Martin Luther King, Jr. Association of Santa Clara Valley. You can read more information about our youth outreach and the Student Guide Initiative in Chapter Three of this Report.

The IPA Office continued its focus on youth outreach by convening a **first-ever forum on the First Amendment and Cyber-Bullying** in October 2011. Attended by high school students and their parents, the forum was a collaboration between the IPA's Teen Leadership Council and the City's Youth Commission.

The **IPA Adult Advisory Council (IPAAC)** in 2011 assumed a **more active role** than in previous years. It led the successful fundraising drive for the TLC Fund. The IPAAC explored additional ways to support the TLC, such as providing individual mentoring to the teens. IPAAC members participated in IPA outreach events; and IPAAC member **Yesenia Ramirez** volunteered her time as a translator for Spanish-speaking attendees at several of our outreach presentations.

Crisis Intervention Training (CIT) is critical to the work of SJPD officers who frequently interact with members of the public who have mental illness. With proper training, officers who encounter mentally ill individuals use their CIT skills to attempt to resolve these situations peacefully. In the aftermath of two recent encounters that ended with officer-involved shooting fatalities, **IPA Senior Analyst Diane Doolan-Diaz** observed CIT sessions in October 2011. **Her suggestions to improve the program** have been included in SJPD's current efforts to enhance and improve CIT.

The Occupy San José movement drew public attention when its members set up tent encampments on the City Hall Plaza for several weeks. We distributed information about the IPA Office to the occupiers. Additionally, **IPA Staff prepared a two-page handout** containing all of the rules and procedures from the SJPD Duty Manual that applied to protestors, demonstrators, and onlookers. We provided this handout not only to the occupiers, but also to the SJPD officers who patrol the downtown area so that all would be reminded of their rights and responsibilities. While major cities throughout the country reported a variety of negative interactions between law enforcement and the occupiers, the City of San José was not one of them. **Only one complaint was made against SJPD officers** in the wake of the Occupy San José movement. The **proactive outreach of our office** to the police and to the occupiers undoubtedly contributed to this result. The Duty Manual handout is in Appendix K.

In 2011, our office conducted extensive outreach to those in the **homeless/unhoused communities and also to those who provide assistance to these communities**. This outreach focused on the particular issues that arise when the homeless/unhoused interact with the police.

We gave unprecedented presentations to **the Hard of Hearing Association**. **Police Chief Moore** participated with us to discuss how to improve officers' communications with the hearing impaired in order to avoid misunderstandings. One outcome of these interactions was the proposal to create a training video for SJPD that will inform officers of this community's concerns.

Hot-button issues in law enforcement are as varied as they are numerous. The IPA Office was in the forefront of many of these issues in 2011 as reflected in our recommendations to the SJPD. (See Chapter Two.) Additionally, **Judge Cordell's opinion pieces** published in the Mercury News on these topics have provoked discussion and change. For example, her December 2011 op-ed advocating for on-officer cameras for the SJPD has led the City Council to seek funding for these cameras. This op-ed and other newspaper articles about the work of the IPA Office in 2011 are in Appendix L to this Report.

The IPA-SJPD MEDIATION PROGRAM

The July 2009 arrest of Harvard professor Henry Louis Gates, Jr., an African American, for resisting arrest in his own home, by a Caucasian Boston police officer was fodder for intense national debate, not to be quelled until the President of the United States intervened. Their subsequent conversation in a private and respectful setting — a mediation — resulted in better understanding and decreased tension between the officer and the professor.

In 2011, the Office of the IPA, in collaboration with the SJPD, initiated a voluntary mediation program. The program brings together civilian complainants and the officers against whom they have lodged complaints about discourtesy and bias-based policing. Retired Santa Clara County judges served as volunteer mediators for five complaints in 2011. The mediations take place in a conference room in City Hall provided by the Office of the Mayor. Confidentiality agreements signed by all participants encourage frank and open discussions.

The willingness of the SJPD officers to participate is noteworthy, since their participation is entirely voluntary. The same is true for the complainants. Not all officers, when asked to participate, agree to do so. But when an officer participates, the complainant withdraws the complaint. Mediations are fair to the participants because the complainants have the unique opportunity to speak directly to the officers about their experiences, and the officers no longer have these complaints on their records.

Many cities use the police/civilian mediation process, some of which include New York, San Francisco, Denver and Washington, D.C. While the structure of these cities' programs may differ, what they have in common are strong, experienced mediators. Some use volunteers, some compensate the mediators, and some use city contracts with mediation vendors. The IPA-SJPD model is unique because it is the only one in the nation in which the mediators are retired judges who serve for no fee. Our retired judges bring experience, wisdom, respect and gravitas to the mediations. In 2011, Judge James Emerson (Ret.) and Judge Robert Foley (Ret.) served as our volunteer mediators.

What follows are brief summaries of the five mediations in 2011:

- The complainant alleged that the police officer who responded to a report of a crime was discourteous and intimidating.
- The complainant alleged that the police officer spoke to her in a discourteous fashion by telling her that she would likely re-offend by violating a drug law.
- The complainant alleged that the police officer spoke to her in a rude, crude and sarcastic manner.
- The complainant alleged that the police officer spoke to her in an aggressive manner and had a negative attitude.
- An African American female complainant alleged that the Caucasian male police officer was reluctant to write an incident report, in the aftermath of an altercation with her neighbor, because of the complainant's race.

The satisfaction surveys completed by the participants demonstrate that the mediation experience has a positive impact upon both the officers and the complainants. The following are some of the survey comments of the mediation participants:

- **Officer:** "The mediation was very fair and impartial."
- **Complainant:** "Mediation was very helpful. I feel a lot better."
- **Officer:** "The mediation did not change my understanding of the other person's point of view. However, I think it was nice to have a third party perspective, and have them involved with the interaction we have with others while we're working."
- **Complainant:** "[The mediator] was as impartial as possible. No real conclusion was made other than me or any citizen be treated respectfully by the SJPD."
- **Officer:** "I appreciated the opportunity to listen to the complainant's perspective and thought process in order for me to learn and serve the community better."
- **Complainant:** "Excellent mediator; able to hear and understand both points of view and give positive feedback as what should happen if another incident occurs."

Chapter Two: IPA Recommendations

One of the IPA's mandated responsibilities is to "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." (San José City Charter section 809).

Even if the allegations of misconduct do not result in discipline against an officer, complaints frequently provide the bases for IPA recommendations to improve or change police practices. In addition, when we observe trends in complaints (e.g., frequent use of fist strikes to the head to control suspects or reports of curbsitting for minor traffic violations), they may provide the impetus for recommendations to address those trends, regardless of the outcomes of the Internal Affairs investigations.

I. 2011 IPA Recommendations

In 2010, the IPA office presented eleven recommendations to the SJPd, all of which were adopted by the Department. That number nearly tripled in 2011, when our office brought forth 30 recommendations to the SJPd. Preliminary discussions with Chief Moore and Assistant Chief Goede indicate that they are receptive to most, if not all, of our suggested improvements to policies and procedures.

What follows are **highlights of the most significant of the IPA's thirty recommendations**. A complete listing of the 2011 recommendations, along with their supporting complaint summaries, is contained in the accompanying 2011 IPA Recommendations Chart.

- **Curb-Sitting:** A review of civilian complaints audited by our office in 2011 revealed that

there were twenty-one instances in which complainants described officers ordering persons to sit on the curb. Of that number, 48% of those who described instances of curbsitting were Latino and 24% were African American. Caucasian complainants comprised just 10%. Over the past year, we received anecdotal information, almost exclusively from individuals of color, whose perception is that they are being unfairly targeted for curbsitting because of their race or ethnicity. Our office recommended that SJPd adopt a curbsitting policy that requires officers to (1) document when they order curbsitting; and (2) document their justification for issuing curbsitting orders. This documentation will allow the Department to track such orders to thwart allegations of Bias-Based Policing. (Recommendation #1)

- **Allow IA to Make Sustained Findings:** When IA concludes its investigations with findings of Not Sustained, Exonerated, Unfounded, or No Finding, there is, generally, no review by the Chain of Command (Captains, Deputy Chiefs, Assistant Chief or Chief). However, when IA determines that the finding is Sustained (i.e. the investigation discloses sufficient evidence to prove that misconduct occurred), IA may recommend the finding, but is not permitted to actually make the finding. All recommendations for Sustained findings must be sent from IA to the Chain of Command for re-analysis and findings. This process is unnecessarily duplicative and time-consuming. The Lieutenants who re-evaluate the IA investigations may lack the requisite expertise and may be subject to bias. We recommend that IA make all Sustained findings, followed only

with a review by the Chief of Police. A more detailed discussion of this recommendation is in Chapter Six of this Report. (Recommendation #26)

- **Pedestrian Stops:** Current SJPD policy requires officers to document the race/ethnicity of individuals who are the subjects of vehicle stops. The purpose is to allow tracking of these stops and monitoring for bias. There is, however, no such documentation requirement for pedestrian stops — a common investigatory tool. Our office recommended expanding the policy to include tracking of race/ethnicity of the subjects of pedestrian stops because we see no reason to distinguish between these stops in the data tracking and the purpose of the policy. (Recommendation #25)
- **Documenting Detentions:** Before an officer may lawfully detain a person, the law requires that the officer must have an articulable and reasonable suspicion that the person is engaged in criminal activity. The lawfulness of detentions is frequently the subject of civilian complaints. Officers are required to specify the facts underlying their reasonable suspicion to detain individuals when they write incident reports. When an officer opts not to write an incident report, then the officer must document the fact that the officer detained someone in the CAD, a computer-generated notation. However, officers are not required to explain their reasonable suspicions when they document detentions in the CAD. We recommended that officers be required to document in the CAD the specific facts supporting their reasonable suspicions to detain, just as they do in a report, because the purpose of documenting detentions is to ensure that these stops are lawful and not arbitrary or motivated by bias. (Recommendation #19)
- **Accessing Criminal Histories of Complainants:** Internal Affairs investigates complaints lodged by members of the public. Internal Affairs sends to subject officers notices of the complaints against them, as well as the names of the complainants. The investigation process often includes interviews of the subject officers and witness officers. The IPA and the Assistant IPA are permitted to attend these confidential interviews and to propose questions. In preparation for their interviews, the officers may review reports, if any, of the incidents that gave rise to the complaints. One of these interviews raised the issue of the propriety of subject and witness officers accessing criminal histories of complainants for the purpose of preparing for IA interviews.

Access to complainants' criminal histories is lawful only where officers have a need to know and a right to know this information. Subject and witness officers in Internal Affairs investigations have neither the need nor the right to know complainants' criminal histories. The IPA recommended that SJPD adopt a policy that prohibits access by subject and witness officers to the criminal histories of their complainants. (Recommendation #8)
- **Sleeping in Cars:** In 2011, our office conducted unprecedented outreach to the homeless/unhoused in the City of San José. We received complaints from some individuals that they had been unlawfully issued citations by San José police officers for sleeping in their cars. Our research determined that there is no city ordinance that prohibits sleeping in cars. We recommended that SJPD immediately cease issuing these citations. (Recommendation #30)
- **No Spitting Policy:** SJPD has a tobacco policy that prohibits officers from smoking cigarettes and cigars when they are on duty.

That policy does not address tobacco-chewing. Following our receipt of complaints from members of the public who were offended by officers who spit tobacco while interacting with them, we recommended that the SJPD tobacco policy be expanded to include a prohibition on chewing tobacco when officers are on duty. (Recommendation #20)

- **Translation Certification:** Some SJPD officers serve as translators for members of the public who do not speak English. These officers frequently interview witnesses, victims, and suspects. Because these interviews are critical to effective police investigations and directly impact the arrest and incarceration of individuals, the translations of the interviews must be absolutely accurate. At an IA interview, the issue of the certification of officer-translators came to our attention. We subsequently determined that SJPD does not have procedures for the certification of officer-translators, nor are there requirements that officer-translators receive ongoing training to ensure the competency of their translation skills. We recommended that these procedures be established. We also recommended that, in the interim, all officer-translators be immediately required to record their interviews and conversations with non-English speaking subjects and that SJPD preserve these recordings. (Recommendation #29)

- **IPA-SJPD Joint Trainings:** Following an IPA recommendation for joint training sessions, the IA staff and the IPA staff participated in joint training sessions in 2011. The goal of the trainings was three-fold: (1) establish common understanding about the intake process, since both IA and IPA staff perform this function; (2) create better communication between IA and the IPA office; and (3) engage in thoughtful discussion about the sometimes thorny issues

that arise when allegations are investigated and analyzed. One such allegation that was the topic of discussion was bias-based policing. Led by distinguished Stanford University Professor Jennifer Eberhardt, the IPA-IA joint session focused upon racial and ethnic bias in the law enforcement arena and how this bias allegation can be objectively investigated and analyzed. (Recommendation #21)

II. Audit of IPA Recommendations (1993-2009)

From 1993 to 2009, our office recommended 109 suggestions to improve SJPD policies and procedures. These recommendations ranged from establishing a policy on the rights of bystanders who witness police conduct, to improvements in the physical layout of the lobby in the SJPD Administration Building, to the provision of ongoing ethics training to police officers.

In 2011, our office conducted the first-ever audit of these recommendations. The purpose of the audit was to assess whether or not those recommendations reported as adopted by SJPD had, in fact, been implemented. Of our 109 recommendations, SJPD reported that 78% (85) had been adopted. Our audit focused upon those 85 recommendations.

The audit process was straightforward. We notified then-Police Chief Davis of the audit in the summer of 2010 and requested that he provide documentation confirming that the recommendations adopted by SJPD had been implemented. In the fall of 2010, we received the documentation from SJPD's Research & Development Unit. IPA Analyst II Brenna Silbory took the lead on this audit. She reviewed and analyzed the documentation. Meetings then ensued between SJPD leadership and our office to clarify information and to obtain additional supporting documentation.

We determined that of the 85 recommendations, 86% (73) had been fully implemented by SJPD and 14% (12) had not been fully implemented. Following discussions with Chief Moore and Assistant Chief Goede, specific timelines have been set for the implementation for all but one of these recommendations.

Our audit showed that certain themes have surfaced over the 16-year period that these recommendations were made. The most frequently recurring theme (in 56 recommendations) was “Internal Affairs Policies.” Recommendations about Internal Affairs policies were first made in 1993 and continued to be made in eleven separate years through 2006. These recommendations ranged from requiring SJPD to offer complainants a choice to file complaints with either IA or the IPA (1995), to requiring IA to formally investigate allegations of officers who refused to identify themselves when so requested (2000), to a requirement that SJPD provide to the IPA a copy of homicide reports in cases of officer-involved shootings prior to convening the Review Panels (2005).

The next most common theme was “Professionalism and Community Relations.” There were 41 recommendations on this subject. We made the first such recommendation in 1994 for the implementation of an onlooker policy governing how officers should conduct themselves when interacting with onlookers of police incidents. Another recommendation was to provide customer service training for officers assigned to the Information Center in the lobby of the SJPD Administration Building (2001). Recommendations with this theme continued through 2008.

Third in frequently recurring themes was “Use of Force,” appearing in 22 recommendations from 1994 to 2006. Ensuring that handcuffs are double-locked to prevent wrist injuries (1994), designating officers to serve as family liaisons to the families of civilians

injured or killed as a result of officer-involved shootings (1999), and identifying alternate, less-lethal weapons for use by officers (2000) were some of the Use of Force recommendations.

From the time our office was established in 1993 to the present, four additional themes have continued to surface — Objectivity & Conflicts, Timing of IA Investigations, Bias-Based Policing, and Early Warning System.

The memorandum to the Major and City Council providing an overview of the audit is in Appendix E of this Report.

You can read the details of the audit on our website: www.sanjoseca.gov/ipa.

2011 IPA Recommendations to SJPD

IPA RECOMMENDATIONS	RATIONALE
<p>Recommendation #1: Adopt a curb-sitting policy that requires officers to document in the CAD or in an incident report when they order curb-sitting, the ethnicity/race of the those ordered to sit on the curb, and the specific reasons for the curb-sitting (e.g., officer safety because the officer was verbally threatened by the suspect).</p>	<p>Complainant and four others staged a peaceful protest in front of a church. Eight uniformed officers responded and required the protestors to sit on the curb for 30 to 45 minutes. None of the protestors were physically or verbally threatening, and all were compliant with the officers' orders.</p> <p>Additionally, the IPA received anecdotal reports from individuals, many of whom were people of color, who claimed that they were forced unnecessarily to sit on the curb following minor traffic stops and pedestrian stops when they posed no threat to the officers.</p>
<p>Recommendation #2: If a video of an incident has been preserved, require that IA question a subject officer about the incident before showing the video to the officer. This requirement should be placed in the IA Guidelines.</p>	<p>IA showed a subject officer a bystander's video of an incident before questioning the officer about his conduct. This may have allowed him to conform his interview statement to the video.</p>
<p>Recommendation #3: Provide training for all officers on service of <u>Steagald</u> warrants and adopt policy requiring all officers participating in the service of any type of search warrants to read the warrants before executing service.</p>	<p>SJPD officers served a <u>Steagald</u> search warrant that restricts the items that officers can search. During the search, one of the officers unwittingly read a document that was not included in the <u>Steagald</u> warrant. The officers involved in the execution of the <u>Steagald</u> warrant had not read the warrant and did not know the restrictions of a <u>Steagald</u> warrant.</p>
<p>Recommendation #4: Improve oversight of SJPD officers' secondary employment & timecard submission.</p>	<p>A complainant alleged that several SJPD officers did not have proper secondary employment permits.</p>
<p>Recommendation #5: Adopt a policy to advise complainants of their right to obtain copies of medical authorizations and copies of their own statements to IA pursuant to Penal Code section 832.7(b).</p>	<p>A complainant elected to withdraw his complaint and asked for a copy of the medical authorization form that he signed during the intake process. IA erroneously refused his request.</p>

IPA RECOMMENDATIONS

Recommendation #6:

Adopt a social media policy that addresses real and perceived conflicts of interest.

Recommendation #7:

Place an admonition in all written notifications to subject and witness officers (notice and reminder letters, etc.) that they must not discuss the cases with other officers (other than their representatives). Include an advisory that officers may review only the incident reports and the case files pertaining to the complaint under investigation.

Recommendation #8:

Adopt policies (1) that Department members are prohibited from accessing criminal histories unless for official business of SJPd; and (2) that subject and witness officers are prohibited from accessing criminal histories of complainants and civilian witnesses in IA investigations. Include this admonition in notice and reminder letters.

Recommendation #9:

Require CIT officers who respond to calls for service at board & care facilities for the mentally disabled to, whenever possible, accompany arrestees through the booking process.

Recommendation #10:

Require officers to lock the doors of cars or residences if the sole occupants are arrested.

Recommendation #11:

Adopt a formal process for moving SJPd memos and bulletins into the Duty Manual in a timely fashion.

Recommendation #12:

Add to IA Unit Guidelines that IA will not abridge IPA summaries in the database shared with the IPA.

RATIONALE

A complainant raised the concern that the officer who was the subject of his complaint was a Facebook “friend” with the IA officer assigned to investigate his complaint.

A subject officer, in order to prepare for his IA interview, discussed the incident that gave rise to the complaint with a witness officer.

At the IA interview, a subject officer brought documentation of the complainant’s criminal history, a listing of contacts between the complainant and the police, and incident reports (not pertaining to the subject complaint) in which the complainant was the subject.

A complainant who was arrested at a board & care facility became combative when being transported to the jail. He was subdued with pepper spray and leg shackles.

An officer arrested complainant at his residence and took him into custody. The officer allegedly left the vacant residence unsecured.

An officer ordered complainant’s car towed. The officer was unaware of the revised tow procedures that had been published in SJPd training bulletins. These revised procedures were not listed in the Duty Manual.

IPA wrote a complaint summary that IA edited without the IPA’s consent. The edit deleted the majority of the complainant’s allegations. IA subsequently reinstated these allegations.

IPA RECOMMENDATIONS

RATIONALE

Recommendation #13:

Revise Duty Manual section L 5403 (towing) emphasizing “whenever possible” language indicating when officers must contact vehicle owners to avoid tows; if the contacts are unsuccessful, then the officers must document the contact efforts.

A complainant’s car was stolen. SJPD quickly recovered it and a SJPD officer, without attempting to contact the complainant, ordered the car towed. Subsequently, SJPD required complainant to pay the tow fee in order to recover her car.

Recommendation #14:

Adopt a policy requiring officers who issue citations to write their notes on the back of the citation, and not maintain notes elsewhere.

Complainant was cited for standing in the roadway. The officer wrote his comments about the stop on his separate, personal notepaper, instead of writing them on the back of the citation. The officer was subsequently unable to locate his notes.

Recommendation #15:

Require officers executing a search warrant in a residence to take before and after photos of the scene, when practicable.

Complainants’ residence was searched pursuant to a search warrant. They complained that the officers left their home in disarray. The officer, although not required to do so, took photographs of the residence before and after the search.

Recommendation #16:

Establish written guidelines for the use of informants; establish a policy that prohibits officers from using their personal funds to pay informants.

The complainant was a confidential informant who alleged that she had not been properly paid for her services.

Recommendation #17:

Establish a policy for field strip searches of arrestees.

While the rules for field strip searches (body searches of a suspect’s private parts) are listed in Penal Code section 430, they do not appear in the SJPD Duty Manual.

Recommendation #18:

Provide training for officers working the SJPD lobby about rules for accepting summons.

A complainant, who was a process server, was erroneously prohibited by an officer from serving a summons at the front lobby of the SJPD Administration Building.

Recommendation #19:

Require officers to document in the CAD **reasonable suspicion** for detentions (during vehicle and pedestrian stops) when no incident reports are written.

A complainant was detained during a pedestrian stop. There was no police report documenting the stop and the CAD did not state the reasonable suspicion for the detention.

IPA RECOMMENDATIONS	RATIONALE
<p>Recommendation #20: Track in the CAD the race/ethnicity of individuals who are the subjects of pedestrian stops.</p>	<p>SJPD officers are required to capture the race of individuals who are the subjects of vehicle stops. There is no requirement to document the race of individuals who are the subjects of pedestrian stops.</p>
<p>Recommendation #21: Establish a policy limiting tobacco chewing/spitting.</p>	<p>Complainants were offended when officers spat tobacco during their interactions. They perceived the spitting to be disrespectful and unprofessional.</p>
<p>Recommendation #22: Convene IPA-IA training sessions.</p>	<p>The IPA, the Commander of IA and the Police Chief agree that joint trainings about the intake, investigation/analysis, and audit processes will result in a better working relationship and higher quality IA reports and IPA audits.</p>
<p>Recommendation #23: Require officers to receive training about how to interact with members of the public who have hearing loss.</p>	<p>Members of the Hearing Loss Association requested that the IPA initiate discussions with the SJPD about training officers how to interact with members of the public who have hearing loss.</p>
<p>Recommendation #24: Adopt a policy for consistent application of Government Code section 3304 (tolling statute).</p>	<p>State law requires tolling (putting a hold on administrative proceedings in a complaint) when a subject officer is criminally charged for conduct that gave rise to the complaint, or when the complainant faces criminal charges for the incident that gave rise to the complaint. State law makes tolling discretionary when the case under investigation is “complex.” Tolling also applies when the subject officer is named in a civil complaint that arose from the incident that is also the basis of the IA investigation. SJPD needs to establish consistent and clear application of these rules.</p>
<p>Recommendation #25: Assign multiple cases involving the same complainant who has alleged the same kind of misconduct against different officers to one IA investigator.</p>	<p>A complainant filed four separate complaints against different officers; each complaint alleged Bias-Based Policing in four separate incidents. Each complaint was assigned to a different IA investigator, rather than assigning all to one investigator so that the complainant’s credibility could be more accurately assessed.</p>

IPA RECOMMENDATIONS

RATIONALE

Recommendation #26:

Permit the IA Commander to make Sustained findings.

When it is likely that an IA investigation will result in a Sustained finding, the complaint is sent to a Lieutenant outside of IA for a review and a finding. Often these Lieutenants have no experience with the IA process. Additionally, these same Lieutenants may be the subject officers' supervisors. This process is time-consuming, lacks efficiency, and is open to bias. The Commander of IA is a Lieutenant who has the expertise and the requisite objectivity to make Sustained findings and should be allowed to do so.

Recommendation #27:

Reconcile Duty Manual sections C 1308 and C 1404 with section C 1710, pertaining to the allegations of Courtesy and Conduct Unbecoming an Officer.

There are discrepancies between the Courtesy definitions in Duty Manual section C 1308 and section C 1710. Similarly, there are discrepancies between the definitions of Conduct Unbecoming an Officer in section C 1404 and section C 1710. SJPD should reconcile these discrepancies.

Recommendation #28:

Equip all officers with state-of-the-art cameras and establish procedures for their use.

See the Op-Ed of Judge Cordell (Ret.) in the San José Mercury News, December 20, 2011 entitled "San José Police Officers Should Carry Cameras." (Appendix L)

Recommendation #29:

Review SJPD translator certification procedures and memorialize them; until the procedures are in place, immediately require officers who translate to digitally record their interviews and conversations and to preserve the recordings.

Some SJPD officers serve as translators to interview witnesses, victims, and suspects who do not speak English. The SJPD has no translator certification procedure, nor does it have a procedure for periodically testing these officers to ensure that their language skills are proficient.

Recommendation #30:

Immediately cease citing individuals for sleeping in their cars (for violation of Municipal Code 6.46.040).

A complainant alleged that he was wrongly cited for sleeping in his car. Municipal Code section 6.46.040 prohibits sleeping in "house cars" and in "automobile trailers." Sleeping in cars is not prohibited by the City of San José.

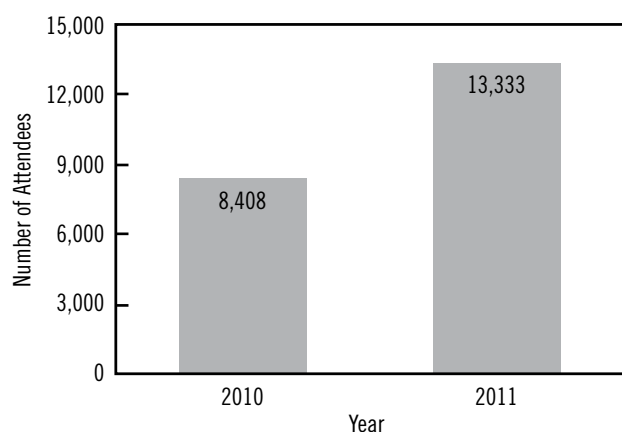
Chapter Three: Community Outreach

I. Overview

The extent of IPA community outreach soared to unprecedented levels in 2011. The IPA and staff participated in **216 outreach activities** involving approximately **13,333 members of the public** in 2011. As compared to the 2010 figures, the IPA participated in 13% more outreach activities and reached 59% more individuals in 2011. These numbers are unprecedented for the IPA Office.

It was an exciting year for IPA community outreach. We launched a new project at the **Mexican Consulate in San José**, established the **IPA Teen Leadership Council** for San José youth, and began offering a specialized presentation for individuals who are homeless/unhoused. These initiatives were in addition to our typical outreach activities that include participation in community events, presentations to the public, media interviews and IPA press releases. A list of the 216 outreach activities is provided in Appendix G to this Report.

Illustration 3-A: Attendees at Community Outreach 2010 and 2011



Types of Activity/ Event in 2011	Events	%	Attendees	%
IPA Presentations	98	45%	7,169	54%
Community Events/ Meetings	118	55%	6,164	46%
2011 Community Outreach Totals	216	100%	13,333	100%

A. Presentations by the IPA and Staff

Presentations by the IPA and staff are the most effective means to accurately and thoroughly convey the purpose and functions of the IPA office. Presentations range in duration and often include question and answer sessions so that audience members may request clarification or simply express their views and concerns. The number of IPA presentations in 2011 increased by 66% over the 2010 total. We delivered 98 presentations to 7,169 audience members. The IPA audiences ranged from small groups (e.g., 10 members of the South Bay Christian Ministers Group) to larger meetings (e.g., 110 people at a Community Dialogue on Public Safety sponsored by District 4) to major gatherings (e.g., 532 people at a National Night Out Event held at the Target store on Story Road).

Positive Public Response

We request attendees at IPA presentations to complete evaluation forms so that we can gauge the effectiveness of IPA presentations.¹ In 2011, evaluations were completed by 1,217 attendees,² a **48% increase** over the number of completed evaluations returned to the IPA in 2010.

¹The evaluation form is contained in Appendix H of this Report.

²It is not always feasible to distribute our evaluation form. If the presentation involves a very large audience, does not include a full description of IPA functions, or is made outside of the city of San José, we may not distribute evaluation forms.



Judge Cordell speaks to members of the Donna Lane Neighborhood group, with translation provided by volunteer Yesenia Ramirez.

The overwhelming majority of the responders (96%) rated the IPA presentations as good or excellent. Attendees consistently reported that their knowledge about the IPA office and the police misconduct complaint process increased. They found the IPA informational materials helpful and the presenters knowledgeable. The evaluation questions and responses by percentage are provided below.

- *Did today's presentation increase your knowledge about the Office of the Independent Police Auditor?*
 - 99% replied yes
- *Did today's presentation increase your knowledge about the complaint process?*
 - 98% replied yes
- *Was the presenter knowledgeable about the subject matter?*
 - 98% replied yes
- *Were the materials provided helpful?*
 - 95% replied yes
- *Overall, how would you rate the presentation? (Excellent, Good, Average or Poor)*
 - **Excellent** – 82%
 - **Good** – 14%
 - **Average** – 1.3%
 - **Poor** – 0%
 - **No response** – 2.7%

B. Community Events/Meetings

Community events and meetings differ from IPA presentations. At presentations, we talk to audiences about the work of the IPA office. At community events and meetings, we are sometimes introduced and then engage with the attendees on a one-to-one basis. There was an 11% decrease in the number of community events/meetings that the IPA and staff attended in 2011. This drop from 133 community meetings/events in 2010 to 118 in 2011 was due to the dramatic increase in IPA presentations in 2011. Even with this decrease, the IPA reached 6,164 attendees, 8% more than we reached in 2010 via community meetings and events.

C. Meetings with City Officials & Participation in City Events

While meetings with city officials and participation in City events do not constitute “community outreach,” we believe that IPA communication with our City government officials is of sufficient importance that we should report on our attendance.³ Throughout 2011, the IPA met with the Mayor, City Council Members, City Council Appointees, and members of the SJPD. The IPA attended City events including the Mayor’s State of the City Address, the Annual Memorial Event for Fallen Police Officers and a San José Police Officers Association (POA) reception. She officiated at the swearing-in ceremony for SJPD Chief Chris Moore following his appointment. The IPA gave a presentation to SJPD officers newly assigned to the lobby of the SJPD Administration Building regarding customer service. The IPA staff regularly attended a variety of City meetings, including Agenda Review meetings and meetings of the Public Safety and Neighborhood Services City Service Areas.

³ If the IPA or staff attend events or meetings that are primarily attended by city employees, those events and meetings are not counted toward the IPA community outreach numbers. Likewise, if the IPA or staff give a presentation to a group that is strictly city employees, such as SJPD officers, those numbers are not counted toward IPA community outreach.



Judge Cordell, Council Member Rose Herrera and Community Organizer Elsie Aranda at National Night Out in District 8.

II. Outreach Targeted to Particular Populations

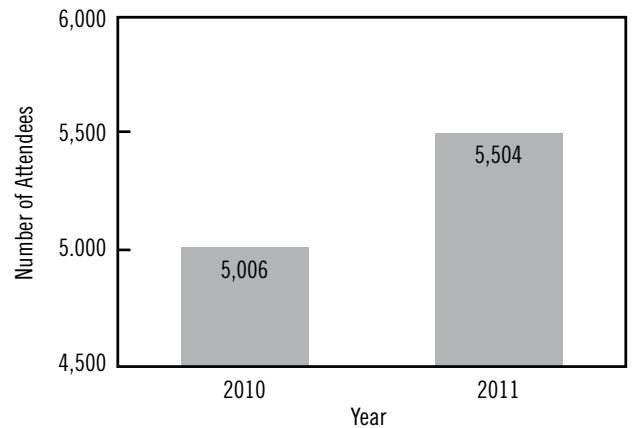
Several years ago, at the direction of the Mayor and City Council, the IPA identified three populations for targeted outreach: people of color, immigrants and youth. To ensure that we are reaching these populations, we target some of our activities at communities where these groups are most evident. In addition to the populations identified above, the IPA and staff participated in outreach activities to individuals who are homeless/unhoused and to those who have mental health issues, as well as to those who provide assistance and services to these populations.

A. Outreach to People of Color and Immigrants

In 2011, we participated in **96 events involving people of color, immigrants, and agencies** that serve those populations. This outreach constituted 45% of the total number of IPA outreach activities. Examples of this outreach were staffing a resource table at Citizenship & Immigrant Pride Day, attending the NAACP Freedom & Friendship Gala, distributing information at the annual Juneteenth event at Cesar Chavez Plaza, and addressing several hundred young women at the Sister to Sister Conference sponsored by Asian American

Recovery Services, Inc. Sixteen of our 216 IPA outreach events were conducted in either Spanish or Vietnamese, using the translation expertise of our IPA staff and community volunteers.

Illustration 3-B: Outreach to People of Color & Immigrants in 2010 and 2011



Year	Outreach Activities	% of Total	Attendees	% of Total
2011	97 (out of 216)	45%	5,504 (out of 13,333)	41%
2010	100 (out of 192)	52%	5,006 (out of 8,408)	60%

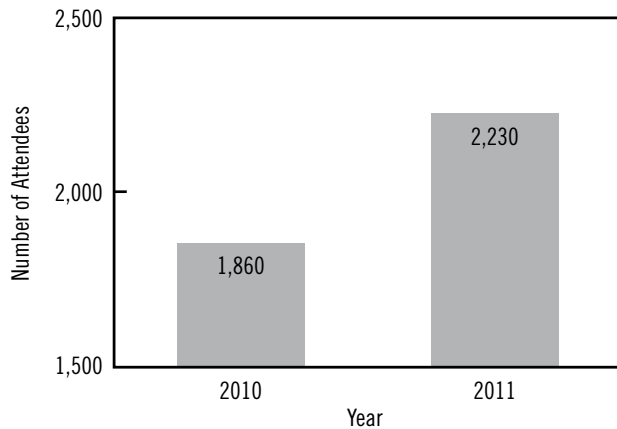
The IPA and the Consul General of Mexico in San José signed an historic Memorandum of Understanding (“MOU”) in 2010. The MOU was the result of feedback from the Mexican Consulate in San José about Mexican Nationals who were fearful of filing complaints about SJPD officers. The MOU provides that an IPA staff member will be available each month at the Consulate to inform the public about the services offered by our office and to explain the misconduct complaint process. In 2011, pursuant to the MOU, we began staffing these monthly sessions. During 2011, an IPA staff member spoke directly to **642 individuals at the Mexican Consulate** and distributed several hundred information sheets, Student Guides, and IPA wristbands.⁴

⁴The Consulate in San José serves the counties of Santa Clara, Santa Cruz, San Benito and Monterey, therefore, some of the people contacted at the Consulate do not reside in San José.

B. Outreach to Youth

The IPA and staff focused much of our outreach in 2011 on young people. To encourage open discussion and to permit time for questions, we gave presentations to teenagers in small group settings. Our goals are to motivate young people to consider positive ways to respond to law enforcement officers, to instill understanding of their legal rights and responsibilities when interacting with the police, and to encourage them to make smart choices. In 2011, IPA staff participated in **65 events involving 2,230 teenagers**, young adults, and the staff who work with them. Youth outreach activities comprised 30% of the IPA's 216 outreach activities in 2011 and 17% of the total individuals contacted via IPA outreach.

Illustration 3-C: Outreach to Youth in 2010 and 2011



Year	Outreach Activities	% of Total	Attendees	% of Total
2011	65 (out of 216)	30%	2,230 (out of 13,333)	17%
2010	54 (out of 192)	28%	1,860 (out of 8,408)	22%

In 2011, the IPA office revised and published the 4th edition of *A Student's Guide to Police Practices* ("Student Guide"). Designed to address common concerns expressed by youth about the police, the Student Guide has since 2003 been a critical tool in our outreach to young people. We encourage audience participation at IPA youth presentations by asking questions that promote group discussions. For example, we ask, *Have you had contact with*

the police? Did it go well or not? If you had it to do again, would you change anything? We also give our Student Guide presentation to teachers, parents, and youth services providers.

Twenty-five of the 65 presentations we made in 2011 focused on the Student Guide. We delivered presentations to young people at Andrew Hill High School, Bill Wilson Youth Drop In Center, Billy DeFrank LGBT Center, Catholic Charities, Independence High School, James Lick High School, Juvenile Hall, Oak Grove High School, Piedmont High School, San José Community High School, Sheppard Middle School and Yerba Buena High School. Several of the presentations were made possible through the generous support of Asian Americans for Community Involvement (AACI) and the Mexican American Community Services Agency (MACSA).

Perhaps the most exciting youth-related initiative in 2011 was the **IPA-Teen Leadership Council ("TLC")** established in April of 2011. Following an application process that drew from a diverse group of young San José residents, ages 14 to 18, more than fifty teens applied for membership. We selected 24 talented teens from nine of the City's ten council districts.

The purposes of the TLC are (1) to provide advice to the IPA on the most effective ways to conduct outreach to youth in San José; (2) to inform the IPA about police related issues on the minds of youth in San José; and (3) to develop their leadership skills. TLC members interact with city officials and police officers, and they participate in IPA community outreach events.

The TLC meets on a monthly basis. Guest speakers at the meetings in 2011 included SJPD Chief Chris Moore, Internal Affairs Officer Mario Recinos, Councilmember Sam Liccardo, Councilmember Ask Kalra and community activist Raj Jayadev.

Discussions ranged from the workings of city government to the laws that impact young people.

The TLC youth put their training into action in 2011. By the end of the year, they had participated in over **20 community events** that included Music in the Park, Project Homeless Connect, National Night Out and several city resource fairs. TLC members attended a San José City Council Meeting, a Neighborhood Safety Meeting and several youth forums. In collaboration with the City's Youth Commission, TLC members and IPA staff presented a forum sponsored by the Office of the Mayor on free speech, cyberbullying and social networking.



IPA Senior Analyst Diane Doolan-Diaz moderates TLC-YC forum.

C. Outreach to the Homeless/Unhoused

The IPA Office has long considered individuals who are homeless/unhoused to be a vulnerable population in San José who require targeted outreach. IPA Analyst Brenna Silbory developed an outreach presentation to address the rights and responsibilities of this population. **We reached more than 400 homeless/unhoused individuals and their service providers** in 2011 via presentations to the Downtown Streets Team, the Homeless Services Provider Network, the Law

Foundation of Silicon Valley, and the Santa Clara County Bar Association Legal Services Providers. IPA staff also participated in resource fairs sponsored by Project Homeless Connect and the Shelter Provider Network. Our homeless/unhoused outreach efforts will continue in 2012.

D. Outreach to Individuals with Mental Health Issues

For many years the IPA has recognized that targeted outreach is necessary to reach individuals with mental health issues. In 2011, IPA staff attended a community forum about public safety and mental health, gave a presentation at the Zephyr Self Help Center for individuals with mental health issues, and participated in two SJPD Crisis Intervention Training academies. In addition, IPA staff participated in two meetings of the Mental Health Leadership Advisory Group for the Santa Clara County Mental Health Department's Post-Crisis Intervention Program. This program provides post-crisis services to youth and adults who are referred by the SJPD.⁵

III. IPA Publications

Each year the IPA distributes informational publications at resource fairs, presentations, and community events. You can find many of the materials online at www.sanjoseca.gov/ipa. IPA publications include the following:

- *A Student's Guide to Police Practices* (Student Guide) in print & CD form;
- IPA reports to City Council;
- 2-sided information sheet entitled "Frequently Asked Questions About the IPA Office";
- brochure describing IPA functions and the complaint process; and
- wallet-sized "info card" providing IPA contact information and a brief description of IPA services.

⁵The PCI Program, operated by the Alum Rock Counseling Center, provides a 24/7 Hotline that Law Enforcement Officers may access for consultation when responding to mental health crisis related calls.

As discussed in the “Outreach to Youth” section above, we completed a major update of *A Student’s Guide to Police Practices* in 2011. The 4th edition is available in both English and Spanish.⁶ Originally released in 2003 and last updated in 2008, the Student Guide is a valuable tool to educate youth about their rights and responsibilities when interacting with police officers. We added new sections to the 4th edition that address SJPD safety officers on school campuses and police interviews of students at schools.

The IPA staff widely distributed our “Frequently Asked Questions About the IPA Office” handout (“FAQ”) at our outreach events. The FAQ is available in English, Spanish and Vietnamese. You can find the FAQ in this Report after Chapter Six.

IV. Media

Throughout the year, the work of the IPA office was the subject of print, radio, television and the internet. The IPA or her staff were interviewed, quoted, or mentioned in the media **65 times in 2011**. The topics that garnered the most media attention were the Memorandum of Understanding between the Mexican Consulate in San José and the IPA office, the selection of San José’s new Chief of Police, the issue of racial profiling, the *2010 IPA Year End Report*, the IPA-SJPD mediation program, and officer-involved shootings. A list of all of 2011 IPA media contacts is in Appendix I.

IPA Media Highlights in 2011:

- Two opinion pieces written by the IPA were printed in the *San José Mercury News* (Mercury News), one about hate speech and the other about equipping SJPD officers with cameras.
- A full-page Mercury News editorial entitled, “Cordell Setting Gold Standard for S.J. Office.” The piece was highly complimentary about the work of the IPA since her appointment by the

Mayor and City Council in April of 2010.

- A KQED Radio interview of the IPA by reporter Cy Musiker about the *2010 IPA Year End Report*.
- The “IPA Roadshow” aired by San José’s CreaTV, a series of interviews by the IPA of local officials and public figures about law enforcement issues.
- The IPA and IPA Senior Analyst Vivian Do were guests on a Vietnamese television program produced by the Immigrant Resettlement & Cultural Center, a California non-profit organization that offers education and social services to the Vietnamese community. The program aired on Comcast Cable 15, as well as KTSF radio 26.5, reaching an estimated viewership of 40,000 people.

The IPA issued several **press releases** in 2011:

- San José IPA and Mexican Consulate to Sign Memo of Understanding, January 12, 2011
- San José Independent Police Auditor Recruiting Teen Advisors, February 1, 2011
- Independent Police Auditor Will Present Report on Audits of SJPD Complaints in 2010 to Mayor and City Council, May 9, 2011
- Judge Cordell, Independent Police Auditor, to Receive ACLU Award, October 27, 2011

While it is not possible to track all media references to the IPA and the IPA Office, we did note coverage by the following entities:

- Print: Evergreen Times, India West Newspaper, Sacramento Bee, San José Mercury News and the San José State University Spartan Daily
- Television: ABC Channel 7, CBS Channel 5 KPIX, Fox Channel 2 KTVU, NBC TV and Univision Channel 14
- Radio: KBAY, KGO, KLIV and KQED

⁶The Vietnamese translation of the 4th edition of the Student Guide is anticipated during 2012.

V. IPA Website & Facebook Page

Available on the IPA website www.sanjoseca.gov/ipa/ are 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. Under the section *News, News, News*, you can find links to current IPA developments, announcements and events. There were 38,816 visitors to the IPA website during 2011 and a total of 448,941 hits or files requested by visitors⁷ — a decrease of 11% in visitors and 17% in hits from 2010. In 2011, the IPA created a Facebook page. You can find us listed as “Office of the Independent Police Auditor, San José.”

VI. Outreach by City Council District

In 2007 the City Council asked the IPA for outreach information by City Council district. Even though it is impossible for us to identify the city council districts of every person who attended IPA events, an estimate using district participation is helpful in reviewing IPA outreach and for setting future targets. As in prior years, the majority of IPA outreach in 2011 occurred in District 3 — the district that includes City Hall and the downtown area. District 3 is a popular location for city-wide events that draw attendees from other City Council districts. Although District 3 continued to receive a majority of IPA outreach in 2011, the percentage dropped from 52% in 2010 to 44% in 2011. We saw increases in Districts 1, 4, 5, 6, 9, and 10.

Neighborhood Events

Each year, some of our community outreach is directed to residents of a particular neighborhood or district. We participated in 34 such events and meetings in 2011, including National Night Out events in Districts 1, 5, 8 and 9, community resource fairs and festivals in Districts 3, 4, 5, 6, 7, 8, 9, and 10, public safety meetings in Districts 3 and 4, and “IPA Roadshow” presentations in each of the ten council districts.

Illustration 3-D: Outreach by City Council District in 2010 and 2011

Council Districts	% in 2011	% in 2010
District 1	2%	1%
District 2	2%	5%
District 3	44%	52%
District 4	14%	5%
District 5	8%	7%
District 6	8%	7%
District 7	10%	11%
District 8	4%	4%
District 9	3%	2%
District 10	2%	1%
N/A*	3%	5%
Total	100%	100%

*N/A: Events, meetings, and presentations that did not occur in San José but involved attendees who reside or conduct business here.

IPA Roadshow

Following her appointment in April 2010, the IPA conducted the “IPA Roadshow,” outreach to every council district of San José. Due to popular demand, the “IPA Roadshow” returned in 2011. These were the “IPA Roadshow” presentations in 2011:

- District 1 - December 16, Senior Citizens, Cypress Senior Center
- District 2 - November 7, Neighborhood Leadership Council, Edenvale Library
- District 3 - October 24, Community Leaders, Sacred Heart Community Center
- District 4 - December 1, Alviso Neighborhood Group, Alviso Fire Station
- District 5 - December 7, Promotoras Group, Somos Mayfair
- District 6 - November 29, District Residents, Willow Glen Community Center (a joint event with Councilmember Oliverio)
- District 7/8 - November 21, KONA Neighborhood Meeting, Most Holy Trinity Catholic Church (a joint event for Districts 7 & 8)
- District 8: - November 3, Community Roundtable, Evergreen Library
- District 9 - September 22, Neighborhood Association, Donna Lane Apartments
- District 10 - December 7, Senior Association, Almaden Community Center

⁷The number of times a specific visitor views the IPA website during the year equals the number of visitors. Each file requested by a visitor on the website registers as a hit. There can be several hits on each page.

VII. Independent Police Auditor Advisory Council

The Independent Police Auditor Advisory Council (IPAAC)⁸ was established in 1999. The group has two functions: (1) promote community awareness of the services offered by the IPA office; and (2) inform the IPA office about police-related issues and concerns that arise in San José.

The support, advice, and insights offered by the IPAAC are integral to the success of the IPA. In 2011, IPAAC members were instrumental in fundraising for the IPA-TLC. Due to their dedicated efforts, including their own personal donations, our office received a \$5,000 matching grant from the Castellano Family Foundation to support our work with the TLC. The roster of 2011 IPAAC members is in Appendix M.



IPAAC Members: Back row – Yesenia Ramirez, Merylee Shelton, Bob Bailey, Panteha Saban, Herman Vasquez, Jorge Wong, Elisa Marina Alvarado, Norma Callender, Mydzung Bui, Telina Martinez, Linda Young Colar, and Joshua Barousse. Front row – Wiggys Sivertsen, Otis Watson, Mauricio Astacio, Hilbert Morales and Alofa Taliva’a.

⁸The Independent Police Auditor Advisory Committee has changed its name to Independent Police Auditor Advisory Council.

Chapter Four: A Statistical Review of the Complaint Process

Fifteen years ago, on November 5, 1996, 64% of San José voters made the historic decision to give charter status to the Office of the Independent Police Auditor. In recognition of this anniversary, we look back at some of the IPA's earlier reported findings and observations, while discussing this year's statistics.

This chapter presents complaint statistics for 2011. Additional statistical information is available in Chapter Five on SJPD Use of Force, and in Appendix J.

I. Why Each Complaint Matters

The complaint process is an important tool because it strives to hold SJPD officers accountable to the communities that they serve. While a small minority of officers receive formal discipline as a result of complaints, complainants can influence SJPD policy and practice when they make their concerns known. Here are some of the reasons why complaints matter, regardless of their outcomes:

- Officers receive Intervention Counseling when their work prompts multiple complaints – even when the complaints are not Sustained.
- Some complaints are selected for mediation, an invaluable opportunity for both complainants and the officers to gain deeper understandings of their experiences.
- IPA tracks trends in complaints that often shape our policy recommendations to SJPD. See Chapter Two for more information about our recommendations to SJPD.

Back in the Day...

Community Concern Prompts IPA Founding

The IPA was founded in the wake of the Rodney King incident in Los Angeles. Rodney King was an African-American man who, in 1991, was detained and brutally beaten by some Los Angeles-area police officers while other officers watched. The beating was caught on video tape by a witness, and the tape was shown on television around the country. When, in 1992 a jury did not convict involved officers, people took to the streets of Los Angeles. Violent riots ensued, killing 53 people. (A different jury later convicted some of the officers.)

The reaction was not violent in San José, but community members here also took to the streets. They evoked the memories of recent officer-involved shootings and filled the city council chambers, causing the suspension of a meeting there.

The IPA was founded the following year, in 1993, by enactment of a City ordinance and after the release of a Santa Clara County Grand Jury report about the SJPD misconduct complaint process.

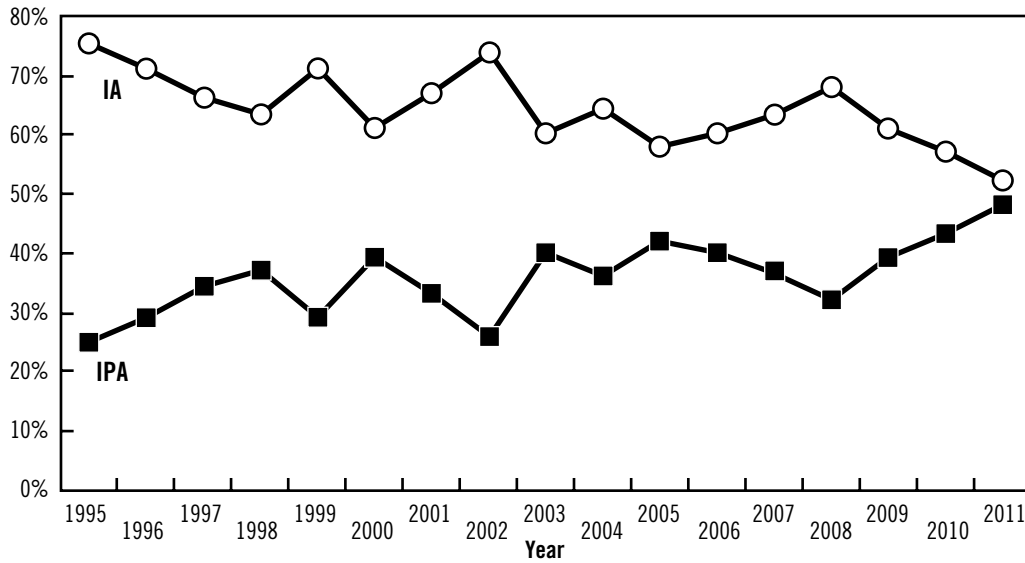
Prior to establishment of the IPA office, complaints were received and investigated solely by IA. In the IPA's first year, formal conduct complaints against SJPD officers jumped by 40% to 243 cases. Allegations increased by 56% over the previous year (and 80% over the year before that). Even SJPD's internal, Department-Initiated Investigations increased by 50% over the previous year. And, the IPA received an average of 60 phone calls a day from members of the public.

II. Who Files a Complaint? Whom Is The Complaint Against?

The complaint process begins when a person – a **complainant** – brings to IA or the IPA office a complaint or concern about an SJPD officer's conduct. In 2011, 391 members of the public⁹ brought 355 complaints or concerns against 255

⁹Sometimes, a single incident will be the subject of a complaint by more than one person. We refer to these people as **co-complainants**.

Illustration 4-A: Percentage of Intakes at IPA and IA



SJPD officers. The number of complaints and concerns in 2011 represents a **26% increase** over the 281 complaints/concerns brought against officers in 2010.

Complainants may contact the IPA office or IA by phone, email, postal mail, or in person. The IPA or IA staff record the complainants' statements so that the matters can be classified and investigated by IA. This initial process is the **intake**.

Illustration 4-B: Council District of Incidents That Prompted Complaints and Concerns in 2011

Council District	Number	%
District 1	10	3%
District 2	19	5%
District 3	104	29%
District 4	23	6%
District 5	30	8%
District 6	47	13%
District 7	35	10%
District 8	16	5%
District 9	17	5%
District 10	17	5%
Unknown/Outside City Limits	37	10%
Total Cases	355	100%

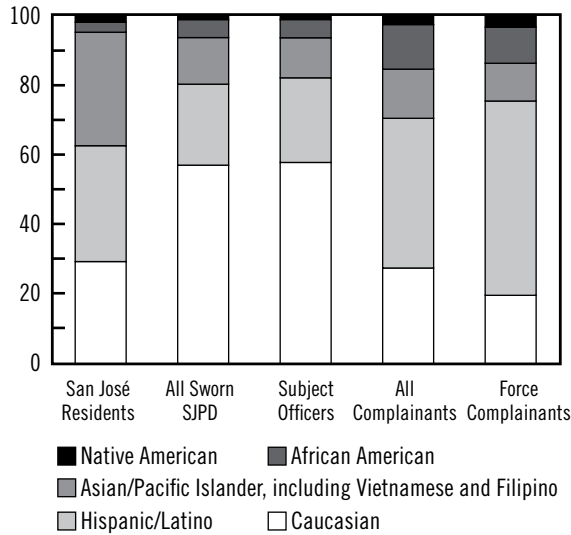
In 2011, an unprecedented 48% of complainants filed their complaints directly with the IPA office, while the other 52% went to IA. This increase in IPA intakes corresponds with unprecedented outreach conducted by the IPA and her staff. See Chapter Three for a description of our outreach efforts.

With the complainants' consent, IA or IPA staff record the intake interviews. These recorded statements become a part of the investigation file. When complainants initiate their complaints with the IPA office, IPA staff write summaries of the complaints and then mail copies of the summaries to the complainants. Next, IPA staff enter the complaint information into a database that IA and the IPA office share.

Race and Ethnicity of Complainants and Subject Officers

IPA staff ask complainants to voluntarily disclose basic demographic information about themselves. In 2011, 78% of complainants disclosed their race or ethnicity. A **subject officer** is an officer against whom an officer has filed a Conduct Complaint. IPA staff obtain similar data about subject officers from SJPD. The distribution of racial identity among complainants and officers, as well as San José

Illustration 4-C: Race and Ethnicity in 2011 Among San José Residents, Officers and Complainants Who Self-Identified



residents generally (according to 2010 Census data), is reflected in Illustration 4-C.

Complaint Rates Differ Among Different Experience Levels of Officers

Out of 1,093 sworn officers, 23% (255) received at least one complaint¹⁰ in 2011. This is consistent with the average annual complaint rate of 22% over the last five years. That is, over the last five years, fewer than 1 out of 4 officers received at least one complaint each year.

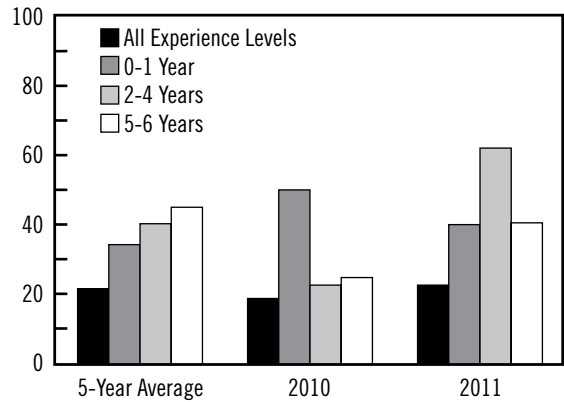
Illustration 4-D: Percentage of Officers Who Received a Complaint, by Years of Experience

Years of Experience	5-Year Average	2011	2010	2009	2008	2007
0-1*	34%	40%	50%	31%	22%	29%
2-4*	40%	62%	23%	24%	53%	40%
5-6	45%	41%	25%	63%	59%	38%
7-10	26%	29%	30%	13%	29%	28%
11-15*	19%	16%	17%	13%	24%	24%
16 or more*	15%	15%	13%	12%	20%	17%
All	22%	23%	19%	16%	28%	24%

* More senior officers are not assigned to patrol, and therefore have fewer contacts with the public, which means fewer complaints. Most junior officers are assigned to patrol.

While the average annual complaint rate is 22%, an average of 34% of the newest officers (0-1 year) received at least one complaint. In contrast, an average of 15% of the most senior officers (16 or more years) received at least one complaint. One reason for the differing complaint rates between newer and more senior officers is that newer officers are more likely to be assigned to patrol.

Illustration 4-E: Percentage of Officers Who Received a Complaint, by Years of Experience



But even among officers with similar experience levels, there have been spikes in the complaint rate from one year to the next. Specifically, in 2010, 50% of officers with 0-1 year of experience received a complaint, almost one and one-half times the five-year average of 34% for this group. In 2011, many of the officers who were in the 0-1 year group in 2010 moved into the 2-4 year experience level, or were laid off, or transferred out. Officers in that 2-4 year category in 2011 received complaints at a rate of 62%, much higher than the five-year average of 40% for this experience level.

Most subject officers receive only one complaint in a given calendar year. In 2011, 79% of subject officers received only one complaint; 21% received 2 or more complaints; and 5% received 3 or more complaints.

Officers who receive multiple complaints within a twelve-month period are provided Intervention

¹⁰ These numbers refer to Conduct Complaints. See Section III, “Breaking it Down: Types of Complaints and Allegations” for an explanation of complaint classification.

Counseling by SJPD, even when none of the complaints are Sustained.

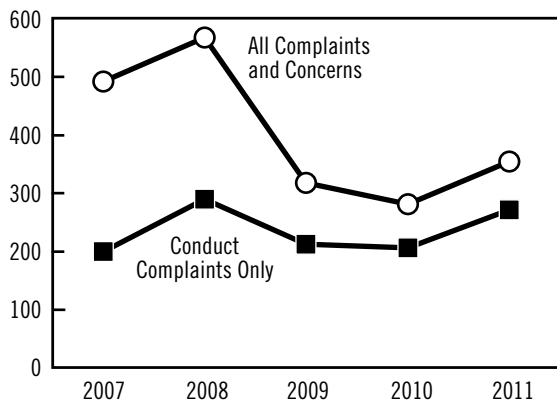
III. Breaking it Down: Types of Complaints and Allegations

All complaints and concerns are classified by IA. The IPA staff review IA's classification decisions early in the process to ensure that allegations of misconduct receive the attention they deserve.

There are three classifications: Conduct Complaints, Policy Complaints, and Non-Misconduct Concerns.¹¹

Conduct Complaints are statements that allege SJPD officers broke one or more of the rules they must follow.¹² These Conduct Complaints are investigated by IA.

Illustration 4-F: Complaints and Concerns Filed by the Public Over Five Years



Policy Complaints are not directed against an individual officer, but rather are about SJPD policies or procedures. They are forwarded to SJPD's Research and Development Unit for review. **Non-Misconduct Concerns** do not rise to the level of a violation of policy, procedure, or law that could result in officer discipline; these concerns receive minimal investigation.

Back in the Day ...

Tracking Civilian Concerns

IA used to place "Procedural" complaints (similar to the current Non-Misconduct Concern classification) in a separate handwritten "Procedural Log". The log omitted officers' names and did not provide sufficient detail to understand the nature of the underlying complaint. IA placed over 1000 of these "Procedural" matters in the log in 1993.

When the then-IPA examined this system, she reported that it resulted in "a perception of impropriety." The IPA advocated for changes to make sure legitimate concerns about officer conduct would be properly classified and tracked. In 1996 the IPA recommended a computer database to which IA and IPA would both have access. IA began using a secure database system to this end in 1999, and today both offices access complaint information using a shared database.

There is one other type of complaint that can subject an officer to discipline – a **Department Initiated Investigation** ("DII"). DIIs are complaints about officer misconduct, except that rather than being initiated by members of the public, they are brought to the attention of SJPD leadership by Department members or other law enforcement agencies. The IPA has no role in the classification, review, or audit of DIIs; these matters are handled exclusively by IA and SJPD Command Staff.

Conduct Complaints (and DIIs) have **allegations**. An allegation is a person's accusation that an SJPD officer violated policy, procedure, or the law. A complaint can have more than one allegation. There are eight types of allegations that, if proven, may lead to officer discipline. **Complainants made 756 allegations in 2011.** The following illustration lists examples of allegations from cases that the IPA audited in 2011.

¹¹ Additionally, IA classifies matters as "Other" when they are 1) duplicate complaints, 2) filed concerning incidents that occurred more than a year before, or 3) not actually about an SJPD officer. IA initially classified sixteen cases as "Other" in 2011. The IPA reviews cases classified as "Other" to confirm the classification is appropriate.

¹² The Duty Manual is a book of rules that all SJPD officers must follow.

Misconduct Allegations, Listed By Frequency

Procedure: The officer did not follow appropriate policy, procedure, or guidelines.

- 240 allegations (32%)
- **Example:** An officer allegedly failed to securely seatbelt an arrestee who was in handcuffs, causing him to be jostled about in the back of a moving police vehicle.

Courtesy: The officer used profane or derogatory language, wasn't tactful, lost his/her temper, became impatient, or was otherwise discourteous.

- 147 allegations (19%)
- **Example:** An officer allegedly called two parents "druggies" and said, "You guys don't deserve your kids."

Force: The amount of force the officer used was not "objectively reasonable," as defined by SJPD Duty Manual, section L2602.

- 120 allegations (16%)
- **Example:** Officers confronting a bicycle rider allegedly punched him in the face, dislocated his elbow, and caused other injuries, although he claimed he was not resisting.
- Turn to Chapter Five to read more about Force complaints.

Arrest or Detention: An arrest lacked probable cause or a detention lacked reasonable suspicion.

- 83 allegations (11%)
- **Example:** Officers allegedly told a driver that they stopped him because of broken brake lights, but the driver contended that his brake lights were working.

Search or Seizure: A search or seizure violated the protections provided by the 4th Amendment of the United States Constitution.

- 59 allegations (8%)
- **Example:** A complainant alleged that, although he was on probation with a search clause, officers had no right to search his mother's home because he no longer lived there.

Bias-Based Policing: An officer engaged in conduct based on a person's race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

- 45 allegations (6%)
- **Example:** A complainant alleged he was repeatedly stopped for driving a low-rider car because of racial bias against Latinos, who, he claimed, were the primary drivers of these modified vehicles.

Neglect of Duty: An officer neglected his/her duties and failed to take action required by policies, procedures, or law.

- 41 allegations (5%)
- **Example:** An officer allegedly failed to investigate a possible battery, although there were multiple witnesses.

Conduct Unbecoming an Officer: A reasonable person would find the officer's on- or off-duty conduct unbecoming a police officer, and such conduct reflected adversely on the SJPD.

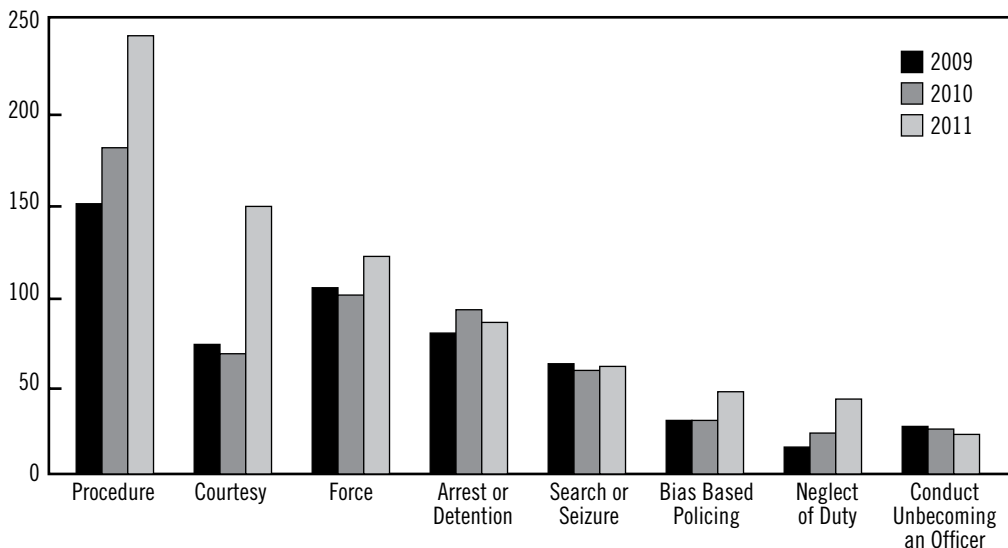
- 21 allegations (3%)
- **Example:** An officer allegedly forced a detained individual to expose her private parts to him.

SJPD changed its Duty Manual definition of Courtesy in October 2010. Previously, SJPD limited its Courtesy definition to prohibiting an officer's "inappropriate" use of profane or derogatory language, or an obscene gesture. That definition did not explain what was "inappropriate." Now, a broader range of conduct constitutes misconduct. The new Courtesy definition states officers "will be tactful in the performance of their duties, shall control their tempers and exercise the utmost patience and discretion, even in the face of extreme provocation," and more clearly limits an

officer's ability to use coarse, profane or derogatory language. This broadened definition may account for the increase in Courtesy allegations.

SJPD changed its Duty Manual definition of Bias-Based Policing in February 2011 to clarify that this form of misconduct can occur at any time during an encounter, not only at the initiation of contact between an officer and a member of the public, and that bias need not be the sole factor influencing the officer to act. This expanded definition may account for the increase in Bias-Based Policing allegations.

Illustration 4-G: Allegations, By Year Received



IV. Internal Affairs Investigates Complaints

After intake and classification, IA investigates each Conduct Complaint. The **IPA does not have the authority to investigate complaints, but instead monitors the IA investigations.**

An important way the IPA monitors investigations is to attend interviews of subject officers and witnesses. Current practices specify that IA is to notify the IPA of all officer interviews in (1) all complaints opened at the IPA office and (2) all complaints containing a Force or Conduct Unbecoming an Officer allegation. IPA staff may request notifications of IA interviews for some, but not all, remaining cases. IA only permits the IPA and the Assistant IPA to attend officer interviews. Time constraints make it impossible for them to attend all of the officer interviews. When IPA staff cannot attend an officer interview, we can send questions to the interviewing sergeant and ask they be included in the interview process.

Case Studies: IPA Access To Interviews

While IA's policy is to notify IPA of all Force case officer interviews, some notable exceptions occurred in 2011. The IPA was not notified of officer interviews where use of force was alleged in cases where

- an officer tased an individual three times,
- an officer tased an individual for twenty-four continuous seconds (five seconds is standard),
- an officer broke a bone in his/her hand while striking an individual's face.

V. Internal Affairs Makes a Finding For Each Allegation

IA makes a finding for each allegation when it concludes its investigation of a Conduct Complaint.

Findings for Misconduct Allegations

Exonerated: “The act or acts, which provided the basis for the allegation or complaint, occurred, however, the investigation revealed they were justified, lawful, and proper.”¹³ This means that the officer engaged in the conduct and the conduct was proper.

- **Result:** The officer cannot be disciplined when there is an Exonerated finding. However, the officer may be required to undergo counseling or training.
- 247 allegations (46%) were Exonerated in 2011.

Not Sustained: “The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation[.]” This means it was a “he said-she said” situation where it is one person’s word against another and IA cannot determine which version to believe.

- **Result:** This finding does not result in officer discipline. However, the officer may be required to undergo counseling or training.
- 102 allegations (13%) were Not Sustained in 2011.

Sustained: “The investigation disclosed sufficient evidence to prove clearly the allegation made in the complaint.” This means that the Police Chief and his Chain of Command determined that the officer did engage in misconduct.

- **Result:** This finding results in officer discipline.
- 44 allegations (6%) were Sustained in 2011.

Unfounded: “The investigation conclusively proved either that the act or acts complained of did not occur, or that the Department member named in the allegation was not involved in the act or acts, which may have occurred.” This means that the IA investigation concluded that the acts never happened, or that no SJPD officers were involved in the alleged acts.

- **Result:** The officer is not disciplined.
- 153 allegations (20%) were Unfounded in 2011.

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 Department member is no longer employed by the Department before the completion of the investigation.” This means that the complainant didn’t follow through with necessary information for IA, or the officer is no longer employed by SJPD.

- **Result:** The officer is not disciplined.
- 39 allegations (5%) were closed with No Finding in 2011.

Withdrawn: “The complainant affirmatively indicates the desire to withdraw his/her complaint.” This means the complainant said he/she wanted to drop the complaint.¹⁴

- **Result:** This finding does not result in officer discipline.
- 21 allegations (3%) were Withdrawn in 2011.

Other: Allegations in 2011 were closed as “Other” when SJPD declined to investigate because of a delay of years from the date of the incident to the date of filing or because the officer was employed by another law enforcement agency – not by SJPD.

- **Result:** No officer is investigated.
- 50 allegations (7%) were closed as Other in 2011.

¹³ All definitions in quotations in this table are from the 2010 Duty Manual, section C 1723. As described in the IPA’s 2009 Year End Report, pages 30-32, the IPA has urged the City Manager to revise the definitions to conform with language used in state law to describe the appropriate burden of proof (see Penal Code section 832.5(d)(3)), including adding the word “clearly” to the definition of Exonerated, and removing the word “clearly” from the definition of Sustained.

¹⁴ IPA staff frequently follows up to ensure that the complainant was not pressured to withdraw the complaint.

Certain types of allegations are more likely to have certain findings.

Dispositions of Allegations in 2011*

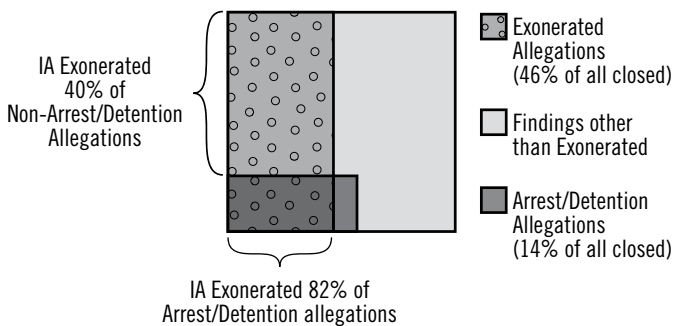
	Bias-		Conduct			Neglect		Search/	Total	Percent
	Arrest/ Detention	Based Policing	Courtesy	Unbecoming an Officer	Force	of Duty	Procedure	Seizure		
Sustained	1	0	5	6	1	1	27	3	44	6%
Not Sustained	2	1	46	7	10	0	29	7	102	13%
Exonerated	87	1	23	0	76	11	105	44	347	46%
Unfounded	6	31	20	16	16	6	53	5	153	20%
No Finding	3	1	9	2	5	1	16	2	39	5%
Complaint Withdrawn	0	0	7	1	1	2	9	1	21	3%
Other	7	4	6	6	4	3	16	4	50	7%
Total	106	38	116	38	113	24	255	66	756	100%

*Excluding Department-Initiated Investigations

Exonerated Findings and Arrest/Detention Allegations

While IA Exonerated, on average, 40% of all other types of allegations combined, IA Exonerated 82% of Arrest/Detention allegations (87 of 106). IA is more likely to Exonerate an Arrest/Detention allegation than any other kind because arrests and detentions are documented in some form (e.g. incident reports or the CAD). For this reason, Arrest/Detention allegations can be objectively evaluated more easily than other types of allegations. Exoneration is an appropriate finding only when IA establishes both that the alleged incident happened, and that the officer’s actions were in keeping with SJPD policy.

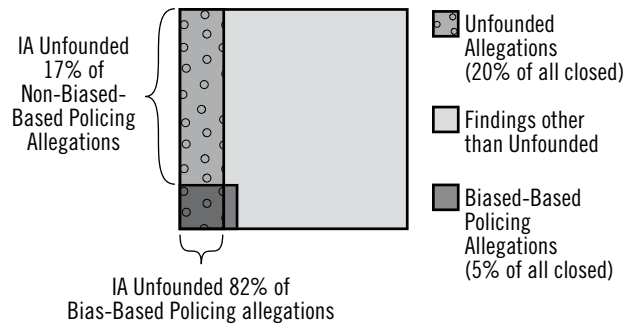
Illustration 4-H: Exonerated Findings & Arrest/Detention Allegations



Unfounded Findings and Bias-Based Policing Allegations

While IA Unfounded, on average, 17% of all other types of allegations combined, IA Unfounded 82% of Bias-Based Policing allegations (31 of 38). This reflects, in part, the difficulty in investigating allegations of Bias-Based Policing – it is often the complainant’s perception versus the officer’s perception. For example, sometimes a complainant may assert, based on his or her gut feeling, that an officer acted on account of race. The officer typically rebuts this assertion with a clear statement that he or she had no intention to discriminate. In the final analysis, the complainant’s feeling about the officer’s intent is outweighed by the officer’s statement about his/her intent or motivation. The result is an Unfounded finding.

Illustration 4-I: Unfounded Findings & Bias-Based Policing Allegations



Case Studies: Is It Bias, Or Something Else?

Complainants often allege Bias-Based Policing when officers' actions seem unfair, and the most obvious explanation to the complainants is bias. For example, a father reported stolen property and was offended when, upon finding the property, an officer targeted his son as a suspect. The father alleged the officer suspected his son only because he was Latino. However, the officer had found evidence along with the property that implicated the son in the theft. The officer had not disclosed this evidence to the father at the time he filed a complaint, because disclosing it would have impeded the theft investigation.

And there are times when there is no reasonable explanation other than bias to explain an officer's conduct. For example, two women in a same-sex relationship reported that one had been violently assaulted by the parents of the other. They alleged that when an officer responded to the scene of the assault he told them he understood why the parents were upset since their daughter was in a relationship with a woman. He refused to arrest the parents in spite of the victim's visible injuries. The complainants alleged the officer said that, while her sexual orientation was changeable, the daughter could be permanently damaging her relationship with her parents by dating the assault victim. He likened being gay to being on drugs.

The officer denied making these statements, but he also admitted that his focus was on the welfare of the daughter, rather than on the welfare of her partner, the assault victim. Because the officer's responsibility was to investigate an alleged crime and to protect the victim of the assault, the IPA requested a more thorough examination of the Bias-Based Policing allegation.

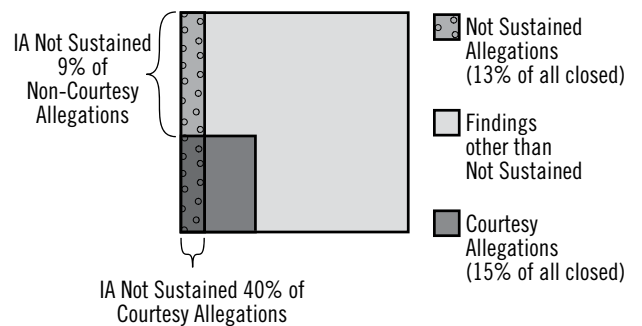
In 2011, the subject of bias-based policing was probed in a joint meeting of IA and IPA staff. Please see Chapter Two for more information about this session.

Not Sustained Findings and Courtesy Allegations

Courtesy allegations are most likely to be "Not Sustained." While IA made Not Sustained findings

for 9% of all other types of allegations combined, IA Not Sustained 40% of Courtesy allegations (46 of 116). In the absence of a witness, a Courtesy allegation often boils down to the word of the officer against the word of the complainant. Because the two accounts essentially cancel each other out, there is inadequate evidence available to prove or disprove the allegation, which results in a Not Sustained finding. On the other hand, if there is an independent witness or other evidence to corroborate one side or the other, then a finding other than Not Sustained will likely result.

Illustration 4-J: Not Sustained Findings & Courtesy Allegations



Sustained Findings and Conduct Unbecoming an Officer Allegations

IA Sustained a higher rate of Conduct Unbecoming an Officer allegations than any other type – 16% (6 of 38).

The Sustained Rate

Illustration 4-K: Sustained Complaints Over Five Years

Year of Complaint	Sustained Rate	Sustained Complaints	Closed Complaints
2007	6%	14	239
2008	5%	19	348
2009	7%	20	291
2010	7%	15	228
2011	10%	24	246

The **Sustained rate** looks at the percentage of Conduct Complaints that are closed with one or more Sustained allegations. The Sustained rate for complaints filed by the public increased to 10% in

2011 after ranging from 5% to 7% over the previous four years.

This increased Sustained rate is likely a reflection of a variety of factors. The IPA has observed improved professionalism among IA staff. New SJPD leadership has implemented training and policies emphasizing a more objective approach to

the investigatory and analytical work of IA. We see this as a very positive trend.

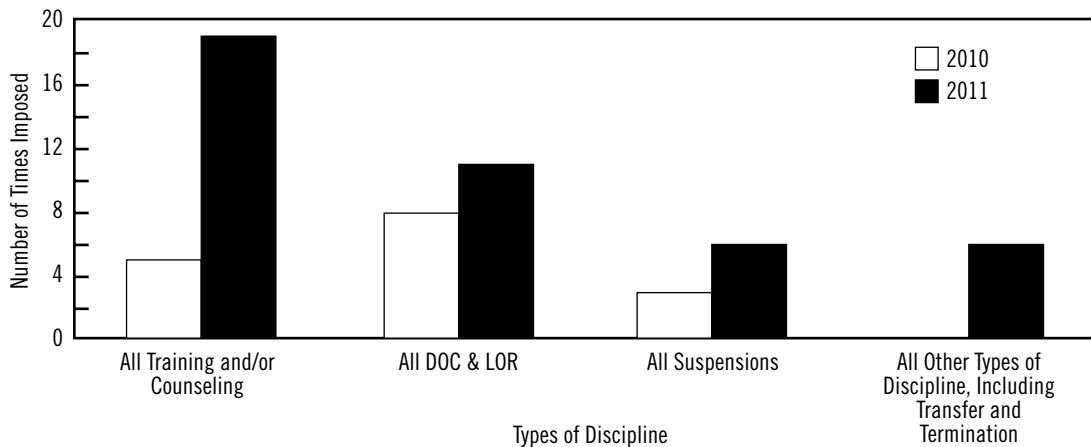
Officer Discipline

SJPD disciplined 42 officers in 2011 as a result of Conduct Complaints. This is a substantial increase from the 16 officers disciplined in 2010, the 20 in 2009, and the 22 in 2008.

Illustration 4-L: Discipline Imposed in 2010 and 2011

Type of Discipline	2010		2011	
	# of Times	% of All Discipline	# of Times	% of All Discipline
Training	1	6%	7	17%
Counseling			2	5%
Training & Counseling	4	25%	10	24%
ALL TRAINING AND/OR COUNSELING	5	31%	19	45%
Documented Oral Counseling (DOC)	5	31%	10	24%
DOC & Training	1	6%		0%
Letter of Reprimand (LOR)	2	13%	1	2%
ALL DOC & LOR	8	50%	11	26%
10-Hour Suspension			3	7%
20-Hour Suspension			2	5%
40-Hour Suspension			1	2%
4-Month Suspension	1	6%		
7-Month Suspension	2	13%		
ALL SUSPENSIONS	3	19%	6	14%
Disciplinary Transfer			1	2%
Settlement Agreement			2	5%
Resigned in Lieu of Termination			1	2%
Termination			2	5%
TRANSFERS, SETTLEMENTS, RESIGNATIONS, TERMINATIONS	0	0%	6	14%
TOTAL DISCIPLINE IMPOSED	16		42	

Illustration 4-M: Types of Discipline Imposed in 2010 and 2011



VI. The IPA Audits the IA Investigations

After IA closes its investigation of a complaint, it forwards the case to the IPA for audit. The IPA fulfilled its mandate in 2011 to audit all cases with a Force allegation, and at least 20% of all remaining cases. In 2011, the IPA audited 256 cases, including 78 Force cases.

In auditing a case, the IPA staff assess whether the IA investigation was fair, thorough, and objective. Issues reviewed during the IPA audit include the application of policy to the facts, the presence/absence of interviews/supporting documentation and IA's analysis of the evidence.

Back in the Day ...

IPA Audit Determinations

In 1997, the IPA reported agreeing with IA investigations 91% of the time, and disagreeing 9%. The IPA requested further action in 13% of cases.

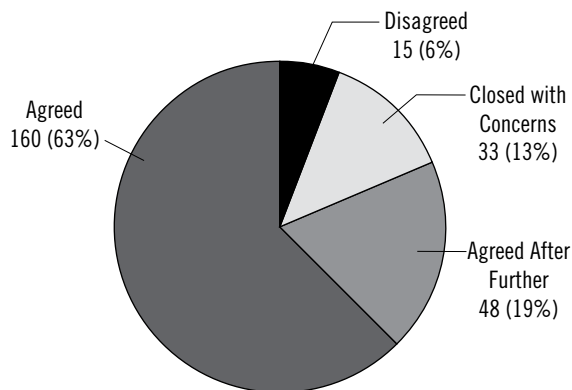
In 1998, the IPA disagreed in 18% of cases.

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"> – CAD (SJPD Computer Aided Dispatch logs) – 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 that 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?

After reviewing the case, we then conclude the audit with one of the following determinations. Each time the IPA audits a case, she determines whether she

- **Agreed** with IA's handling of the case (160, or 63% of audited cases in 2011),
- **Agreed After Further** action, such as receiving from IA a satisfactory response to an IPA request for additional clarification or investigation (48, or 19% of audited cases),
- **Closed With Concerns**, which indicates the IPA questioned the IA investigation and/or analysis, but the concern did not rise to the level of seriousness warranting a formal disagreement (33, or 13% of audited cases), or
- **Disagreed**, meaning the IPA determined that IA's investigation and findings were not thorough, objective, and fair (15, or 6% of audited cases).

Illustration 4-N: 2011 IPA Audit Determinations



IA Investigation Timeliness and IPA Determinations

Prompt investigations are key to obtaining accurate and objective evidence of the incidents. The quality of evidence, including witness and officer statements, tends to fade with time.

Beginning in 1998, state law imposed a one-year deadline in which most misconduct investigations must be completed.¹⁵ If the Department intends to impose discipline, it must usually notify the officer within this one-year window. This means that in order for the IPA's audit to serve its purpose, the audit – and any additional IA investigation or analysis the IPA requests – must also be completed within this one-year period.

For these reasons, SJPD adopted a 1997 IPA recommendation that SJPD complete its investigation and analysis on each case within 300 days from the date of the complaint intake. When SJPD adheres to this policy, the IPA office has just 65 days before the one-year deadline to complete its review and return the case to IA for any necessary follow-up. IA also must complete its follow-up within that same 65-day window to meet the deadline.

The issue of IA investigation timeliness has been an ongoing concern since the inception of the IPA office.¹⁶ Timeliness was again addressed at length in last year's 2010 IPA Year End Report.

Back in the Day ...

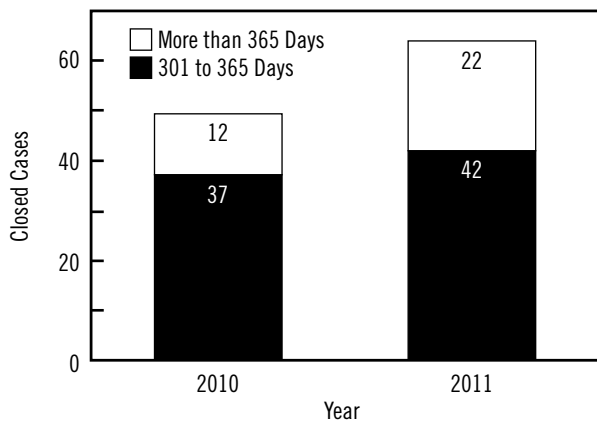
Investigation Timeliness

From the beginning, the IPA raised concerns about complaint investigation timeliness. The IPA's first year end report described IA completing 45% of cases within 120 days, short of a goal of completing 75% in 120 days and 100% within 300 days. In the following year, 1995, IA closed 21% of cases within 120 days, and 53% within 300 days. In 1996, IA had completed 74% of cases within 120 days. A new goal was to complete investigations of "Force I" complaints – when the use of force caused serious injury requiring medical care – within 180 days, and complete all others within 365 days. However, IA continued to lag behind these goals, especially when IA forwarded cases to SJPD units outside of IA for investigation.

¹⁵The one-year deadline can be tolled (put on hold) during the time any criminal or civil court action is proceeding, or if the investigation is particularly complex because it is multijurisdictional or involves multiple officers. Gov't Code section 3304(d)(2). One 2011 IPA recommendation is to ensure that tolling be applied consistently.

¹⁶The IPA Audit of Recommendations to SJPD (1993-2009), reported to the City Council on January 10, 2012, established that the IPA made 10 recommendations on the issue of IA investigation timeliness from 1993 to 2009. SJPD adopted many of these recommendations as policy. See Chapter Two for more information about this Audit.

Illustration 4-0: Number of Misconduct Cases Closed After 300 Days

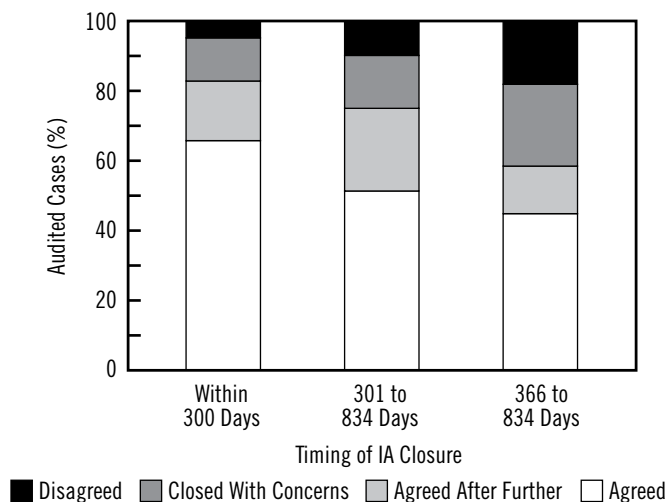


In spite of the IPA efforts and SJPD policy changes, IA investigation timeliness remains a problem. In fact, the rate of late-closed cases actually increased in 2011 over the previous year. IA closed 26% (64 of 246) of misconduct cases more than 300 days after they were filed, seriously jeopardizing IPA’s ability to provide meaningful review. This represented an increase from the previous year, when IA closed 21% (49 of 229) of cases after more than 300 days.

Further, in 2011, IA closed 9% (22 of 246) of cases **more than 365 days** after they were filed, rendering the IPA audit meaningless. This was almost double the rate of cases closed post-365 days in 2010, when the rate was 5% (12 of 229). Although a few of these cases may have been eligible for tolling, which might extend the usual 365-day timeframe, the failure of IA to promptly and consistently identify tolled cases makes it difficult for the IPA to accurately segregate tolled cases from those cases closed late.

IA’s late closing of cases does not in and of itself prompt a “Disagreed” determination by IPA, but it does increase the likelihood that the IPA will take issue with the investigation. As Illustration 4-P depicts, in 2011, the IPA Agreed with 123 cases closed by IA within 300 days, which was 65% of cases closed within that time frame. However, the IPA only Agreed with 52% of the cases IA closed

Illustration 4-P: IA Timeliness and IPA Audit Determinations



more than 300 days after filing, and 45% of the cases closed more than 365 days after filing. Put another way, IPA Disagreed or Closed With Concern more of those cases closed late (after more than 300 days) than those cases closed in a timely fashion.

Additionally, the IPA determination is more likely to be Disagreed or Closed With Concerns when a case involves a Force allegation. While the IPA Disagreed with 4% of all cases audited in 2011 that did not involve a Force allegation, the Disagreed rate was 10% for Force cases.¹⁷ Similarly, the IPA Closed With Concerns 10% of non-Force cases, but 19% of Force cases. Read Chapter Five for more on Force cases.

VII. Selected Complaint Trends

Over the course of the year, the IPA identifies trends in the complaints that sometimes prompt IPA recommendations to SJPD. For example, complaints involving officers associated with the Secondary Employment Unit prompted the IPA to recommend SJPD improve oversight of that unit. The IPA also tracks trends to get a clearer sense of the prevalence of issues of concern.

¹⁷ A complaint with a Force allegation may contain other types of allegations too. The IPA disagreement or concern may not be focused upon the Force allegation, but instead upon one or more of the other allegations.

Back in the Day.....

Some Trends Resolved, Some Persist

The complaint trends identified in IPA Year End Reports have varied over the years. Early trends included the following:

- **1994 - Disputed consent searches:** The IPA highlighted 36 complaints alleging officers had searched homes without consent; but officers reported they had obtained consent to search. Disputed consent searches continue to be issues of concern today.
- **1995 - Secondary employment:** The IPA's far-reaching examination of pay job policies exposed multiple problematic practices. Major positive changes were made to SJPD's policing of the downtown Entertainment Zone as a result. However, concerns around pay job practices resurfaced in 2011.
- **1996 - Officer self-identification:** Multiple complaints alleged that officers refused to identify themselves to members of the public when asked, prompting reform of SJPD policy. Now, when civilians request officer identification, officers must identify themselves with business cards or report receipt cards.
- **1997 - Forcible blood draws:** IPA described the common SJPD practice of taking forcible blood samples in the open parking lots of the Main Jail and Pre-Processing Center, which produced injury in some cases. After the IPA advocated for a policy that brought the procedure in line with approved medical practice, SJPD changed its practice.
- **1998 - Officer involved shootings:** IPA advocated for automatic IPA review of all OIS incidents, regardless of whether a complaint was filed by a member of the public. The IPA now participates on OIS review panels that do not inquire into officer misconduct. (See Chapter Five on use of force for more information on the IPA role in the review of OIS.) However, the IPA must still rely on a complaint from the public in order to trigger its authority to audit OIS misconduct investigations.

For example, officers sometimes order detained individuals to sit on roadside curbs during their detentions for officer safety reasons. This action is perceived as demeaning to some members of the public. Complaints regarding these orders,

and feedback during community outreach events, prompted the IPA to track the incidence of curbsitting in complaints audited by the IPA office. Twenty-one audited cases described curbsitting.

Similarly, early in his tenure as Chief of Police, Chief Moore addressed concerns among some community members that their cars were being towed, at considerable expense to the car owners. He subsequently implemented a policy to reduce the frequency of such tows. Seventeen audited cases in 2011 described car tows/impounds.

With the expanded definition of the Courtesy allegation, the IPA tracked the incidence of complaints involving officer use of derogatory words. Thirty-seven audited cases described officer use of derogatory words.

Illustration 4-Q examines two trends – curbsitting and derogatory words – in relation to the race/ethnicity, where known, of the complainants who raised them. We looked at whether some racial/ethnic groups tended to raise these trends out of proportion with their representation among complainants as a whole.

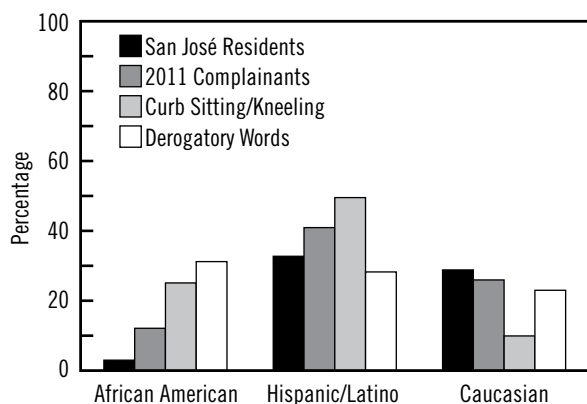
Before drawing conclusions, we encourage the reader to consider the following:

- Not all complainants identified their race or ethnicity. In 2011, IPA only knew the race or ethnicity of 78% of complainants. Additionally, although many people self-identify with more than one racial or ethnic group, our limited statistical information omits this nuance. The illustration only reflects race and ethnicity **when known to the IPA.**
- Not all complainants reside in San José.
- Complainants sometimes are not the individuals subject to police action. For example, a family member may complain about the arrest of a relative. The IPA examined whether any of the individuals actually involved in

the incidents were asked to sit on the curb or described derogatory words by officers. In rare instances, demographics of the complainants may differ from those of the individuals subjected to the alleged police actions.

- Some sample sizes are very small.
- A complainant’s allegation of curb-sitting or derogatory words may not be confirmed by the IA investigation.
- Officers’ actions might sometimes be justified even in situations where the complainant objects to them.

Illustration 4-Q: Selected Complaint Trends by Complainant’s Race/Ethnicity, Where Identified



African Americans constituted 12% of all complainants where ethnicity/race was known. Of the complaints in which curb-sitting was noted, 25% involved African Americans. Of those complaints in which derogatory words were noted, 30% involved African Americans.

Hispanics/Latinos constituted 41% of all complainants where ethnicity/race was known. Of the complaints in which curb-sitting was noted, 50% involved Hispanics/Latinos. Of those complaints in which derogatory words were noted, 35% involved Hispanics/Latinos.

Caucasians constituted 26% of all complainants where ethnicity/race was known. Of the complaints in which curb-sitting was noted, 10% involved Caucasians. Of those complaints in which derogatory words were noted, 23% involved Caucasians.

Chapter Five: Use of Force

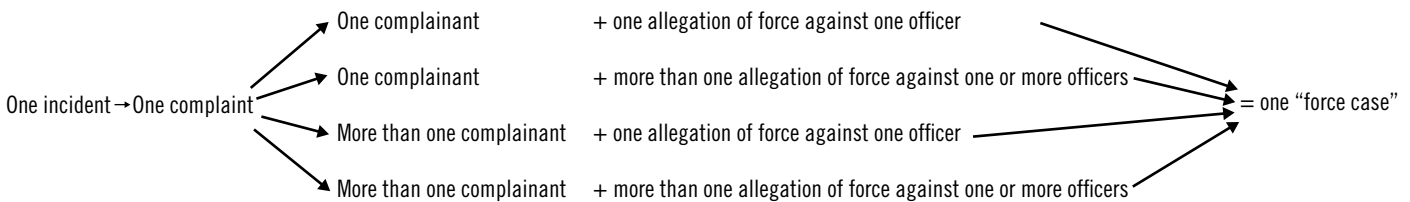
This chapter provides data from Force Cases closed and audited in 2011.

I. Force Cases and Allegations

A. Overview

Police work poses both expected and unexpected dangers. On occasion, the use of force by officers is necessary. A police officer who has reasonable cause to believe that a suspect has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. The use of unnecessary or excessive force is one of the most serious allegations made against an officer. The IPA

Illustration 5-A: How Force Cases are Defined



An IA investigation of a Force Case should answer three questions: (1) Was the force response lawful? (2) Was the force response reasonable? (3) Was the force response within SJPD policy? The IA investigation must examine all the facts and circumstances associated with the incident in order to determine whether or not the officer acted reasonably. The severity of the crime, the threat presented by the suspect and the resistance offered by the suspect are factors that IA evaluates.

Seventy-two (72) Force Cases were opened in 2011.¹⁹ That number is higher than the Force Cases opened in 2010 and 2009, but significantly lower than the number of Force Cases opened in 2008. Illustration

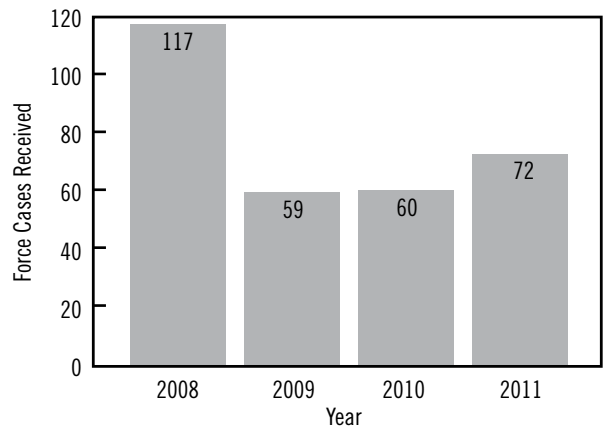
is required by the City’s Municipal Code to audit all investigations conducted by Internal Affairs (“IA”) of Force allegations filed by members of the public.

B. Force Cases

“Force Case” describes a complaint that includes one or more allegations of improper use of force by a San José police officer. The term “Force Case” helps us to discuss, in general, all those types of cases that have one thing in common — an officer’s use of force.¹⁸ Each of the scenarios below is an example of a Force Case.

5-B shows the number of Force Cases opened from 2008 through 2011.

Illustration 5-B: Force Cases Opened from 2008 through 2011



¹⁸Use of the term “Force Case” assists in making comparisons from year to year.

¹⁹Even if a case is filed in 2011, it may not necessarily be closed in 2011.

C. Force Allegations

The annual number of Force **allegations** in complaints is higher than the annual number of Force **Cases** because, as shown in Illustration 5-A “How Force Cases are Defined,” each single complaint may contain more than one Force allegation. Of the 756 allegations contained in complaints from members of the public opened in 2011, 16% (120) were Force allegations. In 2010, 17% of all allegations filed by the public were Force allegations. Illustration 5-C shows the number of Force allegations received from 2008 through 2011.

Illustration 5-C: Force Allegations Received from the Public from 2008 through 2011

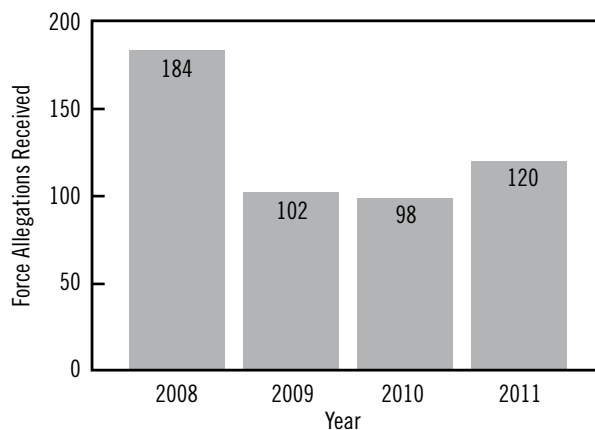


Illustration 5-E: Force Case Complainants by Ethnicity*

Ethnicity From Complainants' Surveys & Intakes	Force Complainants		Total Complainants		% of San José Population**
	Number	%	Number	%	
African American	7	8%	36	9%	3%
Asian / Pacific Islander	5	6%	20	5%	15%
Caucasian	14	16%	79	20%	29%
Filipino***	0	1%	3	1%	6%
Hispanic / Latino	40	47%	126	32%	33%
Native American	2	2%	5	1%	1%
Vietnamese***	3	4%	18	5%	11%
Other	3	4%	18	5%	2%
Decline / Unknown	11	13%	86	22%	0%
Complainants' Responses to Surveys / Intakes	85	100%	391	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; however all complainants are members of the public.

** Source: U.S. Census Bureau, Census 2010 ***For the purpose of this illustration, Filipino and Vietnamese are listed separately from Asian/Pacific Islanders.

Illustration 5-D shows the number of Force Cases and the number of complaints received from the public from 2008 to 2011. Despite the fact that the number of Force Cases increased in 2011 over the number of Force Cases received in 2009 and 2010, the percentage of complaints that contained one or more Force allegations decreased in 2011 relative to percentages in prior years.

Illustration 5-D: Force Complaints and Allegations — Four-Year Overview*

Year	Total Force Allegations	Total Force Complaints	Total Number of Complaints	Force Complaints as % of Total Complaints
2008	184	117	467	25%
2009	102	59	214	28%
2010	133	60	216	28%
2011	120	72	355	20%

*This illustration reflects only complaints filed by members of the public.

II. Force Case Demographics

A. Ethnicity of Complainants

The IPA attempts to identify the ethnicity of complainants during the initial complaint intake, as well as through voluntary surveys. We attempted to obtain information on ethnicity from 391 individual complainants in 2011. We were not able to capture the ethnicity of all complainants

because some declined to disclose this information to us. Illustration 5-E shows the ethnicity of the complainants who filed Force Cases, as well as the ethnicity of all complainants, and the percentage of those ethnicity groups within the San José population.

B. Demographics of Persons Against Whom Force was Allegedly Used

Complaints are accepted from members of the public, regardless of their connection to the incident. A complainant may be the subject of force, a witness to force used on another, a relative of the suspect, or a civilian who, having learned about force used upon another, has concerns about that force. Since anyone can file a complaint, the demographics of complainants may not reflect the demographics of the persons upon whom police are using force. For example, it is not uncommon for parents to file complaints about the force police allegedly used upon their adult or juvenile children. The demographics of the parents (the complainants) may be different from those of the children (the subjects of the force). The IPA reviewed all Force Cases to determine the ethnicity, age and gender of the persons on whom force was allegedly used. This more detailed information was gleaned from police reports, citations, and/or medical records. Illustrations 5-F, 5-G and 5-H show the ethnicity of persons against whom force was allegedly used, the gender of these persons and the age of these persons.

SJPD Duty Manual Section C 1305
Equality of Enforcement

“People throughout the city have a need for protection, administered by fair and impartial law enforcement. As a person moves about the city, such person must be able to expect a similar police response to the person’s behavior -- wherever it occurs. Where the law is not evenly enforced, there follows a reduction in respect and resistance to enforcement.

“The element of evenhandedness is implicit in uniform enforcement of law. The amount of force or the method employed to secure compliance with the law is governed by the particular situation. Similar circumstances require similar treatment -- in all areas of the city as well as for all groups and individuals. In this regard, Department members will strive to provide equal service to all persons in the community.”

Illustration 5-F: Force Cases — Ethnicity of Persons Against whom Force was Allegedly Used

	Number of persons	Percentage of total persons	Percentage of San José population*
African American	18	22%	3%
Asian	2	2%	15%
Caucasian	15	19%	29%
Filipino	1	1%	6%
Hispanic / Latino	40	49%	33%
Native American	2	2%	1%
Vietnamese	1	1%	11%
Other	1	1%	2%
Decline/unknown	1	1%	0%
Total persons	81	100%	100%

*Source: U.S. Census Bureau, Census 2010

Illustration 5-G: Force Cases — Gender of Persons Against Whom Force was Allegedly Used

	Number of persons	Percentage of total persons
Male	63	78%
Female	18	22%
Total persons	81	100%

Illustration 5-H: Force Cases — Age of Persons Against Whom Force was Allegedly Used

	Number of persons	Percentage of total persons
Under age 20	12	15%
20-29 years	22	27%
30-39 years	16	20%
40-49 years	23	28%
50-59 years	5	6%
60 and over	2	2%
unknown	1	1%
Total persons	81	100%

III. Force Cases Closed and Audited in 2011

A. IPA Audit Determination

The IPA is mandated to audit all complaints in which force is alleged. In 2011, the IPA audited 78 Force Case investigations. The IPA agreed with the findings of IA in 54% of these cases after a first review. In 17% of the Force Cases, the IPA requested that IA provide additional documentation, obtain additional interviews or evidence, and/or complete a re-analysis of the facts and supporting rationale. And, in 29% of Force Cases, the IPA concluded that the IA investigation was not complete or objective (“Disagreed”) or the IPA questioned the IA investigation and/or analysis (“Closed With Concerns”).

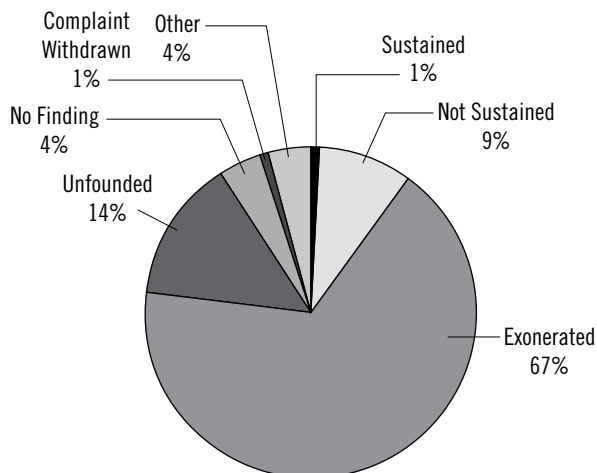
Illustration 5-I: IPA Audit Determination of Force Cases

IPA Audit Determination	Explanation of IPA audit of the IA investigation of Force cases	2011 Audits
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	42 (54%)
Agreed After Further Action	IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	13 (17%)
Closed with Concerns	IPA questioned the IA investigation and/or IA analysis.	15 (19%)
Disagreed	IPA audit concluded that the IA investigation was not thorough, fair and objective.	8 (10%)
Total Force Cases Audited		78 (100%)

B. IA Findings for Force Allegations

Illustration 5-J provides general information about how IA treated Force allegations in the complaints that they closed in 2010. One Force allegation was “Sustained” in 2011. This is the first time the SJPD has Sustained a Force allegation since 2009. IA closed the majority of the Force allegations with findings of “Exonerated,” meaning that the IA investigation determined that the level and the type of force used by the officers were reasonable and justified.

Illustration 5-J: IA Findings for Force Allegations in Cases Closed in 2011



IV. Data Tracked from Force Cases

The IPA tracks data from the Force Cases opened in 2011 and from our audits of IA force investigations closed in 2011. In order to determine whether any trends or patterns can be detected from Force Cases, the IPA tracks information reported by complainants, as well as information gleaned from the IA investigation process — primarily officer interviews, witnesses interviews, police reports and medical records. We gather additional trend information regarding the consistency of the data reported by the complainant versus the data reported by the SJPD officers and/or reflected in written documents.

A. The Number of Officers Allegedly Using Force During the Complaint Incident

The IPA examined force allegations to track how many officers allegedly used force against one individual. This data is helpful to determine whether the force was excessive. The greater the number of officers using force options on a single individual, the greater the need to determine whether the magnitude of force was warranted under the circumstances. Illustration 5-K shows the numbers of officers allegedly using force on one individual. Some complaints involved force against more than one complainant. These data reflect the

number of officers **alleged by complainants** to have used force and may not reflect the **actual number** of officers who used force. In those instances in which the complainant could not supply an exact number of officers, the number in the chart reflects the number of officers who did, in fact, use some physical force on the individuals as indicated in the investigation documents. For example, if the complainant stated that three or four officers used

force and the officer interviews and/or supporting police reports clearly reflect that three officers used force, then the chart reflects three officers and not four.

In approximately half of the cases, there was one officer who allegedly used force on one individual. In only 12% of cases did the number of officers applying force to one individual exceed two officers.

Illustration 5-K: Force Cases – Number of Officers Who Allegedly Used Force on Individuals

Number of Officers Allegedly Using Force	Number of Individuals Against Whom Force was Allegedly Used	% of Total Number of Individuals Against Whom Force was Allegedly Used
One officer used force on one individual	41	51%
Two officers used force on one individual	30	37%
Three officers used force on one individual	8	10%
Four officers used force on one individual	2	2%
	81	100%

B. Types of Force Applications

We collect data about the types of force used in order to track the frequency as shown in Illustration 5-L. The total 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 one complaint; and, there can be more than one officer alleged to have used force in one complaint. 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 illustrates three different types of Force allegations against multiple officers in one complaint.

Force Options: Selected Terms

Force: SJPD Duty Manual section L 2603 describes force options ranging from mere physical contact (touching) to impact weapons, tasers and deadly force. While the Duty Manual also lists *voice commands* as a force option, the use of voice commands does not provide a basis for a force allegation under the misconduct complaint process.

Control Hold: an officer's use of his/her limbs, torso or body weight, to move or restrain a person or to constrict a person's movements.

Takedown: an officer's use of his/her limbs, torso or body weight to force a person against an immovable object (such as a car or a wall) or to force a person to the ground.

Body Weapons: an officer's use of her/her limbs in a manner similar to an impact weapon, e.g, using his/her hands to punch, hit or slap a person.

Illustration 5-L: Force Cases – Types of Force Application Alleged, 2011

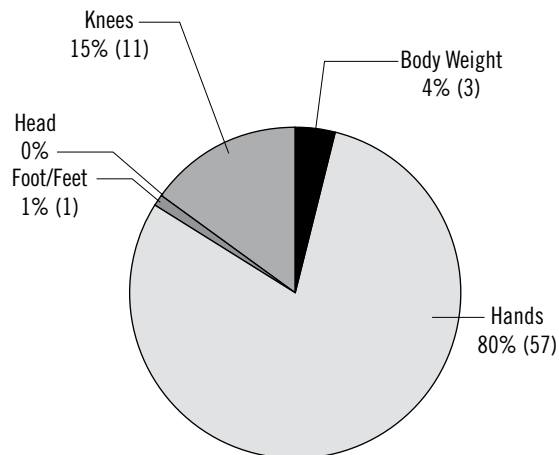
Type of force	Number of Applications	% of Total Force Applications
Canine bite	1	0.6%
Car impact	1	0.6%
Chemical agent	0	0
Gun	3	1.2%
Control hold	72	41%
Take down	45	25%
Body weapons	26	15%
Baton	17	10%
Flashlight	1	0.6%
Taser	10	6.0%
Other	1	0.6%
Total Force Applications	177	100%

Illustration 5-L shows that complainants alleged that “control holds” was the type of force used most frequently by officers in 2011. In 2011 the next most frequently alleged type of force was “takedowns.” The use of “body weapons” and “batons” were the third and fourth most frequently alleged types of force.

1. Control Holds

A control hold is generally defined as the application of force or pressure by the officer to move, push, pull a person, to keep a person in one position, or to restrain a person’s limbs, torso or head. For example, an officer may use a control hold to grab a suspect’s arm and to force the arm behind the suspect’s back. The hold both prevents the suspect from striking the officer and allows the officer to handcuff the suspect behind his/her back. If a suspect is on the ground, officers may use control holds to pull his/her arms from underneath the suspect’s body and then force them behind his/her back for handcuffing. During this process, the officer may place his/her knee on the suspect’s back to prevent the suspect from getting up and fleeing. In 2011, there were 72 control hold applications that formed the bases of Force allegations. Most of these, 79% (57) involved an officer’s use of his/her hands. Complainants disputed applications of the

Illustration 5-M: Methods of Alleged Applications of Control Holds (72 total)

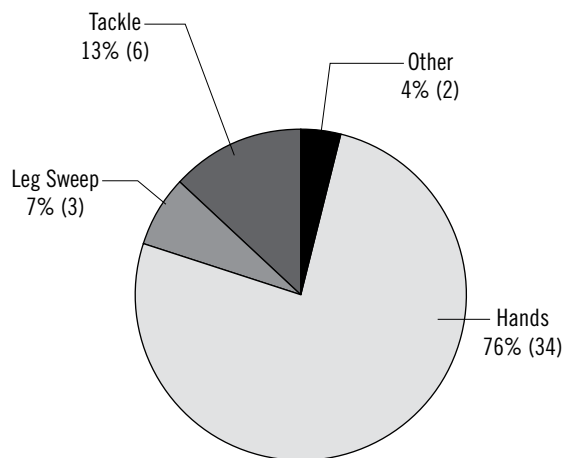


officers’ placing their knees on the suspects’ bodies to constrain movement in eleven Force Cases.

2. Takedowns

A takedown is generally defined as the application of force or pressure by the officer to force a person against an immovable object, usually a car, a wall or the ground. For example, an officer chasing a fleeing suspect, may push/pull the suspect to the ground. An officer may force a suspect against a car in order to better control his movements during handcuffing. In 2011, 45 takedown applications formed the basis of Force allegations. Most of these, 75% (34) involved an officer’s use of his/her upper limbs (including hands, forearms, and elbows) to push or pull a suspect. Complainants alleged that officer(s) “tackled” the suspect in six cases and

Illustration 5-N: Method Used for Alleged Takedowns (45 total)

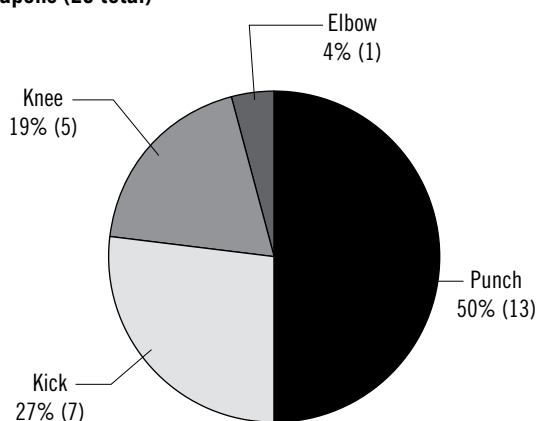


used a “leg sweep” in three cases. The IPA tracked complainant’s description of what object they were forced against during the takedown application. Complainants alleged that 31 takedowns were against the ground, eight takedowns were against cars, and four takedowns were against walls.

3. Body Weapons

Depending on the circumstances, an officer may need to strike, punch or kick a suspect in order to counter the suspect’s force, to gain compliance or to protect the officer or other persons. For example, if a fleeing suspect suddenly turns and throws a punch at the pursuing officer, that officer may respond with a punch or kick to the suspect. SJPD calls these strikes or blows “body weapons” because the officer is using a part of his/her body in a manner similar to an impact weapon (e.g., a baton). In 2011, there were 26 body weapon applications that formed the bases of Force allegations. Most of these, 50% (13) involved officers’ use of hands/fists to punch or hit suspects. In seven Force Cases, complainants alleged that officers kicked suspects; in five Force Cases, the complainants alleged that officers struck suspects with their knees.

Illustration 5-0: Method Used for Alleged Applications of Body Weapons (26 total)



C. Consistency Between Complainants’ and Officers’ Accounts of Officers’ Use of Force

The IPA staff was interested in examining whether — in general terms — the force alleged by complainants was consistent with the force described by the officers. The descriptions of the Force alleged by complainants were obtained mostly through the intake interviews. The IPA obtained descriptions of the officers’ use of force from interviews of the subject officers (if any), written police reports and force response reports. In most cases, 63%, complainants’ descriptions of force were fairly consistent with the force described by the officers. However, in 35% of cases, the force alleged by complainants was significantly inconsistent with the force described by the officers. It should be noted that some complainants who lodge force complaints are not on-scene witnesses or the subjects of the force. In those instances, the complainants have filed complaints on behalf of others and rely upon descriptions provided by others. In 35% of Force Cases, the IPA noted that the complainant and/or the subject of the force was under the influence of alcohol or drugs — substances that can impair the ability to perceive and/or recall details.

Illustration 5-P: Consistency Between Complainants’ and Officers’ Accounts of Officers’ Use of Force

	Number of Force Cases	% of Total Force Cases
Mostly consistent	49	63%
Significantly inconsistent	27	35%
No determination	2	2%
Total number of Force Cases	78	100%

D. Injuries Allegedly Sustained as a Result of Force

1. Level of Injury Alleged by Complainant

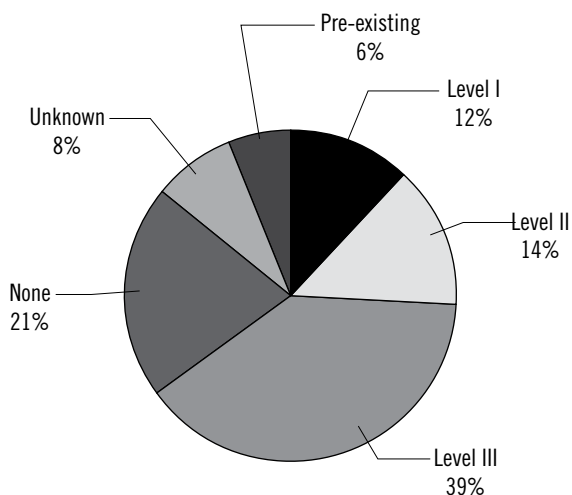
Illustration 5-R provides data about the levels of injury alleged by complainants. We tracked six categories of injury tracked — Level I, Level II, Level III, “none,” pre-existing,” and “known.” Level I reflects the most serious injuries and Level III

reflects the least serious injuries. Examples of these three levels are shown in Illustration 5-Q.

Illustration 5-Q: Levels of Alleged Injury

Level I	Level II	Level III
Fatal injuries	Minor bone broken	Bruising
Major bone broken	Major laceration	Minor laceration
Compound fracture	requiring stitches	Minor abrasion
In-patient hospital stay required	Minor concussion	
Blood loss requiring transfusion	Brief loss of consciousness	
Major concussion	Chipped or lost tooth	
Longer than brief loss of consciousness	Major abrasion	
Debilitating chronic pain	Sprain	
Damage to organ (other than skin)		
Effective Tasings		

Illustration 5-R: Complainants' Alleged Levels of Injury



Data from Force Cases closed in 2011 show allegations of Level III injuries account for the highest percentage of alleged injuries. There were thirty-one Force Cases in which complainants alleged Level III injuries.

2. Consistency between Injuries Alleged and Supporting Records

This year the IPA tracked whether the injuries described by the complainant were consistent

with the injuries reflected in medical reports and records. In 45% of the cases, the injuries described by complainants were consistent with the injuries reflected in medical reports/records. In 32% of the cases, there were no supporting medical records, and thus a determination could not be made. The lack of supporting medical records does not necessarily negate an injury. Medical records may not be obtained if the complainant refuses to sign a medical release or if the complainant was not the person injured and therefore cannot authorize the release of another person's medical records. In 4% of the cases, the injuries described by the complainant were significantly inconsistent with the injuries described in their medical reports/records. In 19% of the cases, the complainant did not seek medical care for his/her injuries or the force allegedly used by the officers did not result in injuries.

3. Location of Alleged Force Applications

Illustration 5-S provides data showing the parts of the body that complainants reported were impacted by the use of force. The IPA tracks this data to determine if any trends exist in Force Cases. The IPA captures data for five areas of the body: head, neck, torso, limbs, and unknown. The force alleged in a complaint can impact more than one body area. The IPA closely monitors the number of allegations of head injuries because force to the head has the greatest potential to cause serious injury. This was the first year in which the IPA tracked allegations of force applications to the neck.

Illustration 5-S: Location of Alleged Force Applications

Location of Force Applications	#	%
Head	23	20%
Neck	9	8%
Torso	37	32%
Limbs	44	38%
Unknown	2	2%
Total	115	100%

V. Officer-Involved Shootings and In-Custody Fatal Incidents

Illustration 5-T: Officer-Involved Shootings in 2011:

Case	Ethnicity	Mental Illness History	Person Armed?	Police Weapons Used	Prior Criminal Record	CIT* at Scene?	Cause of Injury/Death	Within Policy?
1	Vietnamese	Yes	Knives	Handgun	Yes	No	Death/Gunshot	Pending
2	Hispanic	No	Vehicle	Handgun	Yes	No	Injury/Gunshot	Pending
3	Hispanic	No	Handgun	Handgun	Yes	No	Injury/Gunshot	Pending
4	African-American	No	Handgun	Handgun	Yes	No	Injury/Vehicle	Pending
5	Hispanic	Yes	Handgun	Handgun	Yes	Yes	Death/Gunshot	Pending
6	Eastern Indian	No	Vehicle	Handgun	Yes	Yes	Death/Gunshot	Pending
7	Hispanic	No	Facsimile Handgun	Handgun	No	Yes	Injury/Gunshot	Pending
8	Hispanic	No	Handgun	Handgun	Yes	No	Death/Gunshot	Pending

* In 1999, the SJPD developed Crisis Intervention Team Training (CIT). This training addresses a variety of mental health issues and crisis intervention situations encountered by police officers on a regular basis.

In 2011 there were eight officer-involved shootings resulting in injury or death, and one in-custody fatal incident. When officer-involved shootings occur, the IPA has specific mandated responsibilities. This section discusses information about these incidents and the IPA's responsibilities.

A. Officer-Involved Shooting Incidents

The SJPD Duty Manual section L 2638 describes when an officer may use deadly force. It 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; questions inevitably arise about the need for the use of lethal force. In recognition of the serious nature of these issues, the IPA has been given specific but limited responsibilities, including the option of responding to the scene when these incidents occur and participating on the Shooting Review Panel that evaluates the SJPD investigation.

Every officer-involved shooting that results in death is subject to a thorough investigation and review process that is depicted in Illustration 5-V. As the illustration indicates, the SJPD Homicide Unit conducts a criminal investigation that IA monitors. The Santa Clara County District Attorney presents a criminal investigation to the County Grand Jury to determine whether there is sufficient evidence to institute criminal proceedings against the officer. The Grand Jury can make one of two determinations:

- **No True Bill:** If the Grand Jury deems that there is insufficient evidence to initiate criminal action against the officer, IA conducts an administrative review to determine whether the officer's actions were within SJPD own policies.
- **True Bill:** If the Grand Jury deems that there is sufficient evidence, a “true bill” of indictment is filed and the officer proceeds through the criminal trial process. If the officer is acquitted of criminal conduct, IA still conducts an

administrative review to determine whether the officer’s actions were within SJPD policy. Thus, although the officer may not receive punishment or penalty in the criminal system, the officer may receive discipline if the SJPD determines that his/her actions fell outside of SJPD’s policy.²⁰ If the officer is convicted, the officer is usually terminated from SJPD employment.

B. IPA Review

The extent of the IPA’s role and responsibilities in connection with an officer-involved shooting depend upon whether a member of the public has filed a complaint about the incident with either IA or the IPA. As shown in Illustration 5-U, the IPA’s role in officer-involved shooting incidents differs if there is no public complaint about the incident versus the IPA role if a complaint is filed.²¹ In 2011, there were several complaints from the public following media accounts of officer-involved shooting incidents.

Illustration 5-U: Role of IPA in Officer-Involved Shooting Incidents

All Officer-Involved Shooting Incidents	Officer-Involved Shooting Incident in which a public complaint is filed
IPA is notified of incident, and can respond to scene and be briefed by IA Commander.	IPA is notified of incident, and can respond to scene and be briefed by IA Commander.
IPA can participate in the shooting review panel. IPA is provided with pertinent documents to prepare for panel.	IPA can participate in the shooting review panel. IPA is provided with pertinent documents to prepare for panel.
The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.	The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.
	IPA can attend interviews of witnesses and any subject officers conducted by IA.
	The IA investigation determines whether the officer acted within SJPD policy. The IPA audits the IA investigation to determine whether it was fair, thorough, complete and objective.
	IPA can appeal IA’s determination to the Chief of Police and to the City Manager.

The purpose of the shooting review panels is limited to determining whether, given the circumstances of the incident, any training or equipment needs exist and whether any changes to SJPD policies are warranted. The IPA is concerned that these review panels are not convened until months or years after the incidents thereby defeating their purpose. It is essential that these panels be held shortly after

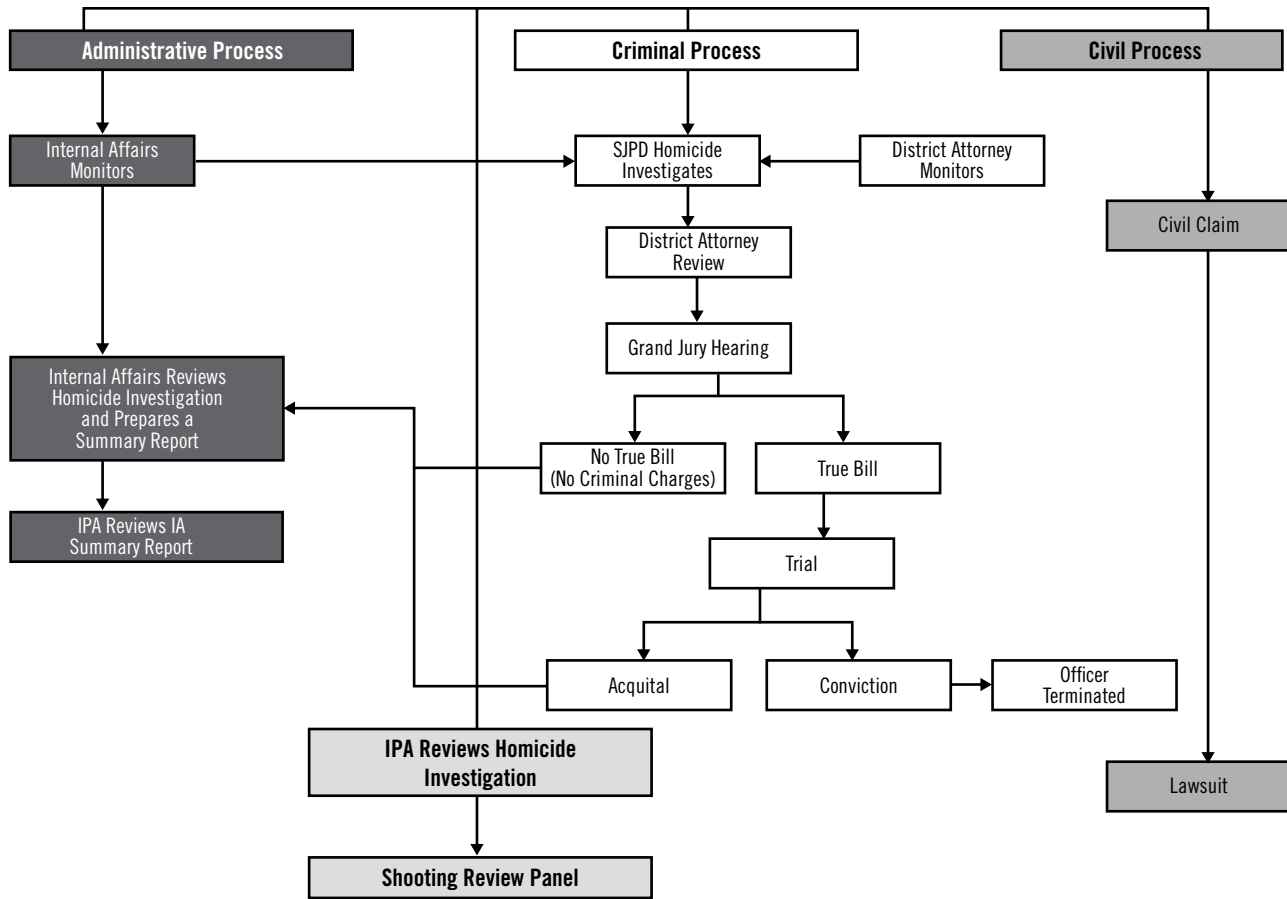
the incidents so that SJPD can quickly implement changes, if any, to policies and procedures. For example, no review panels were convened in 2010 or in 2011 to review the five officer-involved shooting incidents in 2010 and one in-custody death. As well, no panels were convened in 2010 or 2011 to review two officer-involved shooting incidents that occurred in 2009.²²

²⁰ A conviction in a criminal trial is based upon a “beyond a reasonable doubt” standard – that standard is very high. The standard used to determine whether an officer acted outside of SJPD policy is lower; it is the “preponderance of the evidence” standard.

²¹ The SJPD may initiate an internal investigation of the officer’s conduct. However, the IPA is not permitted to review or audit Department-Initiated Investigations (DII).

²² There were two review panels held in 2010; one panel reviewed a 2009 officer-involved shooting incident and the other reviewed a 2009 in-custody death incident.

Illustration 5-V: Officer-Involved Shooting Review Process



⁴³ Officers are directed to document “reportable uses of force” that do not include all force used by an officer. Minimal force or force that does not result in a complaint of residual pain is generally not documented on this form. Such force may, or may not, be described by the officer in the police or incident report.

In-Custody-Death Training Review Panel

In 1999 the SJPD established an Officer-Involved Shooting Incident Training Review Panel. The panel is convened to review officer-involved shootings where a person was wounded or killed in order to determine whether any training or equipment needs exist or if changes to SJPD policies are warranted. This panel, however, is limited to incidents in which an officer fired his/her gun it does not include a review of other deaths that occurred while a suspect was in police custody.

In January 2008 the SJPD established a separate review panel designed to address incidents in which a death occurs, not as the result of an officer-involved shooting, but while a person is in the custody of an SJPD officer.

An in-custody death can occur anywhere at any time. Generally “custody” ends when the person is released from the police department or the jail booking process is completed.** However, when a death occurs while a suspect is under the physical control of SJPD officers, such as being restrained, arrested, transported, or during the jail booking process, the death may be considered “in-custody.” The In-Custody-Death Training Review Panel was created to provide a review of SJPD policies and procedures related to these deaths.

The In-Custody-Death Training Review Panel consists of individuals selected by the Chief of Police and includes command staff and management level SJPD personnel, as well as a representative from the Office of City Attorney and the Office of the Independent Police Auditor. Similar to the protocol following the officer-involved-shooting incidents, this review is limited to discussions of concerns and recommendations relating to SJPD policy/procedure, training/tactics, officer safety, equipment and communication. The panel does not determine whether the officer acted in or out of policy.

Unlike the policy for an officer-involved shooting where the IPA is promptly advised of the incident and may respond to the scene, the In-Custody-Death protocol does not indicate when the IPA will be notified, and states that the Chief of Police will determine if the IPA may respond to an In-Custody death scene and receive a briefing.

The Internal Affairs investigation determines whether the officer acted in or out of policy. Unless a citizen files a misconduct complaint with IA or the IPA related to the in-custody death, the IPA does not have the authority to audit the Internal Affairs investigation of the event and the IA determination about whether the officer acted in or out of policy.

** If the death occurs after release, and it is established that a San José officer used reportable force prior to the release, the Chief of Police has the discretion to refer the case to the panel for review.

Chapter Six: Looking Ahead

In this Report, we have touted our expanded outreach efforts, discussed the IPA audit outcomes for 2011, and noted some problems that have, for years, hampered the Internal Affairs investigation process — the most enduring of which is timeliness. In our 2010 Report, we discussed in detail the problems that arise when IA fails to complete complaint investigations timely. This 2011 Report shows that the problem continues unabated. We desire to do more than merely reiterate our discussion of this issue. Rather, we take this opportunity to propose concrete solutions.

The Timeliness Issue

In 1997, the IPA recommended that IA set a deadline of 300 days in which to close its investigations of officer misconduct. We made that recommendation because a 300-day deadline leaves 65 days not only for our office to complete our audit but also for IA staff to complete additional investigation and/or analysis when warranted. This 65-day timeframe also encompasses the period in which the IPA may exercise her prerogative granted under City Ordinance to file written appeals to the Police Chief and the City Manager if IA rebuffs our informal requests.

The 300-day period is critical because if discipline is to be imposed upon a subject officer, it can be imposed only if the IA investigation and subsequent Chain of Command review is finalized within 365

days of the date that the complaint was made. The SJPD adopted this recommendation.

As we noted in Chapter Four of this Report, post-300 day closings of IA investigations persist. In 2010, 21% of IA investigations were closed more than 300 days after the complaints were filed; in 2011, that percentage increased to 26%. Worse still, in 2011, IA closed 9% of its cases (22 of 246) a full year or more after the complaints were filed. This delay effectively cuts the IPA out of her mandated oversight role.

Officers assigned to the Internal Affairs Unit work diligently, devoting long hours to investigating and analyzing the complaints assigned to them. It is not for lack of effort on their part that timeliness issues persist. We believe that the root causes of this problem are organizational and procedural.

The Problem: Organization

The Internal Affairs Unit is staffed by sworn officers: one Lieutenant, nine Sergeants, and five Officers, each of whom is assigned to IA for a two year rotation. These officers do not receive training at the Police Academy to prepare them for assignments in IA. Subsequent SJPD assignments or rotations fail to provide these officers with any experience in conducting internal investigations on fellow officers. It is only when officers are assigned to IA that they are trained about the IA process.

The work of an officer assigned to IA is multi-faceted: officers interview complainants and civilian witnesses, write summaries of those interviews, identify and gather supporting documentation. Sergeants perform more intensive investigations that often involve interviewing subject officers and

witness officers. Both officers and sergeants write detailed investigation reports including quasi-legal analyses for review by our office. All of this work must be done thoroughly, objectively, and within the 300-day deadlines.

It takes many months for officers newly-assigned to IA to acquire the skills necessary to work in this Unit. This “learning curve” understandably slows down the IA investigation and report-writing process. Unfortunately, it is not long after these officers fully understand the process and become comfortable with their roles, that it is time for them to leave the Unit. After twenty-four months in IA, they rotate out to other assignments; all are replaced by a new cadre of officers and the demanding learning process begins anew.

A Solution: Re-Organization

One solution is to simply lengthen the time that officers are assigned to the IA Unit from two years to four or five years. It is likely, and understandable, that long-term assignments to IA would be met with resistance not only by SJPD leadership, but also by the rank and file.

A bolder and longer lasting solution is to **staff IA with non-sworn permanent employees who report directly to the IA Commander**, a Lieutenant. Permanent staff will eliminate turnover of staff, thereby reducing or eliminating delays arising from the repeated learning curve element in the current IA staffing approach. The IA Commander, appointed by the Police Chief, would continue to give final approval to all IA reports. It is our belief that non-sworn staff, such as attorneys with criminal law and procedure experience, could be quickly trained to perform all of the IA functions. **We propose that a pilot project be implemented by SJPD** in which one or two non-sworn staff (legal analysts) would be placed at IA for a six-month to one-year test period. If, as we believe, unsworn staff prove successful, then

SJPD could phase out the fourteen officer positions at IA, enabling more officers to use their law enforcement training and expertise working in patrol or other SJPD assignments. In an era of layoffs and budget shortfalls, the City of San José can only benefit by having these additional officers back in the community.

The Problem: Current Procedure Involves Too Many Desks

When IA closes an investigation and sends its report to our office, the report includes one or more findings. The IA Commander has the authority to close complaints with findings of Not Sustained, Exonerated, Unfounded, No Finding, or Other. The IA Commander, however, is currently precluded from making a **Sustained** finding. Sustained means that the officer was found by IA to have engaged in the misconduct alleged in the complaint. Under the current system, IA must send all cases that will likely result in Sustained findings to **officers outside of IA** (up the Chain of Command) for a final determination. Bear in mind that these are complaints that IA has thoroughly investigated and analyzed and that, as mentioned above, only those persons assigned to IA receive the requisite training and have the experience of investigating fellow officers.

The first step in the Chain of Command is the Lieutenant who is **the supervisor of the subject officer**. This non-IA Lieutenant reviews the IA report and then makes his/her own determination of whether or not the finding of Sustained should be made. In making this determination, the non-IA Lieutenant

can conduct his/her own additional investigation and engage in a complete re-analysis of the rationale provided by the IA investigation, adding a duplicative and time-consuming step to the process.

After the Lieutenant weighs in, the case is then sent to his/her supervisor, a Captain, and then to a Deputy Chief, then to the Assistant Chief, and finally to the Police Chief who has the final say. Frequently the Lieutenant assigned to review the IA report has little to no experience with the IA process. This lack of experience is problematic. For example, IA officers must apply the preponderance of evidence standard in making their findings. They receive training about what this standard means and about how to apply it in the IA analysis process. The non-IA Lieutenants who review these cases have no such training; thus they are unfamiliar with this evidentiary standard, the application of the standard, and the duty to apply this standard in all cases.

We have encountered instances where Lieutenants disregarded Sustained recommendations by IA and, instead, made findings in the subject officers' favor, with no logical bases to support the findings. In one case, a Lieutenant's finding of Exonerated was overruled by the Chief of Police who issued a Sustained finding that comported with the reasoning and recommendation of IA.

Objective decision-making is critical to the work of IA, a fact that cannot be overstated. IA officers are jury (fact-finders) and judge (decision-makers) when they investigate and analyze misconduct allegations against their fellow officers.

The process cannot have credibility within the Department and with the public unless it is free of actual and perceived bias and undue influence.

The concerns about bias are two-fold. First, as noted above, the non-IA Lieutenants who are designated to review cases in which Sustained findings are recommended are the supervisors of the subject officers. These Lieutenants know the subject officers, have interacted with them, and, in some instances, are friends with them. For this very reason, they should not be permitted to sit in judgment of their subordinate officers. The reason that judges and juries may not participate in court cases where the parties or attorneys in the litigation are their acquaintances, family or friends is because of real and perceived bias. Second, asking the supervising Lieutenant to objectively review the conduct of a subordinate may be problematic because the Lieutenant has an actual or subconscious desire that those officers under his or her command appear competent. As a result, the Lieutenants may minimize officer misconduct that may reflect poorly upon the Lieutenants' leadership skills.

The Department has charged Internal Affairs with the responsibility of determining the outcomes of officer misconduct complaints. The very reason that the Internal Affairs Unit exists is to be the impartial judges of whether or not officers have acted appropriately. Assigning those decisions to the supervisors of the subject officers undermines the process.

The Solution: Fewer Desks

We propose that **the Commander of the Internal Affairs Unit be given the authority to make Sustained findings, subject only to final review by the Chief of Police** or his/her designee. In this way the process will be streamlined, those with the training and expertise will make the determinations, and actual and perceived fairness and objectivity will be preserved.

The past two years have seen a dramatic and positive shift in the relationship between the IPA Office and SJPD leadership. Chief Moore and his Command Staff have been receptive to many of our recommendations to improve SJPD policies and procedures. It is our hope that this spirit of collaboration will continue as we, moving forward and working together, dare to think outside the box to ensure that the misconduct complaint process is the best that it can be.

THINKING OUTSIDE THE BOX

Frequently Asked Questions About The IPA Office

What is the IPA?

The Independent Police Auditor (IPA) is a City Council appointee whose office does mainly three things: (1) takes in complaints from members of the public about San Jose police officers; (2) makes sure that the Internal Affairs Unit of the SJPD investigates those complaints thoroughly and fairly, and (3) recommends improvements to SJPD's policies and procedures.

The IPA is Judge LaDoris Cordell (Ret.), who has a staff of five people.

Why does the Office of the IPA matter?

The Office of the IPA matters because, by auditing the investigations into claims of police misconduct to ensure that those investigations are fair and thorough, it helps keep SJPD accountable to the communities it serves. The work of the Office of the IPA has resulted in improved police policies. For example, because of the IPA, SJPD officers must follow better rules about how to treat a person who is:

- watching an officer in the field (i.e. onlooker policy)
- hurt by an officer
- suspected of being drunk in public
- asking for an officer's name or badge number
- filing a Conduct Complaint

Is the IPA part of the police department? Why should I trust the IPA?

No, the IPA is not part of the police department. The IPA answers to the Mayor and the City Council. The Chief of Police answers to the City Manager.

You should trust the IPA because the IPA is independent. The IPA is free to agree or disagree with the decisions of the SJPD.

What can I do if I think an SJPD officer did something wrong?

One of the things you can do is file a Conduct Complaint with the IPA.

What is a Conduct Complaint?

A Conduct Complaint is a statement from you explaining why you think an SJPD officer broke one (or more) of the rules that the officer has to follow, and requesting that the officer's conduct be investigated by the SJPD. The rules are in the SJPD Duty Manual.

What if I don't know which rule the officer may have violated?

There are many rules officers have to follow and you don't need to know them all. If you have a question about whether a certain kind of behavior by an officer is against the SJPD rules, you can contact the IPA to ask.

Does it matter whether I file a Conduct Complaint?

Yes, it does matter. By speaking out about a possible problem with an officer, you are alerting the SJPD leadership about ways to improve the SJPD.

Also, the IPA looks for trends in Conduct Complaints. When we identify patterns, we make recommendations to the SJPD for improvements.

Do I have to know the officer’s name or badge number?

No, you don’t. While it’s useful information, if you don’t have that information, you can still file your complaint.

Can I file a complaint with the IPA against an officer who is not with the San José Police Department?

No. The Office of the IPA can only process your complaint if it is about an SJPD officer. Complaints about officers employed by other law enforcement agencies cannot be filed with the IPA.

Who can file a Conduct Complaint with the IPA?

Any member of the public can file a Conduct Complaint about a SJPD officer. You can file a Conduct Complaint about something that happened to you, or about something that happened to somebody else. You can live in San José or outside the city. You can be a U.S. citizen, or you can be an immigrant – with or without papers. IPA staff are fluent in English, Spanish, Vietnamese, Cantonese and Japanese. You can be a young person or you can be an adult.

You can also file a complaint if you are a defendant in a criminal case; but if the case is related to the complaint you want to tell us about, we recommend that you talk to your lawyer first.

How do I file a complaint?

You can file your complaint in writing (email, mail, fax, or hand delivery), or by talking to us about it by phone or in person. We have a form that you can fill out if you prefer to file your complaint this way. You can be anonymous if you want, although it will be harder to investigate and prove your complaint. If you file in writing, we will need to reach you if we have any questions about your complaint.

What happens after I file a Conduct Complaint?

When the Office of the IPA receives your complaint, we identify specific allegations that you have made against the officer(s). Then we forward your complaint to Internal Affairs (IA) for investigation. The IPA does not investigate any complaints. Unlike the IPA, IA is a part of SJPD. IA investigates all Conduct Complaints. As part of IA’s investigation, you and any witnesses may be contacted for more information about the incident. If you claim that you were injured by an officer, you might be asked to sign a release of medical records. IA may obtain documents about the incident from the SJPD, and may interview the subject officer(s) and any witness officers. The IA investigation can take from several months to a year.

When the investigation is finished, IA issues a finding for each allegation. The possible findings are Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other. (You can read the definitions of these findings in the Glossary.) Based on these findings, the SJPD decides whether or not to discipline the subject officer(s).

The IPA gets involved again at this stage. The IPA audits IA’s investigations and findings. The IPA and her staff review the investigations by IA to ensure that those investigations are **thorough, objective, and fair**. Sometimes the IPA agrees with the findings and sometimes the IPA disagrees. When there is a disagreement, the IPA can discuss the matter with IA. Sometimes this causes IA to re-open the investigation or change its findings. The IPA can also bring the disagreement to the attention of the Police Chief and the City Manager. You can read the IPA’s Year-End Report for more details about the complaint process.

After the entire process is over and your case is closed, you will get a letter in the mail telling you the findings of the investigation.

Will I have more problems with the police if I file a Conduct Complaint?

The SJPd has strict rules that prohibit officers from retaliating against complainants.

Is the process fair to the officers?

Yes, we believe that it is. The Peace Officers Bill of Rights (POBR) is a state law that provides many protections to officers during this process. These protections include the right to have a representative present during misconduct investigation interviews, the right to an administrative appeal, and the right to review and respond to adverse comments in the officer's personnel file. POBR also places restrictions on how interviews of police officers are conducted and timelines in which investigations must be completed.

What if I don't have a Conduct Complaint against an individual officer, but I don't like a pattern I see with the police?

You can file a policy complaint. Policy complaints are not requests for individual officers to be investigated and disciplined. Instead, they are requests that the SJPd change its policies or procedures or adopt new ones. You can file a policy complaint with the Office of the IPA.

What if an officer did a good job and I want to give him or her a compliment?

You can submit compliments with Internal Affairs at SJPd by calling 408-277-4094 or by going to the SJPd website: <http://www.sjpd.org/COP/IA.html>

Can you tell me what happened to the officer about whom I complained?

No, we can't. Because we must follow very strict confidentiality rules, we are not allowed to give you any information about this. In fact, it is against the law for us to talk about this with any member of the public.

What if I think that the police should have to pay me money because of what they did to me. Can the IPA help me with this?

No, we can't. This complaint process looks only at possible officer discipline. You should seek the advice of a lawyer about other remedies.

I have been charged with a crime. Will filing a complaint affect the criminal case against me?

No. The complaint you file with us is completely separate from your criminal case. The IPA cannot advise or represent you on any legal matter.

As a community member, how can I be supportive of the IPA Office?

You can help us spread the word by inviting us to give presentations in your communities. Also, there are two groups who advise the IPA: IPAAC (IPA Advisory Council) and the IPA-TLC (Teen Leadership Council). You can visit the IPA website to learn more about these groups and how you can get involved.

Glossary

Agreed (IPA determination): A complaint is closed as “agreed” if the Independent Police Auditor (IPA) determines that the Internal Affairs (IA) investigation of a complaint was thorough, objective, and fair.

Agreed After Further (IPA determination): A complaint is closed as “agreed after further” if the IPA determines that the IA investigation of a complaint was thorough, objective, and fair after additional inquiry and/or investigation.

Allegation: a person’s accusation that a member of the SJPD violated Department or City policy, procedure, rules, regulations, or the law. Only Conduct Complaints contain allegations. There are eight types of allegations: Procedure, Search or Seizure, Arrest or Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, and Neglect of Duty. A Conduct Complaint can have more than one allegation. When IA finishes a Conduct Complaint investigation, IA issues a finding on each allegation.

Arrest or Detention (an allegation): an arrest lacked probable cause or a detention lacked reasonable suspicion

Audit: the process the IPA uses to decide if a Conduct Complaint investigation by IA was thorough, objective and fair

Bias-Based Policing (an allegation): An officer engaged in conduct based on a person’s race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability. The SJPD changed its

definition of Bias-Based Policing in February 2011 to clarify that this form of misconduct can occur at any time during an encounter between an officer and another person, not only when the encounter begins.

CIT: see Crisis Intervention Training

Classification: a decision about whether an issue or complaint raised by a member of the public about an officer is a Conduct Complaint, a Policy Complaint, or a Non-Misconduct Concern. Classification is an IA determination; the IPA can appeal the classification determination through the appeal process.

Closed With Concerns (IPA determination): A complaint is “closed with concerns” if the IPA questioned the IA investigation and/or the IA analysis. The complaint is closed without an Agree or Disagree determination. The IPA first implemented this determination in 2010.

Complainant: any member of the public who files a complaint

Complaint: an expression of dissatisfaction that contains one or more allegations of police misconduct

Complaint process: the sequence of events that begins when a person files a complaint, continues when IA investigates the complaint and issues findings, and concludes when the IPA audits the investigation and issues a determination

Conduct Complaint (a classification): a statement from any member of the public that alleges that a

SJPD officer broke one (or more) of the rules he or she must follow, and requesting that the officer's conduct be investigated by the SJPD

Conduct Unbecoming an Officer (an allegation): an officer's on or off-duty conduct could reflect adversely on the SJPD or that a reasonable person would find the officer's on or off duty conduct unbecoming a police officer

Courtesy (an allegation): an officer used profane or derogatory language, wasn't tactful, lost his/her temper, became impatient, or was otherwise discourteous. This definition went into effect in October 2010. Previously, only an officer's use of profane words, derogatory language or obscene gestures was considered misconduct.

Crisis Intervention Training (CIT): a 40-hour training program that teaches officers how to better address situations involving persons who are experiencing a mental or emotional crisis, or who have a developmental disability, thus reducing the possibility of the officers using force to gain control of the situation

Department-Initiated Investigation: an investigation into a misconduct allegation that is initiated by someone within the SJPD, and not by a member of the general public

Disagreed (IPA determination): A complaint is closed as "disagreed" if the IPA determines that the IA investigation of a complaint was not thorough, objective, or fair.

Documented Oral Counseling: a form of officer discipline

Duty Manual, the: a book of rules that each SJPD officer must follow. An officer's failure to abide by the rules in the Duty Manual can result in

discipline. The Duty Manual is a public document and can be viewed on the SJPD website.

Exonerated (finding): the officer engaged in the conduct described by the complainant, and the officer's conduct was justified, lawful, and proper

Finding: When a misconduct investigation is finished, IA makes a finding for each allegation. The possible findings are Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other.

Force (an allegation): the amount of force the officer used was not "objectively reasonable"

Force Case: a Conduct Complaint that includes one or more allegations of improper use of force by a San José police officer(s)

IA: see Internal Affairs

Independent Police Auditor (IPA): a City Council appointee who leads the office that takes complaints from the public about SJPD officers, audits investigations of those complaints, and makes recommendations to improve police practices and policies

Independent Police Auditor Teen Leadership Council (IPA-TLC): young people selected by the IPA to advise the IPA staff about how to improve outreach to youth in San José

Independent Police Auditor Advisory Council (IPAAC): adult volunteers selected by the IPA to promote community awareness of the services offered by the IPA office and inform the IPA office about police-related issues within the San José community

Intake: the first step in the process of filing a complaint

Internal Affairs (IA): the unit within the SJPD that investigates allegations of officer misconduct

IPA: see Independent Police Auditor

Letter of Reprimand: a form of officer discipline

Misconduct: an act or omission by an officer that is a violation of policy, procedure, or law

Neglect of Duty (an allegation): an officer neglected his/her duties and failed to take action as required by policy, procedure, or law

No Finding (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 is no longer employed by the SJPD before the completion of the IA investigation

Non-Misconduct Concern (classification): a concern expressed by a member of the public about an officer's conduct that IA determines does not rise to the level of a violation of policy, procedure, or law or that would not result in officer discipline

Not Sustained (finding): The IA investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation[.]” This means it was a “he said-she said” situation where it is one person’s word against another and IA can’t tell which version to believe.

Officer-involved shooting: an incident that involves an officer’s discharge of his or her firearm

Other (finding): when SJPD declines to investigate because of too long a delay from the date of the incident to the date of filing, or because the officer was not a SJPD officer, or because a duplicate complaint exists

Police Officer’s Association (POA): the bargaining unit (union) that represents SJPD police officer interests

Policy Complaint (classification): complaints from the public about SJPD policies or procedures

Procedure (an allegation): an officer did not follow appropriate policy, procedure, or guidelines

Search or Seizure (an allegation): a search or seizure violated the 4th Amendment of the United States Constitution

Sustained (finding): the investigation disclosed sufficient evidence to clearly prove that the allegation about the conduct of the officer was true

Sustained rate: the percentage of Conduct Complaints (not allegations) that results in a finding of Sustained for one or more allegations

TLC: see Independent Police Auditor Teen Leadership Council

Unfounded (finding): The investigation conclusively proved either that the act or acts complained of did not occur, or that the officer named in the allegation was not involved in the act or acts, which may have occurred. This means that the IA investigation concluded that the acts never happened.

Withdrawn (finding): the complainant expressed an affirmative desire to drop the complaint.

Appendix A

San José Municipal Code Chapter 8.04 and San José City Charter §8.09

SAN JOSE MUNICIPAL CODE CHAPTER 8.04

OFFICE OF THE INDEPENDENT POLICE AUDITOR

8.04.010 Duties and responsibilities.

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

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

2. Analyze trends and patterns.
3. Make recommendations.

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.

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.

(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

IPA Statement of Values



Office of the Independent Police Auditor

STATEMENT OF VALUES

I acknowledge that as a member of the staff of the Office of the Independent Police Auditor for the City of San Jose, I am expected to demonstrate the highest standards of personal integrity and honesty in all activities and in all settings in order to inspire public confidence and trust in the Office. My conduct in both my official and private affairs must be above reproach and my standards, views and behavior will comply with the following values:

1. **Integrity:** Demonstrate the highest work ethic; be honest and accountable.
2. **Independence:** Perform work that is free from actual influence or the appearance of influence of any individual or group; adhere to the No-Gift Policy of the Office.
3. **Confidentiality:** Understand and appreciate the critical importance of confidentiality to the Office; demonstrate unwavering adherence to the rules of confidentiality at all times.
4. **Respect:** Treat everyone fairly and be considerate of diverse views.
5. **Objectivity:** Be equitable, fair and neutral in the evaluation of complaints and issues considered by this Office.
6. **Professionalism:** Be committed to the mission of the IPA Office; refrain from making statements which may be viewed as compromising the independence and integrity of the IPA Office, its work, and its staff.

Adopted July, 2010 – IPA and Staff

Appendix D

IPA No-Gift Policy



Office of the Independent Police Auditor

NO-GIFT POLICY

Employees of the Office of the Independent Police Auditor must be held to the highest standard of conduct, to ensure that the independence and integrity of the unique work of the Office is maintained.

The acceptance of gifts or gratuities of any kind by the staff of the Office could be perceived or interpreted as an attempt by the donors to influence the actions of the staff. **Therefore, no gifts of any value may be accepted by members of the staff of the Office of the Independent Police Auditor from any individual or organization that may be impacted by the work of the employee or the Office.** However, gifts from family members and close personal friends are permissible, so long as they are consistent with state law and the City's Gift Policy and Ordinance.

Gifts include, but are not limited to the following: (1) any rebate or discount in the price of anything of value, unless the rebate or discount is made in the regular course of business to members of the public; (2) complimentary tickets; (3) meals, (4) holiday presents, and (5) non-informational materials.

This policy is more stringent than and supersedes the City's Gift Policy and Ordinance, as applied to the IPA Office, to the extent the City's Gift Policy and Ordinance conflict with this policy.

Adopted July, 2010 – IPA and Staff

Appendix E

Memorandum to the Mayor and City Council Regarding IPA Audit of Recommendations to SJPD (1993-2009)



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Judge LaDoris H. Cordell (Ret.)
Independent Police Auditor

SUBJECT: IPA Audit of Recommendations
to SJPD (1993-2009)

DATE: December 14, 2011

Approved

Date: December 14, 2011

RECOMMENDATION

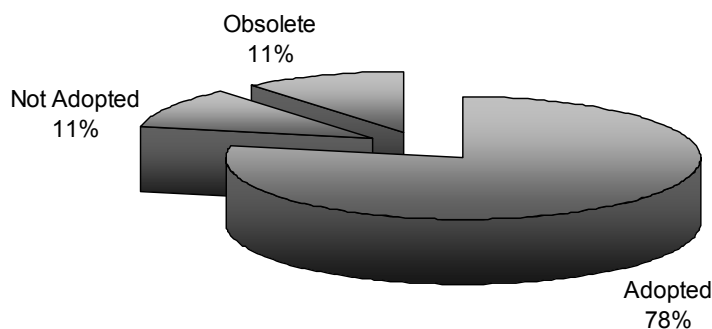
Accept the audit report of the Independent Police Auditor reflecting the current status of Independent Police Auditor recommendations made between 1993 and 2009 — eighty-five of which have been adopted by the San José Police Department.

BACKGROUND

As part of its Charter mandate, the Office of the Independent Police Auditor (“IPA”) makes policy recommendations to San José Police Department (“SJPD”). From 1993 to 2009, the IPA made 109 such recommendations, encompassing a broad range of issues.

Beginning in late 2010, the IPA conducted the first-ever audit of these recommendations. This audit determined that SJPD adopted 85 of our recommendations. Another 12 were deemed obsolete due to changes in law or policy.

All IPA Recommendations, 1993-2009



The IPA requested that SJPD provide documentation confirming that it had, in fact, implemented the adopted recommendations. The IPA then reviewed the documentation, and requested and received clarification of some of the responses via written and oral communications with SJPD. Our audit determined that, of 85 adopted recommendations, 73 (86%) have been fully implemented, and 12 (14%) are not yet fully implemented.

We commend SJPD for its responsiveness to our requests for information during this audit process. SJPD's cooperation ensured that our office was able to complete a thorough and objective audit of the adopted recommendations. We especially thank Lieutenant John Spicer and Sergeant John Seaman of SJPD's Research and Development Unit, and Brenna Silbory, Analyst II of the IPA Office, for their extraordinary work on this audit.

ANALYSIS

1. Positive Impacts of IPA Recommendations

Our audit revealed that SJPD has implemented 73 (86%) of the 85 IPA recommendations that were adopted. The implementation of our recommendations has impacted policing in San José in many positive ways. Examples of these positive impacts include the following:

- ✓ **The handling of misconduct complaints has improved** as a result of the implementation of IPA recommendations. Almost 50% of all IPA recommendations touched upon SJPD's handling of allegations of officer misconduct. For example, SJPD adopted and implemented an IPA recommendation to establish the specific types of conduct that merit thorough investigation by the Internal Affairs Unit. (Recommendation #32)
- ✓ **Officer-involved shootings and great bodily injury incidents** have received greater scrutiny because of the implementation of IPA recommendations. As early as 1994, the IPA advocated that SJPD supervisors collect evidence and investigate whenever an officer's use of force caused great bodily injury to a civilian. Following a series of IPA recommendations beginning in 2003 about officer-involved shooting incidents, the IPA now participates in the shooting review panel held after such incidents. (Recommendations #91, 93, 94)
- ✓ **Shooting by officers at moving vehicles and Taser use** were addressed by IPA recommendations in 2005. As a result, SJPD issued guidelines under which officers are permitted to shoot at moving vehicles and to use their Tasers. Approximately 20% of IPA recommendations over the years have pertained to officers' use of force. (Recommendations #99, 100)
- ✓ **The rights of bystanders** to witness police events and to obtain officers' names and badge numbers upon request are now in the SJPD Duty Manual — the product of some IPA recommendations. (Recommendation #7, 34, 39, 59)

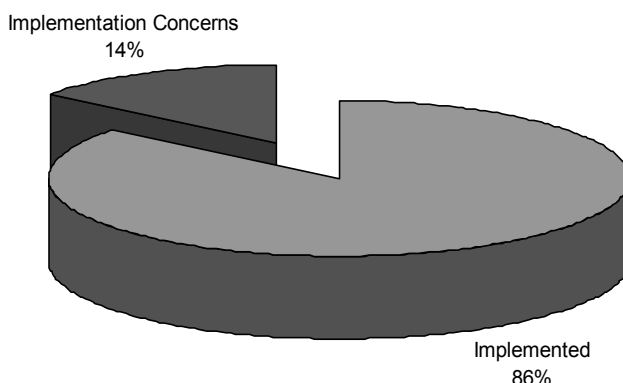
- ✓ **Physical conditions of the lobby area in the SJPD Administration Building** have improved dramatically following several 2000 IPA recommendations to make the area more hospitable to members of the public. (Recommendations #65-74)
- ✓ **Chemical sobriety tests during “drunk in public” arrests:** in 1994 and, again, in 2008, the IPA recommended a policy requiring officers to offer chemical sobriety tests to individuals arrested for public intoxication (PC 647(f)). That policy is now in place. (Recommendation #10)

2. Adopted Recommendations Not Yet Fully Implemented

Even though SJPD has adopted 85 of the IPA recommendations, 12 recommendations (14%) have not yet been fully implemented.

Listed below are IPA recommendations the audit revealed were not yet implemented, although adopted by SJPD. Following audit discussions between the IPA and SJPD, specific timelines have been set for the implementation for all but one of these recommendations.

All Adopted IPA Recommendations



- One of the IPA’s very first recommendations in 1993 was to apply **Intervention Counseling** to all types of complaints. Intervention Counseling is an important tool available to SJPD for identifying and speaking to officers who receive multiple complaints within a specific time frame. Addressing a potential pattern of conduct concerns early can help SJPD prevent serious officer misconduct. We were unable to confirm that they have fully implemented this system. However, in response to our audit, SJPD informed us that it is making major and positive revisions to its Early Warning System (which identifies officers at risk for committing misconduct) and that it will implement this revised system by June 2012. (Recommendation #3/#83.)
- The **arrests of individuals for public intoxication** have been an occasional subject of controversy in San José. The IPA first raised concerns about these arrests in 1994. Given community concerns that these arrests are highly discretionary on the part of officers, proper documentation of these arrests is important to demonstrate that the arrests are lawful and free of bias. Initially, we did not receive requested documents necessary for us to verify consistent documentation of these arrests. However, per our request to perform spot checks

of public intoxication incident reports, SJPD has agreed to provide 100 of these reports to the IPA by December 31, 2011. (Recommendation #9.)

- SJPD had agreed to implement an IPA recommendation that requires the Internal Affairs Unit to **contact complainants** (people who have brought misconduct complaints) at regular intervals until their complaints are closed, with update letters sent every 60 days, and final closing letters. In response to this audit, SJPD has now linked all such communications in IAPro so that our office can perform spot checks to ensure compliance. (Recommendation #14.)
- **Internal Affairs investigators' objectivity when interviewing officers** about alleged misconduct is an issue of ongoing concern. In 1995, we recommended a standardized format for officer interviews to promote objectivity. As a result of recent discussions on this subject, including a joint IA/IPA training, Internal Affairs no longer permits its investigators to ask leading questions in their interviews of officers. Our audit has also prompted SJPD's agreement to implement a standardized format for interviewing officers by March 2012. (Recommendation #26.)
- Positive police/community relations sometimes require that **officers apologize** when they make mistakes. In 1999, the IPA recommended that SJPD issue an explanation and/or apology in instances of unintentional or inadvertent police error, such as when there is a search of the wrong house. Our audit has resulted in an agreement from SJPD to issue the procedure to be followed when these errors occur, in the form of a standing order, available by June 2012. Thereafter, the procedure will be included in the revised Duty Manual by December 2012. (Recommendation #49.)
- The **fear of retaliation**, however unjustified that fear may be, is often cited by potential complainants as the reason they will not go on record with their concerns about potential police misconduct. To further protect the integrity of the misconduct complaint process, we recommended in 2000 that SJPD place a non-retaliation policy in the Duty Manual, to reinforce SJPD's message to all officers that retaliation against complainants and witnesses will not be tolerated. We also requested a Duty Manual whistleblower policy to protect SJPD employees who raise misconduct concerns. In the wake of our audit, SJPD will add both policies to the Duty Manual by December 2012. (Recommendations #52 & 54.)
- **Ethics trainings** are routinely administered in many workplaces, and are particularly important for law enforcement — a profession in which challenging situations are routine. Although SJPD adopted the IPA recommendation in 2000 for recurring SJPD ethics trainings, our audit disclosed that there have been no SJPD ethics training programs since 2002. In response to our audit, SJPD will reinstitute, by July 1, 2013, an updated ethics training program, mandatory for all officers. The SJPD ethics training program will be administered every other year. (Recommendation #55.)
- **Handling suspects who are armed with projectile weapons such as knives and swords** can pose perilous and challenging situations for officers. Following a

- review of fatal incidents in 2000, the IPA recommended specialized training be given to officers on facing suspects armed with these weapons. SJPD adopted this recommendation. However, our audit was unable to confirm that this specialized training in fact occurred. In response to this audit, SJPD has committed to implement a training program by mid-2012 that addresses these and other safety challenges that officers encounter in the field. (Recommendation #61.)
- **Misconduct allegations against top-ranking SJPD officers** require special handling to avoid actual or perceived bias. In 2002, the IPA recommended a written policy to provide guidance in this situation. While a policy pertaining to alleged sexual harassment and discrimination is already in place, in response to our audit, SJPD will include in the Duty Manual, by December 2012, direction to officers about how to bring complaints when high-ranking officers are the subjects. (Recommendation #88.)
 - **Providing information about officer-involved shootings and fatal incidents** is important to the public trust. In 2003 we recommended that SJPD generate documents that could answer frequently asked questions about the investigations that follow these incidents. As a result of our audit, SJPD has committed to generate FAQ's and to post the document on the homicide unit page of the SJPD website. This will be accomplished by March 2012. (Recommendation #90.)
 - **Tracking Taser use** ensures that these relatively new, less-lethal, but still powerful weapons are used responsibly by SJPD officers. In 2004 we recommended continued tracking and analysis of Taser use. Our audit confirmed that while SJPD still collects data on Taser use, no analysis has been performed on the data. In response to this concern, SJPD will implement an IAPro "Blue Team" system by January 2013. This system will allow SJPD to quickly track all types of force used, including Tasers, and to sort the data by weapon. (Recommendation #96.)
 - **When property is seized for safekeeping** (e.g., wallets, purses, bicycles), SJPD must store and later return the property if it is claimed. If the owner fails to reclaim his/her property within four months after receiving proper notification, SJPD can auction off or discard the property. Previously, SJPD had not been providing those notices in a timely fashion. In response to our audit, SJPD has now agreed to modify the report receipt card that is given to the property owner when SJPD seizes the property. By June 2012 the card will include notification information to these property owners. This process will be memorialized in the Duty Manual by December 2012.

JUDGE LADORIS H. CORDELL (RET.)
Independent Police Auditor

Appendix F

Memorandum of Understanding



Memorandum of Understanding

Between the

Consulate General of México in San José, California

And the

Office of the Independent Police Auditor for the City of San José

Recitals

1. The Office of the Independent Police Auditor for the City of San José was established in 1993 to provide independent oversight of investigations that are conducted by the San José Police Department into civilian complaints. Among its duties and responsibilities are receiving citizen complaints as an alternative to the Police Department, making recommendations regarding Police Department policies and procedures, and conducting public outreach and education. Its office is located at 75 E. Santa Clara Street, San José, California. The Independent Police Auditor is the Honorable LaDoris H. Cordell (Ret.).
2. The Consulate General of México in San José, California, is the official representation of the government of the United Mexican States in the Counties of Santa Clara, San Benito, Santa Cruz and Monterey. Among other duties, the Consulate General is required to provide consular protection and assistance to the Mexican nationals who reside or who find themselves temporarily within these counties. The United States of America federal government, through the United States Department of State, recognizes this office as a foreign government consular post as defined in the Vienna Convention on Consular Relations of 1963. The Consulate is located at 2125 Zanker Road, San José, California, and Honorable David Figueroa Ortega is currently the Consul General of Mexico in San José, California.
3. The Consul General has brought to the attention of the Independent Police Auditor his concern that there are Mexican Nationals who live and work in the City of San José who are fearful of going to the San José Police Department or to the Office of the Independent Police Auditor to file complaints about San José Police Officers.

Accordingly, the Consul General and the Independent Police Auditor have proposed that the Mexican Consulate serve as an alternative location for the Independent Police Auditor to apprise the public about the services offered by that Office.

Terms

The Consul General and the Independent Police Auditor agree that commencing January 2011, and for one-half day per month thereafter, on a schedule to be mutually agreed upon, the Mexican Consulate in San José will provide an office at the Consulate for staff of the Office of the Independent Police Auditor to inform the public about the purpose of the Independent Police Auditor and to encourage members of the public to bring any complaints or concerns about San José police officers to the Office of the Independent Police Auditor.

Immunity: The Consulate and representatives acting on behalf of the Consulate in this Memorandum of Understanding do not waive any kind of Consular or Diplomatic immunity that they are entitled to according to the applicable international laws, which may include, but not limited to, agreements, treaties, and conventions.

This Memorandum of Understanding is not intended to and does not create any contractual rights or obligations with respect to the signatories, their agencies or any other parties.

This Memorandum of Understanding is entered into this 13th day of January, 2011, and may be terminated by either party at any time.

On behalf of the Consulate General
of México in San José, California,

On behalf of the Office of the Independent
Police Auditor for the City of San José,




**Honorable David Figueroa Ortega
Consul General**

**Judge LaDoris H. Cordell (Ret.)
Independent Police Auditor**

Appendix G:

IPA 2011 Community Outreach Activities

Date	Name	Type	District	Location/Notes
01/06/11	Rachel Ray & Dr. McClean	Meeting/Event	3	Community Members
01/06/11	IPAAC Meeting	Meeting/Event	3	Quarterly meeting
01/11/11	Public Interest Law Firm	Meeting/Event	3	Law Foundation of Silicon Valley
01/12/11	Mayor's Gang Prevention Task Force Meeting	Meeting/Event	7	Franklin-McKinley School District
01/12/11	Pat Dwyer, Law Enforcement Liaison	Meeting/Event	6	SCC Mental Health Department
01/13/11	IPA/Mexican Consulate MOU Ceremony	Meeting/Event	3	Signing of Memo of Understanding
01/14/11	Silicon Valley Faces - MLK Event	Meeting/Event	8	Evergreen Valley High School
01/14/11	Employment Connection Co. of SC	Presentation	7	CalWORKs
01/15/11	Stop the Violence Rally	Meeting/Event	8	Evergreen Valley College
01/18/11	AARP	Presentation	n/a	Campbell
01/21/11	Aaron Resendez	Meeting/Event	3	Community Member
01/21/11	Opening Reception	Meeting/Event	4	Mexican Consulate
01/24/11	Bill Wilson Center	Meeting/Event	3	Regarding Teen Issues
01/24/11	City Youth Commission	Presentation	3	City Hall
01/25/11	Yerba Buena High School	Presentation	7	Girl Scouts Got Choices Program
01/25/11	VEP Community Association	Presentation	10	Vistapark, Encore/Echo Valley & Parkview Valley
01/27/11	Captain Toribio	Meeting/Event	3	From Oakland Police Dept.
01/27/11	Andrew Hill High School	Presentation	7	Girl Scouts Got Choices Program
01/28/11	La Raza Round Table	Meeting/Event	7	Monthly Meeting
01/31/11	EMQ Eastfield Ming Quong	Meeting/Event	3	Regarding Teen Issues
01/31/11	Juvenile Hall	Presentation	3	Girl Scouts Got Choices Program
02/01/11	Juvenile Justice Commission	Meeting/Event	3	County of Santa Clara
02/02/11	MH Leadership Advisory Group	Meeting/Event	3	Downtown Mental Health Building
02/03/11	Momentum for Mental Health	Meeting/Event	n/a	Hobee's Palo Alto
02/04/11	SJ Community School	Presentation	1	Girl Scouts Got Choices Program
02/04/11	Rotary Guest Speaker	Presentation	3	HP Pavilion
02/05/11	MLK Civil Rights Fair	Meeting/Event	3	MLK Library
02/07/11	Mexican Consulate	Meeting/Event	3	Monthly Outreach
02/08/11	Public Defenders Office	Presentation	3	
02/09/11	Mayor's Gang Prevention Task Force	Presentation	2	Edenvale Community Center
02/10/11	Coordinated School/Health Collaborative	Presentation	4	County Department of Education
02/11/11	Latina Coalition	Meeting/Event	3	Bella Mia
02/11/11	Senior Walk at Oakridge Mall	Meeting/Event	10	Annual event
02/14/11	Berryessa Community Advisory Committee	Presentation	4	Berryessa Community Center
02/17/11	Male Rights of Passage Program	Presentation	8	Evergreen Valley College
02/24/11	ACLU Event	Meeting/Event	3	The Loft
02/25/11	Work 2 Future Resource Fair	Meeting/Event	3	City Hall Rotunda
02/25/11	La Raza Roundtable Meeting	Meeting/Event	7	Monthly Meeting
02/28/11	Latino Parents' Group	Presentation	4	East Side Union High School District
03/01/11	Juvenile Justice Commission	Presentation	3	County of Santa Clara
03/03/11	City's Human Rights Commission	Presentation	3	City Hall
03/03/11	People Acting in Community Together	Presentation	5	Our Lady of Guadalupe Church
03/04/11	Juvenile Hall	Presentation	6	Girl Scouts Got Choices Program
03/07/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
03/07/11	Men's Circle/Domestic Violence	Presentation	5	MACSA

Date	Name	Type	District	Location/Notes
03/10/11	City's Seniors Commission	Presentation	3	City Hall
03/16/11	Project Homeless Connect	Presentation	5	Eastside Neighborhood Center
03/16/11	Sheppard Middle School Group 1	Presentation	5	AACI - Project Plus
03/16/11	Sheppard Middle School Group 2	Presentation	5	AACI - Project Plus
03/17/11	Men's Circle/Domestic Violence	Presentation	5	MACSA
03/18/11	Youth Commission's Annual Youth Conference	Meeting/Event	3	City Hall Rotunda
03/18/11	City's Youth Conference	Meeting/Event	3	Meet the City Officials Session
03/22/11	Independence High School Group 1	Presentation	4	AACI - Project Plus
03/22/11	Independence High School Group 2	Presentation	4	AACI - Project Plus
03/22/11	Kiwanis Club Meeting	Presentation	6	1645 Bascom Avenue
03/23/11	SJPD/Mental Health Public Forum	Meeting/Event	3	MLK Association of Silicon Valley
03/24/11	Yerba Buena High	Presentation	7	AACI - Project Plus
03/25/11	La Raza Round Table	Meeting/Event	7	Monthly Meeting
03/26/11	Spanish Outreach Event	Presentation	4	East Side Union High School District
03/29/11	Grace Community Center	Meeting/Event	3	Regarding SJPD - CIT
03/29/11	Homelessness Service Provider Network	Presentation	3	Georgia Travis Center
04/01/11	Nora Campos Assembly Member	Meeting/Event	3	Flames Restaurant
04/01/11	Mica Estramera & Juniper Downs	Meeting/Event	3	County Counsel Civil Detainer Task Force
04/04/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
04/04/11	People Acting in Community Together	Meeting/Event	3	Meeting Regarding Bias-Based Policing
04/05/11	Castellano Foundation	Meeting/Event	n/a	Regarding the IPA-TLC
04/06/11	Katie Dunn MHAP	Meeting/Event	3	Regarding SJPD - CIT
04/07/11	IPAAC Meeting	Meeting/Event	3	Quarterly meeting
04/07/11	CIT HOPE Services	Meeting/Event	6	CIT site visit
04/07/11	CIT Grace Community Center	Meeting/Event	3	CIT site visit
04/08/11	Century Club	Presentation	3	Garden Hotel
04/09/11	Citizenship & Immigrant Pride Day	Meeting/Event	3	Center for Employment & Training
04/13/11	Mayor's Gang Prevention Task Force	Meeting/Event	2	Edenvale Community Center
04/14/11	Juvenile Hall - Unit B3	Presentation	3	MACSA
04/15/11	Senior Walk at Valley Fair Mall	Meeting/Event	6	Annual event
04/20/11	Juvenile Hall Unit B8 Group 1	Presentation	3	MACSA
04/21/11	County Human Relations Awards	Presentation	3	Office of the County Executive
04/22/11	County CIT coordinator Meeting	Meeting/Event	3	Regarding Santa Clara County CIT
04/22/11	TLC Focus Group Meeting	Meeting/Event	4	AACI, BWC, YAC, FLY
04/23/11	Public Education Series- Chinese	Presentation	4	East Side Union High School District
04/25/11	Juvenile Hall Unit B8 Group 2	Presentation	3	MACSA
04/26/11	Juvenile Hall Unit B2	Presentation	3	MACSA
04/27/11	Crime Prevention/Neigh.Safety Mtg.	Meeting/Event	3	MLK Association of Silicon Valley
04/27/11	Juvenile Justice & Tolerance Mtg.	Presentation	6	Silicon Valley Council of Nonprofits
04/29/11	La Raza Round Table	Meeting/Event	7	Monthly Meeting
04/30/11	Teen Leadership Council	Presentation	3	Kick Off Event (Guest Chief Moore)
05/02/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
05/03/11	Community Free of Bias & Bigotry Together	Presentation	n/a	Silicon Valley Faces
05/04/11	Hilbert Morales	Meeting/Event	3	Regarding IPA-TLC
05/04/11	DeAnza College	Presentation	n/a	De Anza College Cupertino CA
05/05/11	Sister to Sister Conference	Presentation	6	Asian American Recovery Services, Inc.
05/07/11	36th Annual Berryessa Art & Wine Festival	Meeting/Event	4	Annual event
05/12/11	Park Pleasant Outreach Event	Meeting/Event	5	Mt. Pleasant Elementary School
05/13/11	Latina Coalition Luncheon	Meeting/Event	3	Bella Mia
05/14/11	Public Education Series-Vietnamese	Presentation	4	East Side Union High School District

Date	Name	Type	District	Location/Notes
05/16/11	Meeting with Serra High School students	Meeting/Event	3	IPA Office
05/21/11	TLC Meeting	Meeting/Event	3	Monthly meeting
05/21/11	NAACP Freedom & Friendship Gala	Meeting/Event	3	Annual Event
05/27/11	La Raza Round Table	Meeting/Event	7	Monthly Meeting
05/28/11	School of Social Work Commencement	Presentation	3	SJSU
06/06/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
06/08/11	Mayor's Gang Prevention Task Force	Meeting/Event	2	Victory Outreach
06/08/11	Neighborhood Safety Meeting	Meeting/Event	3	Regarding Gang Violence
06/11/11	Know Your Rights Forum-Youth	Presentation	6	Sponsored by NAACP + BPOA +BLA
06/13/11	Green Cadre Program	Presentation	6	Work2future
06/14/11	Mary Greenwood, Public Defender	Meeting/Event	3	IPA Office
06/14/11	Green Cadre Program	Presentation	6	Work2future
06/15/11	Jaime Alvarado	Meeting/Event	3	American Leadership Forum
06/16/11	Juneteenth Celebration	Presentation	7	Solari Community Center
06/18/11	Teen Leadership Council	Meeting/Event	3	Monthly Meeting (Guest Sam Liccardo)
06/19/11	Juneteenth Event	Meeting/Event	3	Annual Event, AACSA
06/22/11	El Comite of Santa Clara County	Presentation	7	County of Santa Clara Building
06/23/11	Zephyr Self Help Center	Presentation	3	Downtown Mental Health Building
06/24/11	La Raza Roundtable	Meeting/Event	7	Monthly Meeting
06/30/11	Music in the Park	Meeting/Event	3	Plaza de Cesar Chavez Park
07/01/11	Project Homeless Connect	Meeting/Event	3	City Hall Plaza
07/06/11	James Lick High Group 1	Presentation	5	Silicon Valley Future Stars
07/06/11	James Lick High Group 2	Presentation	5	Silicon Valley Future Stars
07/07/11	IPAAC Meeting	Meeting/Event	3	Quarterly meeting
07/09/11	Career Day	Presentation	n/a	Girl Scouts of Santa Clara County
07/11/11	Building Communities of Trust Roundtable	Meeting/Event	10	Pioneer High School
07/13/11	SPN Community Resource Event	Meeting/Event	3	InnVision One-Stop
07/15/11	Sacred Heart Community Center	Meeting/Event	3	Regarding ICE working with SJPD
07/16/11	TLC Meeting	Meeting/Event	3	Monthly Meeting (Guest Officer Recinos)
07/19/11	Employment Connection Center	Presentation	7	SSA/CalWORKs
07/20/11	Law Foundation of Silicon Valley	Presentation	3	Legal Service Attorneys & Interns
07/21/11	Know Your Rights Forum	Meeting/Event	7	St. Maria's Church (SIREN)
07/27/11	TLC - Starlight Cinema Outreach	Meeting/Event	3	San Pedro Square
07/30/11	Center for Employment & Training	Presentation	3	Graduation Keynote Address
08/01/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
08/02/11	City Council Meeting	Meeting/Event	3	IPA-TLC Issue
08/02/11	Starbird Park	Meeting/Event	1	National Night Out
08/02/11	Murdock Park	Meeting/Event	1	National Night Out
08/02/11	Ohlone Chenoweth Commons	Meeting/Event	9	National Night Out
08/02/11	Mayfair Community Center	Meeting/Event	5	National Night Out
08/02/11	Target Store Parking Lot	Presentation	8	National Night Out
08/03/11	James Lick High	Presentation	5	Silicon Valley Future Stars
08/08/11	Ernesto Hernandez	Meeting/Event	3	Regarding IPA-TLC
08/08/11	Coalition for Justice & Accountability	Presentation	6	AACI
08/10/11	Mayor's Gang Prevention Task Force	Meeting/Event	8	Most Holy Trinity Church
08/10/11	Project Inspired Program (YWCA)	Presentation	7	Yerba Buena High
08/11/11	South Bay Christian Ministers Union	Presentation	6	Open Bible Faith Community Church
08/12/11	LCSV Luncheon	Meeting/Event	3	ELLA Graduation
08/20/11	TLC Meeting	Meeting/Event	3	Monthly Meeting (Guest Raj Jayadev)
08/24/11	Community Forum - Public Safety	Presentation	3	MLK Assoc of Santa Clara Valley

Date	Name	Type	District	Location/Notes
08/26/11	La Raza Roundtable	Meeting/Event	7	Monthly Meeting
08/26/11	Movie Night & Resource Fair	Meeting/Event	4	Flickinger Park
08/26/11	Santa Clara County Women's Equality Day Breakfast Program	Presentation	n/a	Milpitas
08/28/11	Celebrate Cambrian Festival	Meeting/Event	9	Annual Event
09/10/11	Autumn Festival	Meeting/Event	7	Emma Prusch Park - Annual Event
09/12/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
09/14/11	Hearing Loss Assn. of Silicon Valley	Presentation	6	San Jose Masonic Center
09/15/11	MACSA Event Planning	Meeting/Event	6	MACSA
09/16/11	Mexican Independence Day Celebration	Meeting/Event	4	Mexican Consulate
09/17/11	TLC Meeting	Meeting/Event	3	Monthly Meeting (Guest Council Member Ask Kalra)
09/17/11	Greater St. John Baptist Church	Presentation	3	1230 E. San Antonio Street
09/18/11	Almaden Art & Wine	Meeting/Event	10	Annual Event
09/22/11	Roadshow District 9	Presentation	9	Donna Lane Neighborhood Association
09/27/11	Retired Public Employees Assoc.	Presentation	1	Harrys Hafbrau
09/30/11	La Raza Roundtable	Meeting/Event	7	Monthly Meeting
10/01/11	Annual Day in the Park	Meeting/Event	8	Lake Cunningham Park - Annual Event
10/01/11	National Forum for Black Administrators	Presentation	2	Hayes Mansion
10/06/11	Disability Awareness Day	Meeting/Event	3	Annual Event
10/06/11	IPAAC Meeting	Meeting/Event	3	Quarterly meeting
10/08/11	Neighborhood Development Resource Fair	Meeting/Event	3	SJSU
10/12/11	School City Collaborative	Presentation	9	Campbell Unified School District
10/13/11	Occupy San Jose	Meeting/Event	3	City Hall
10/13/11	Silicon Valley Crime Stopper's	Meeting/Event	n/a	Annual Fundraiser
10/14/11	Occupy San Jose	Meeting/Event	3	City Hall
10/14/11	Walk to End Domestic Violence	Meeting/Event	3	Annual event
10/15/11	Know Your Rights Forum-Youth	Presentation	4	Sponsored by Asian Law Alliance
10/16/11	Community Dialogue on Public Safety	Presentation	4	East Side Union High School District
10/17/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
10/17/11	County Democratic Club	Presentation	n/a	Santa Clara
10/18/11	Mexican Consulate	Meeting/Event	4	Planning Anti-Hate Crime Forum
10/21/11	San Francisco BART	Meeting/Event	3	Civilian Oversight
10/22/11	Free Speech, Social Networking & Cyberbullying	Presentation	3	IPA-TLC & YAC Special Event
10/24/11	Roadshow District 3	Presentation	3	Sacred Heart Community Center
10/26/11	Piedmont High School	Presentation	4	Law Enforcement Student Club
10/28/11	Occupy San Jose	Meeting/Event	3	City Hall
10/28/11	MACSA	Meeting/Event	5	Outreach Fair
10/28/11	La Raza Roundtable	Meeting/Event	7	Monthly Meeting
10/29/11	ACLU's Don Edwards Award	Presentation	n/a	Judge Cordell - Award Recipient
11/01/11	James Lick High School Group 1	Presentation	5	Ms. Blanco: Teacher/Sponsor
11/01/11	James Lick High School Group 2	Presentation	5	Ms. Blanco: Teacher/Sponsor
11/01/11	Principals Meeting	Presentation	9	Campbell Union High School District
11/02/11	Civil Grand Jury	Presentation	3	111 W. St. John Street
11/03/11	Anti-Hate Crimes Forum	Presentation	4	Mexican Consulate
11/03/11	James Lick High Group 3	Presentation	5	Teacher: Ms. Blanco
11/03/11	Roadshow District 8	Presentation	8	Evergreen Library
11/07/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
11/07/11	Roadshow District 2	Presentation	2	Edenvale Library
11/09/11	Mayor's Gang Prevention Task Force	Meeting/Event	3	Center for Employment & Training
11/10/11	Federation of Retired Union Members	Presentation	6	South Bay Labor Council
11/12/11	TLC Meeting	Meeting/Event	3	Monthly Meeting

Date	Name	Type	District	Location/Notes
11/15/11	Family & Children's Services	Meeting/Event	3	IPA Office
11/15/11	Mexican Consulate	Meeting/Event	4	Debrief on Forum
11/15/11	Downtown Streets Team	Meeting/Event	3	First Christian Church San Jose
11/18/11	Legal Services Retreat	Presentation	3	SCC Bar Association
11/21/11	Roadshow District 7/8	Presentation	7	Most Holy Trinity Church
11/28/11	Donna Lane Neighborhood Group	Presentation	9	Donna Lane Apartments
11/29/11	Roadshow District 6	Presentation	6	Willow Glen Community Center
11/30/11	Alviso Rotary Club	Presentation	4	Vahl's Restaurant, Alviso
11/30/11	District 5 United Neighborhood Group	Presentation	5	Mayfair Community Center
12/01/11	Roadshow District 4	Presentation	4	Alviso Fire Station Wilson Wy
12/05/11	Mexican Consulate	Meeting/Event	4	Monthly Outreach
12/07/11	Roadshow District 10	Presentation	10	Almaden Community Center
12/07/11	Roadshow District 5	Presentation	5	Somos Mayfair Promotoras
12/13/11	Jay Rorty	Meeting/Event	3	IPA Office
12/13/11	Bill Wilson Center	Presentation	3	Legal Advocates for Children & Youth
12/14/11	School City Collaborative	Meeting/Event	9	Campbell Unified School District
12/14/11	Hearing Loss Association	Presentation	6	Joint Presentation SJPD & IPA
12/15/11	Mental Health Leadership Advisory Group	Meeting/Event	3	(SJPD & MH) Post Crisis Intervention
12/16/11	Roadshow District 1	Presentation	1	Cypress Senior Center
12/20/11	MLK Arts Contest Awards Presentation Meeting	Meeting/Event	3	IPA Office
12/29/11	Kids in Common	Meeting/Event	3	IPA Office

Appendix H

IPA Presentation Evaluation



OFFICE OF THE INDEPENDENT POLICE AUDITOR City of San Jose

Presentation Evaluation

Audience _____
(To Be Filled Out By Presenter)

Date: _____

Location: _____

Name of Presenter(s): _____

1. Did today's presentation increase your knowledge about the **Office of the Independent Police Auditor**?

Yes No

2. Did today's presentation increase your knowledge about the **citizen complaint process**?

Yes No

3. Were the presenters knowledgeable about the subject matter?

Yes No

4. Were the materials provided helpful?

Yes No

5. Overall, how would you rate the presentation?

Excellent Good Average Poor

6. Are there additional issues you wish the presenters had addressed?

7. What was the most important or most interesting part of the presentation?

Appendix I:

IPA 2011 Media Contacts, Articles, and Interviews

Date	Name	Notes	Contact
01/07/11	NBC TV	MOU signed by Mexican Consul General and IPA	Damian Trujillo
01/10/11	San Jose Mercury News	“Names of police chief finalists to remain concealed: City officials say diverse but internal vetting process helps attract best candidates in nation “	Sean Webby
01/10/11	KQED Radio Interview	re: MOU signed by Mexican Consul General and IPA	Peter Jon Shuler
01/14/11	El Observador	“Acuerdo histórico” (Historic agreement)	Rosario Vital
01/14/11	KCBS radio	“Search for San Jose Police Chief Puts Spotlight on the Independent Police Auditor”	
01/14/11	KLIV radio	Relationship between new SJPD Chief & IPA	
01/17/11	Sjbeez.org	“Independent Police Auditor and Mexican Consulate Sign MOU to Aid Mexican Nationals in San Jose”	Cesar Flores
01/23/11	San Jose Mercury News	“Trust is a must for next top cop: Both finalists have demonstrated an ability to connect with, relate to diverse communities”	Sean Webby
01/23/11	San Jose Mercury News	Opinion Piece: When hateful people speak, we must speak louder	Judge LaDoris Cordell
01/26/11	San Jose Mercury News	Letter to the Editor: A false premise from the S.J. police auditor	
01/27/11	Channel 2	San Jose Shootings	Robert Handa
02/01/11	KGO - ABC local	“Chris Moore announced as new SJ police chief”	Karina Rusk
02/02/11	San Jose Mercury News	“New chief vows to fix community’s broken trust”	Sean Webby
02/22/11	San Jose Mercury News	“Police toughen stance against racial profiling: It’s now a violation for cops to show biased behavior at any time during an encounter”	Sean Webby
02/22/11	ABC-TV Channel 7 Interview	Racial Profiling	Amy Hollfield
02/22/11	Univision Channel 14 San Francisco	Racial Profiling	
02/22/11	CBS-TV Channel 5 KPIX	Racial Profiling	Mark Sayre
02/24/11	SJSU Student Reporter	Interview of Judge Cordell	Brandon Castillo
02/25/11	San Jose Mercury News	“A symbolic swearing-in”	Sean Webby
03/18/11	CreaTV	New SJPD Chief Selection	Janice Edwards
03/23/11	San Jose Mercury News	“Earning trust starts young: IPA originates Teen Leadership Council to strengthen relationship between cops, community”	Sean Webby
04/18/11	Channel 5 Interview	SJPD Chief’s Advisory Committee	Len Ramirez
04/18/11	San Jose Mercury News	“Police chief welcomes dissent; Department’s new leader invites his critics to join advisory board”	Sean Webby
04/25/11	Channel 2 live interview	Use of force lawsuits	Maureen Naylor
04/25/11	Channel 5 phone interview	Use of force lawsuits	
05/03/11	KQED Radio	“San Jose Independent Police Auditor Releases 2010 Report”	Cy Musiker
05/03/11	NBC-TV Live Interview	2010 IPA Year End Report	Chris Sanchez
05/03/11	CBS Live Interview	2010 IPA Year End Report	
05/04/11	NBCbayarea.com/news	“SJPD Get Their Report Card”	Bay City News
05/04/11	San Jose Mercury News	“S.J. cops’ internal inquiries fall short: Independent auditor say probes take too long, lack objectivity”	Sean Webby
05/13/11	El Observador	“Establishing a legacy in SJ-IPA community outreach”	Cynthia Rodriguez
05/23/11	KGO	Mediation Program	
05/23/11	CBS Channel 5	Regarding Mediation Program	Len Ramirez
05/23/11	San Jose Mercury News	“City tries new approach to handling complaints about police: Residents, officers talk through disputes in front of retired judges”	Sean Webby
05/25/11	San Jose Mercury News	SJ Mercury News Editorial: “Cordell setting gold standard for S.J. office”	Editorial Board

Date	Name	Notes	Contact
05/25/11	Talk Show Taping IRCC	Interview of Judge Cordell	Nam Pham, Immigrant Resettlement & Cultural Center
06/07/11	San Jose Mercury News	Editorial: "California Legislature has no excuse to prohibit releasing calendars"	Editorial Board
06/30/11	SJPD Press Release	"San Jose Police Department Announces that Assistant Chief of Police Diane Urban has Accepted a Job Offer to Become the Chief of Police in Hayward, California."	Sgt. Dwyer
07/08/11	Our Voice, Consumer Affairs Newsletter	"Zephyr Special Presentation from the Office of the Independent Police Auditor"	Rachel Schultz
07/08/11	Evergreen Times	"Local teen works with SJPD"	Varsha Sivagami Sathappan
07/15/11	KGO	"Police chief tries to calm worries over gang prevention"	Karina Rusk
07/20/11	KBAY Radio	IPA, District Attorney, Chief of Police, IPA and MLK rep interviewed re: upcoming community forum	
07/20/11	San Jose Mercury News	"Immigrant advocates to meet ICE supervisors"	Sean Webby
08/18/11	Community-newspapers.com	"Police department holds special community meeting at city hall"	Mary Gottschalk
09/11/11	San Jose Mercury News	"Officers' Facebook posts raise questions: Councilman complains about comments, brings up free speech issues"	Sean Webby
10/07/11	Media Call	San Jose Mercury News	Tracy Kaplan
10/10/11	KCBS Interview	Officer-involved shootings	
10/17/11	ABC -TV	Officer Involved Shootings	Karina Rusk
10/18/11	KGO	General Subjects, Budget Cuts, Etc.	Jennifer Hodges
10/18/11	Channel 5 CBS news	Officer Involved Shootings	Len Ramirez
10/18/11	Associated Press	Officer Involved Shootings	Brooke Donald
10/18/11	KTVU Channel 2 Fox	Officer Involved Shootings	Robert Handa
10/18/11	NBC News	Officer Involved Shootings	Unknown
10/18/11	San Jose Mercury News	"San Jose marks alarming rise in police shootings: Officers fired on suspects six times this year; some blaming cuts on the force"	Julia Prodis Sulek & Sean Webby
10/19/11	San Jose Mercury News	Officer Involved Shooting	Julia Sulek
10/19/11	San Jose Mercury News	"Forum to focus on bully and youth"	Around the Valley
10/20/11	San Jose Mercury News	"Family asks for inquiry into fatal police shooting: Officers say suspect acted suspiciously, but man was unarmed"	Julia Prodis Sulek
10/24/11	India West Newspaper	Officer Involved Shooting	Sunita Sohrabji
10/25/11	Sacramento Bee	In Custody Deaths	Kim Minu
10/27/11	Indiawest.com	"Family Files Excessive Force Complaint in Police Shooting"	Sunita Sohrabji
12/16/11	KGO	Officer Involved Shooting	Jeannie Lynch
12/16/11	ABC 7	Officer Involved Shooting	Amy Hollyfield
12/16/11	Channel 2 Fox News	Officer Involved Shootings	Robert Honda
12/20/11	KLIV	Police & cameras	Jason
12/20/11	San Jose Mercury News	Opinion Piece: "San Jose police officers should carry cameras"	Judge LaDoris Cordell

Appendix J: Additional Statistical Information

Table 1: Complaints/Concerns Received in 2011*

Matters Received in 2011	IPA	IA	Total	%
Conduct Complaints	133	137	270	76%
Policy Complaints	5	2	7	2%
Non-Misconduct Concerns	22	40	62	17%
Other	11	5	16	5%
Total	171	184	355	100%

*Excludes Department-Initiated Investigations

Table 2: Types of Allegations Received in 2009, 2010 and 2011

Allegations Received	2009		2010		2011	
	#	%	#	%	#	%
Procedure	143	27%	179	32%	240	32%
Force	102	19%	98	17%	120	16%
Arrest or Detention	77	15%	90	16%	83	11%
Courtesy	71	13%	66	12%	47	19%
Search or Seizure	60	11%	57	10%	59	8%
Bias Based Policing	29	6%	29	5%	45	6%
Conduct Unbecoming an Officer	26	5%	24	4%	21	3%
Neglect of Duty	14	3%	22	4%	41	5%
Missing/Damaged Property	5	1%	0	0%	0	0%
Total Allegations	527	100%	565	100%	756	100%

Table 3: Dispositions of Force Allegations in Cases Closed in 2010 and 2011

Dispositions of Force Allegations	2010		2011	
	#	%	#	%
Sustained	0	0%	1	1%
Not Sustained	15	10%	10	9%
Exonerated	101	66%	76	67%
Unfounded	20	13%	16	14%
No Finding	12	8%	5	4%
Complaint Withdrawn	4	3%	1	1%
Other	0	0%	4	4%
Total	152	100%	113	100%

Table 4: Five-Year Overview of Complaint Rates

Number of Complaints	Subject Officers by Number of Complaints				
	2007	2008	2009	2010	2011
1 Complaint	76%	76%	82%	82%	79%
2 Complaints or more	24%	24%	18%	18%	21%
3 Complaints or more	7%	7%	5%	3%	5%
4 Complaints or more	1%	3%	2%	1%	2%

Table 5: Five-Year Overview of Complaints Received by Individual Officers

Officers Receiving	2007	2008	2009	2010	2011
1 Complaint	257	298	178	196	201
2 Complaints	59	67	30	37	42
3 Complaints	18	16	6	4	8
4 Complaints	3	10	3	2	4
5 Complaints	1	2	1	1	0
6 Complaints	0	1	0	0	0
7 Complaints	0	0	0	0	0
8 Complaints	1	0	0	0	0
Total Number of Officers Receiving Complaints	339	394	218	240	255

Table 6: Ethnicity of Subject Officers in 2011

Ethnicity	Subject Officers	%	SJPD Sworn Officers	%
Native American	2	1%	7	1%
Asian American/Pacific Islander	22	9%	110	10%
African American	13	5%	49	4%
Filipino American	5	2%	29	3%
Hispanic/Latino	63	25%	259	24%
Caucasian	144	56%	606	55%
Not Available	6	2%	33	3%
Total	255	100%	1,093	100%

Table 7: Gender of Subject Officers in 2011

Ethnicity	Subject Officers	%	SJPD Sworn Officers	%
Male	240	94%	984	90%
Female	15	6%	109	10%
Total	255	100%	1,093	100%

Table 8: Complainants' Levels of Injury in 2011

Degree of Injury	2011	
	#	%
Level I	9	12%
Level II	11	14%
Level III	31	40%
None	16	21%
Unknown	6	8%
Pre-existing	5	6%
Total	78	100%

Appendix K:

SJPD Duty Manual Handout Concerning Demonstrators and Onlookers

POLICY ENFORCEMENT –

L 2300 DEMONSTRATIONS AND CIVIL DISTURBANCES:

It is neither the intention nor the desire of the Department to suppress or restrain lawful activity. The Department will expend whatever resources are necessary to protect the rights of any person or group to conduct a peaceful and lawful demonstration at any location within the City. However, unlawful activity, whatever its guise, requires prompt and effective action by the Department. The Department will take appropriate legal steps to discourage unlawful conduct whenever it occurs.

PROCEDURE

L 2301 DEMONSTRATIONS/CIVIL DISTURBANCES:

Tactics employed by dissidents engaged in disruptive activities frequently include efforts to draw the police and other public officials into responses likely to produce violence and injury to participants and thus garner support for their cause. It is therefore incumbent upon Department members to resolve disruptive situations in a manner which will minimize the potential for violent confrontations by performing assigned tasks within the framework of the following principles.

L 2302 DEPARTMENT RESPONSE TO DEMONSTRATIONS:

Demonstrations are often highly emotional incidents. The demonstrators and others in the area are committed to their various causes and their rights, which may be in conflict. In such situations, Department members will strive to remain objective in order to maintain effectiveness. Once an officer's objectivity is lost or even appears to be lost, the officer's mere presence at a demonstration may increase tensions and make the police task even more difficult. Department members assigned to the scene of a demonstration will strive to maintain an outward appearance of calmness, whether the task involved is simply standing by protecting demonstrators from hostile onlookers, or making necessary arrests of violent demonstrators.

L 2303 EQUALITY OF TREATMENT:

Department members will treat demonstrators, onlookers, or counter demonstrators with equal treatment.

L 2304 RESPONSE TO VIOLENT CONDUCT:

Where a demonstrator uses physical violence upon another person or property, Department members should promptly make an arrest unless the supervising officer at the scene concludes that making the arrest would divert limited manpower or be unnecessarily risky in reducing the ability of members to perform their duties most effectively.

L 2305 RESPONSE TO OTHER ILLEGAL CONDUCT:

Arrests will occasionally have to be made because of a demonstrator's nonviolent but nevertheless illegal conduct; for example, illegal obstruction of the streets or of a building entrance. In such situations the officer in command at the scene will decide if such arrests are to be made. Moreover, before any such arrest is made, demonstrators will be warned that they must move or risk arrest.

L 2306 TREATMENT OF NEWS MEDIA:

Department members assigned to the scene of a demonstration will cooperate with the media, whether writer, photographer, radio or television personnel. News media representatives have a constitutional right to cover demonstrations, though, as everyone else, they must not violate the law.

Those with a right to cover or photograph demonstrations are obviously not limited to representatives of the major newspapers, radio or television stations. Persons who represent some of this City's small newspapers or magazines, free lancers, and other citizens are also entitled to take notes or photographs.

Although the press has no special right as a matter of law to be present if an unlawful assembly is declared, members will attempt to discriminate between non-obstructing members of the press and voluntary participants in the unlawful assembly.

Section 409.5 of the Penal Code authorizes officers to close disaster scenes such as earthquakes or fires to the public. Subsection (d), however, allows duly authorized representatives of any news service, newspaper, or radio or television station or network to enter closed areas. Areas determined to be part of a crime scene shall be closed to both the public as well as the press.

The Department issues media credentials as a convenient means for officers to identify members of the media and an easily recognized way for the media to identify themselves to officers at the scene of disasters or crime scenes. Media credentials issued by other police agencies or by the media representative's employer should be considered valid.

L 2307 COORDINATION OF DEPARTMENTAL ACTIONS:

Department members will strive to ensure that a disciplined and coordinated Department response is maintained at the scene of a demonstration. Department members will not act alone unless loss of life or great bodily harm could result from the conduct of demonstrators. When mere property damage is imminent, members will coordinate their response through assigned supervisors and perform tasks as directed. Supervisors will remain at the scene and continually seek information concerning location and number of demonstrators, emotional condition of the crowd, and resources available to effectively maintain order.

L 2308 ONLOOKERS AT THE SCENE OF A DEMONSTRATION, CIVIL DISTURBANCE OR OTHER INCIDENT:

Onlookers shall be permitted to observe and overhear conversations in detention or arrest situations in public areas when it is reasonable to do so. Onlookers may remain in the vicinity as long as the presence of these persons does not interfere with the officers' duties or create a safety concern for the officer, person detained, or onlooker.

Onlookers have the right to record the incident, and the recording device (camera, video camera, tape recorder, and any film or tape from a recording device) cannot be seized by an officer at the scene except under the authority of a search warrant. If the immediate circumstances lead the officer to believe that the recording contains crucial evidence, the officer may ask the citizen to voluntarily surrender the recording material.

If the citizen refuses to give consent for the seizing of the recording material and there is a possibility of criminal prosecution or civil liability for the City or its employees arising out of the incident, the officer should ask for the name, address and telephone number of the onlooker who records the incident. If the onlooker refuses to provide identification, the officer should obtain any available information at the time that will allow investigators to identify the onlooker and obtain a search warrant for the recording materials.

Occasionally, onlookers may record incidents involving juveniles or victims of a sexual assault. In these circumstances, Department members are not obligated to advise the onlookers of the rights of privacy of these victims. A juvenile or victim of a sexual assault may take legal action against an onlooker who publishes or distributes recorded material that would not have otherwise been released by an agency of the criminal justice system.

Onlookers must maintain a reasonable distance when monitoring police activities depending on the circumstances. Onlookers are allowed to approach within hearing distance provided that the control of the situation can be maintained by the officer. Onlookers who are clearly at a reasonable distance will not be subject to a "move-on" order or threatened with arrest.

The sensitive nature of these situations requires that officers make every attempt to diplomatically resolve conflicts involving onlookers. Depending on the stability of the situation, officers will advise onlookers of their legal rights and limitations under this order. If an onlooker continues to create a disturbance, a supervisor will be called to resolve the conflict. All highly sensitive

incidents will be reported immediately to a supervisor and recorded on a Crime Report to ensure documentation.

Nothing in this section is meant to restrict an officer from arresting any person who willfully resists, delays, or obstructs any peace officer in discharging his or her duties according to the provisions of Penal Code section 148. Nor does this section restrict an officer from arresting any person who willfully commits a trespass as defined in Penal Code section 602.

L 2309 DEPARTMENT RESPONSE TO CIVIL DISORDERS:

Due to the variety of situations existing during a civil disorder, it is not possible to establish procedures which would cover all contingencies. Therefore, the Department has established the following procedures to assist members assigned to the scene of a civil disturbance.

L 2310 FIRST OFFICER AT SCENE:

The first officer at the scene of a disturbance should observe the situation from a distance and evaluate it before taking action. If the situation demands, such officer will notify the District Supervisor.

L 2311 COORDINATION OF EFFORT:

Actions by officers will be coordinated by a supervisor. Only requested units will respond to the scene. Officers will report to the supervisor after parking their vehicles in one group away from the crowd. One officer will be assigned to guard the vehicles against damage. Individual officers should avoid driving their cars into the center of the crowd and operating individually.

L 2312 ORDER TO DISPERSE:

A dispersal order must be given before a person can be guilty of remaining at a place of a riot, rout or unlawful assembly. If the supervisor in charge at the disturbance scene decides to declare an unlawful assembly, such supervisor should go as near to the crowd as is safe and make an audible statement having the following form:

- "This is (rank and name), a peace officer of the State of California and a police officer of the City of San Jose. I do hereby declare this an unlawful assembly and in the name of the People of the State of California I command you to immediately disperse." A reasonable time must be allowed for compliance. Orders for arrest may then be given.

L 2313 SUPPLEMENTARY INFORMATION:

Riot experience throughout the United States has shown that in many cases minor incidents involving the police were responsible for initiating the trouble.

With this in mind, the following procedures will be observed unless specific orders to the contrary are issued by competent authority.

- Arrests must be thoroughly justified and only necessary force must be used in making them.

- Incidents must be handled as quickly as possible without creating a disturbance or attracting other persons.

- Areas of an incident or small riot should be closed off and ingress not allowed. Persons wishing to leave should be allowed to do so.

- The Deputy Chief of the Bureau of Field Operations or his designated alternate will be responsible for field operations involving civil disturbances. Reports from the field will go directly to the Deputy Chief or designee in overall command. The Department member in overall command will have the responsibility for deciding whether or not to notify the Assistant Chief of Police.

L 2314 REQUESTS FOR ASSISTANCE:

While the control of riots is primarily the responsibility of the Police Department, we can expect assistance from other agencies if the riot grows very large. In the event such assistance is necessary the Chief of the Police or, if unavailable, one of his immediate subordinates will notify the highest ranking officer available at the Sheriff's Department who will in turn make appropriate requests. The Chief of Police or a designee will be delegated the responsibility of notifying the City Manager that a request for assistance has been made.

Appendix L: Press Release and Selected Newspaper Articles About The IPA Office

San Jose Mercury News

SAN JOSE



Police Chief Chris Moore: "I'm bound and determined to investigate all aspects of these allegations."



Independent Police Auditor LaDoris Cordell: The language change is "huge, it's very significant."

Police toughen stance against racial profiling

It's now a violation for cops to show biased behavior at any time during an encounter

By Sean Webby

swebby@mercurynews.com

Over the past four years, San Jose police investigated 150 racial profiling or other bias allegations against city cops — yet the department's internal affairs unit did not sustain a single complaint.

Now, the department is broadening its definition of profiling, and its new police chief is calling for more thorough looks into claims of biased behavior by cops. The city's independent police auditor calls it a "huge" shift in the right direction, and minority community leaders say it's about time.

San Jose police changed the policy last week, making it a violation for an officer to show any biased behavior at any time during an encounter with the public. Before, it was considered a violation only if the officer first stopped an individual solely because of race, gender or other biased reasons.

Police

Continued from Page 1

"I'm bound and determined to investigate all aspects of these allegations," police Chief Chris Moore said. "Sometimes I get the feeling that some of the more nuanced issues may have been skipped."

He gave no specifics. But when asked whether he felt that his officers may have gotten away with racially profiling people, the chief said: "There's no way for me to tell. I don't believe so, given what I know about my police officers."

Independent Police Auditor LaDoris Cordell said the language change was "huge, it's very significant. If these allegations are not thoroughly investigated, then we are subject to the same type of federal oversight that you have in Los Angeles. I hope that doesn't happen in San Jose."

Late last year the Los Angeles Police Department was criticized by the federal Department of Justice for its inadequate handling of racial profiling complaints.

Building bridges

Moore has vowed to try to repair the strained relationship between San Jose's minorities and police, which has been accused of overly aggressive street policing and racial profiling. Last week's change of definition is just one of a series of steps the new chief has made to show the community he is taking those issues seriously. Late last year, for example, he stopped his officers from impounding cars for a month when unlicensed drivers were nabbed for minor traffic violations, a practice many felt was unfairly targeting undocumented Latino immigrants.

Police oversight experts say San Jose's track record of not sustaining racial profiling complaints is relatively common among major departments. Such complaints, they said, are hard to prove.

"It's difficult to show an officer intended to discrimi-

BIASED-BASED POLICING ALLEGATIONS AGAINST S. J. POLICE OFFICERS (BY YEAR)

2007*: 57 allegations (20 racial profiling, 20 discrimination, 17 harassment); **sustained = 0**

2008: 35 allegations; **sustained = 0**

2009: 29 allegations; **sustained = 0**

2010: 29 allegations; **sustained = 0**

*That year, biased-based policing allegations were split into three separate classifications, all of which included race as a factor.

Source: San Jose Independent Police Auditor's Office

nate," said Philip Eure, a national police oversight leader and head of Washington's police oversight agency. "Yet it's easy to show an officer pulled someone over for a lawful reason. That's the paradox."

Since 2002, the San Jose Police Duty Manual has read that an officer must not "initiate a contact solely" based on factors including race, color, nationality and gender. This definition clearly was hard to prove if, for example, an officer could rebut that the person had a broken tail light on his or her car. Police came under heavy scrutiny for arresting a disproportionate number of Latinos for public intoxication, some of whom alleged they were simply not drunk.

Using racial epithets and other overtly racist behavior would normally be covered by other officer guidelines, but more subtle issues may not be. An example would be if an officer orders the person to sit on a curb.

Cordell said a litmus test would be: "If an officer has a Latino man sit on the curb, then would the officer have a white man in a suit sit on a curb, if the circumstances were the same?"

The independent police auditor had complained directly to former police Chief Rob Davis about the "bias-based policing" definition, but he "did not respond." Davis said he did respond but did not change the definition because the department was focusing on bringing in an independent social science group to analyze the department. The former chief praised the definition change as a positive step.

Angel Luna, 26, said he is frustrated that neither of his racial profiling complaints

was sustained.

In one case, he said he was driving to work on the East Side with a friend when an officer pulled him over. When asked why, the officer reportedly told him it was a crack on his windshield.

The officer asked him who his parole officer was, when the last time he was arrested was, and what his immigration status was, Luna said.

Luna, a U.S. citizen who said he has no criminal record, said he was frightened and upset.

'Afraid of the police'

"My skin, my heritage is for them an excuse to check if I have a weapon or drugs on me," Luna said. "I have a gym membership, Netflix, a 40 hour-a-week job. But they treat you like you are the worst of the worst. I'm afraid of the police, straight up."

The new definition brings San Jose more in line with other departments. The Sacramento Police Department, for example, has a policy that says: "Bias-based policing may also be defined as a police action based on an assumption or belief that any of the aforementioned classifications (race, etc.) have a tendency to participate or engage in criminal behavior."

The San Francisco police policy includes a list of steps to help ensure that people do not feel they are being profiled. One step is for the officer to provide a quick explanation of why the person has been stopped.

But even though San Francisco has a broader definition of racial profiling, last year none of its 82 complaints were sustained.

Contact Sean Webby at 408-920-5003.

Around the Valley www.mercurynews.com/community

OUR COMMUNITIES IN BRIEF

SAN JOSE

A symbolic swearing-in

By Sean Webby

swebby@mercurynews.com

The biggest news at San Jose police Chief Chris Moore's swearing-in ceremony Thursday may have been who administered the oath of office.

In a move heavy on symbolism, Moore was sworn in by LaDoris Cordell, the city's official police watchdog whose office had a rocky relationship with Moore's predecessor, Rob Davis.

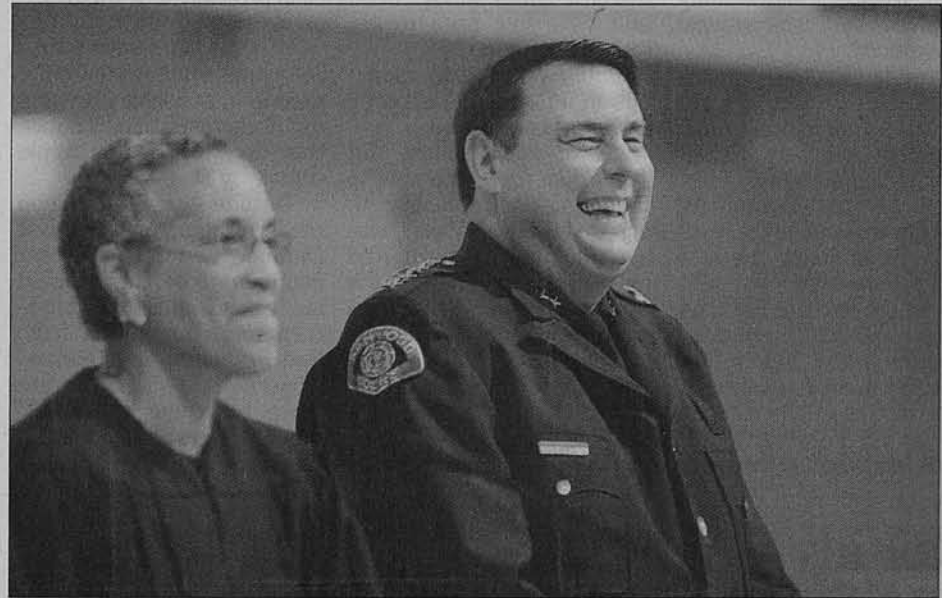
Moore asked Cordell to perform the honors, and Cordell spoke words of encouragement and praise during the event at City Hall. It remains to be seen if the gesture helps usher in a new era of cooperation between the independent police auditor and the police department, but the two seem to have started off on a positive note.

"It is clear that these are challenging and controversial times. I believe that Chief Moore is up to the challenge," Cordell said.

After the oath, Cordell high-fived the new chief to the delight of a City Council chamber crowded with police brass from many departments, city officials and county dignitaries.

Moore thanked Cordell and underlined the importance of community trust in a time of deep budget cuts: "With fewer officers, it is critical that the community become engaged with us in a strong partnership."

Major city police chiefs are often sworn in by mayors in ceremonies that are more about political theater than policing. In this



PATRICK TEHAN/MERCURY NEWS

San Jose police Chief Chris Moore, right, smiles before being sworn in Thursday by Independent Police Auditor LaDoris Cordell, left, at San Jose City Hall.

case, Moore's surprising choice of the city's top cop watcher was meant by the participants and generally accepted by others as a sign of detente. The two agencies have been at loggerheads on police accountability and the authority of the IPA, which monitors disciplinary investigations by the department's Internal Affairs unit. Barbara Attard, Cordell's predecessor, was bounced by city leaders in 2008 after openly battling with Davis.

Attard said that she could never have imagined a similar invitation from Davis.

"We would swear a little differently," she said, laughing. "I think that (Cordell) has a lot of integrity and stature, swearing him in won't mean that there is an inappropriate alliance there.

I think it's important recognition for the IPA office, a sign that the office is important."

Cordell underscored the open conflict between Attard and Davis as a rationale of her unusual choice: "In light of recent history, the symbolism of the two of us, the IPA and the chief of police, standing together, is a powerful and positive statement that the building of a better relationship between law enforcement and the community is under way."

Walter Wilson, a community activist and frequent critic of the Police Department, said Moore's choice of Cordell was "refreshing."

"The last chief and the IPA refused to work together on anything and that wasn't useful for civil rights or social justice at all,"

Wilson said. "We want them to be independent of each other, but the IPA and police chief have begun a relationship in an atmosphere where they respect each other's professional positions, and maybe something constructive can come out of that for all of our community."

Moore has already made several other steps to rectify the department's clear credibility gap with some of the city's minority communities. He is creating a police chief's community advisory board, has broadened the department's definition of racial profiling and stopped a policy of impounding cars for 30 days from unlicensed drivers pulled over for minor traffic stops, a practice thought to unfairly target undocumented Latinos.

Opinion www.mercurynews.com/opinion

San Jose Mercury News

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Editorial

Cordell setting gold standard for S.J. office

Just more than a year ago, the selection of retired Judge LaDoris Cordell as San Jose's independent police auditor shook up the troops — not only in the police department, which had had a contentious relationship with Cordell's predecessor, but also on the City Council, where support for her appointment was not unanimous. Mayor Chuck Reed was one of the votes against hiring her.

It's hard to imagine that now, in a short time, Cordell has set the gold standard for this office, raising the bar for professionalism, community outreach, transparency and innovation.

Our favorite innovation by Cordell is offering mediation as an option for less serious complaints, such as discourteous behavior.

Her passionate advocacy of people intimidated or mistreated by those in power is complemented by respect for the criminal justice system and for the police department whose conduct she monitors. What many thought to be a risky appointment because of Cordell's strong opinions and reputation for outspokenness could not have turned out better.

This is a time of rock-bottom morale in the police department and throughout the city as budget shortfalls presage pay cuts and layoffs. Removing the friction and animosity that sometimes characterized the relationship between independent auditors and the police makes for one fewer cause of tension.

It's all the more remarkable because the shift has been accompanied by more public outreach than ever before by the auditor, making sure people know where to go if they have a problem with the police department and don't feel comfortable complaining directly. Cordell has convened or attended nearly 200 community meetings all over the city. When the Mexican consul general raised

concerns about the treatment of Mexican nationals by the police, Cordell worked out an agreement to have a Spanish-speaking staff member hold regular hours at the consulate.

Our favorite innovation by Cordell is offering mediation as an option for less serious complaints, such as discourteous behavior, if both the officer and the complainant agree. It's a terrific idea that's working in other cities, including New York. The alternative is pursuing an official complaint that

triggers a full investigation by the police internal affairs unit. This can cost a fortune and drag on forever, ultimately unsatisfying to everyone.

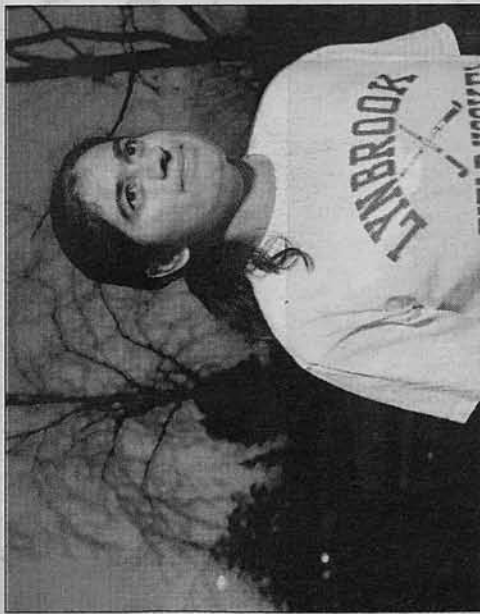
Mediation is free, thanks to Cordell's call for retired judges to volunteer their time as mediators. Participants come away feeling they've been heard, and sometimes that's all it takes to dissipate anger.

In the auditor's annual report, Cordell suggested that internal affairs investigations were sometimes skewed toward exonerating the officer. For the third time in six years, the department sustained zero complaints of excessive force or racial profiling, so the concern is credible.

Police Chief Chris Moore, also new to the job, defends the IA procedures. But unlike his predecessor, Moore acknowledges that there are problems in the department and has pledged to make changes. This approach has contributed to the thaw in relations with the auditor's office.

Cordell notes that the department, without being asked, added a Web link from its home page to the auditor's site. And no, it did not carry a virus. Times have changed.

Earning trust starts young



ADITI PRADHAN

School: Lynbrook High School

Comments: In her neighborhood in Cupertino, Pradhan said police officers mostly do simple traffic work and their interactions with the public are always positive.



LAYLA OJEDA

School: San Jose High Academy

Comments: "I want to keep my city safe. I love my city. I've heard stories about how police officers were. Some are really nice, some are really mean. It depends on the police officer."



DAI SUGANO/MERCURY NEWS PHOTOGRAPHS

JAZMIN BARBA INIGUEZ

School: Presentation High School

Comments: "I want people not to be scared of the police. I see that a lot. I want them to be able to go up to a police officer and say, 'Good morning.'"

Independent police auditor originates Teen Leadership Council to strengthen relationship between cops, community

By Sean Webby

swebby@mercurynews.com

If Jazmin Barba Iniguez ever gets a chance to chat with San Jose police Chief Chris Moore, she'd like to tell him about the fear and intimidation that some kids her age feel from cops.

"I think the police are doing a pretty good job taking care of the city," the 15-year-old Presentation High freshman said. "But I would like to see them be more involved

with youth. I want people not to be scared of the police. I see that a lot. I want them to be able to go up to a police officer and say, 'Good morning.'"

Barba is likely to get her chance to speak with the chief, and perhaps even help influence the way police interact with the city's young people.

Out of 50 who applied, she is one of the teenagers who have been picked to join the Teen Leadership Council, a group being formed by Independent Police Auditor LaDoris Cordell. The retired judge plans to select 15 teens, one for each City Council districts and five at-large members.

The group, which is expected to convene its first meeting in April, will advise Cordell, go to outreach meetings,

hand out the independent police auditor-produced "Students Guide to Police Practices" and spread the word about the independent police auditor, which takes citizen complaints, monitors police investigations into their own and recommends police policy.

The teen council is one of a series of recent efforts intended to bolster what is widely seen as a broken trust between police and some in the city who believe the department is too aggressive and unfairly targets ethnic and racial minorities.

Moore said he thinks Cordell's idea is excellent.

"Young people are insightful, much more than we give

See **TEENS**, Page 5

Teens

Continued from Page 1

them credit for," Moore said. When asked whether he would meet with the teens, the chief replied: "I'm counting on it."

The pile of applications included one from Sebastian Ceballos, an Oak Grove High varsity soccer player who understands the attraction of gangs but wants someday to be a police officer. And there was one from San Jose High Academy freshman Layla Ojeda, who has a Pacific Island, Russian and Mexican background, loves to kick-box, swim and Aztec dance and says she knows that racial profiling is real.

There was an application from Aditi Pradhan, 16, a Lynbrook High junior who just finished directing a school play. Pradhan said she has nothing but praise for the officers in her safe neighborhood near Cupertino who mainly untangle traffic.

Johnson Tran, a freshman at Independence High School, added with his application a letter about the need for police to catch criminals without taking advantage of their power. He used an example of an officer he saw racing through a stoplight without sirens or lights on.

"I was stunned and astonished, a true act of someone of the law exploiting their power," Tran wrote.

All these teens have also been tapped to join the youth council.

Cordell said she was buoyed from the response from an age group that can sometimes be seen as apathetic about such issues as police oversight and accountability.

"Young people in this city are ready to have a better relationship with the SJPD, and they view our office as having the credibility and the ability to build that relationship."

— *San Jose Independent Police Auditor LaDoris Cordell*

"Young people in this city are ready to have a better relationship with the SJPD, and they view our office as having the credibility and the ability to build that relationship," Cordell said. "It doesn't get any better than that."

Experts say that the council may be unique in the country. Many law enforcement oversight agencies, including San Jose's independent police auditor, use adult advisory groups to help keep in close touch with the community and spread the word about their services. The New York City Civilian Complaint Review Board is proposing a youth "ambassador" program with the teenagers who live in Queens public housing.

But Philip Eure, executive director of the District of Columbia's Office of Police Complaints and a national police oversight leader, said San Jose's program is unique, admirable and an intriguing model that could be emulated elsewhere in the country.

Eure said he hopes both the teens and police learn something from their interaction.

"These are the future leaders and they can take that knowledge and share some of that with their friends," Eure said.

Cordell said she thought of the idea as a way to reach the next generation of residents and leaders to establish a more positive relationship with police.

"I'm old. I have no idea of what is going on out there," Cordell said.

Ceballos, an 18-year-old senior, said he knows those who have run afoul of the law, even though he has avoided it with the help and support of his family. He said he also knows those who hate and fear the police.

"The Latinos have fallen into bad blood with the police. I wish it wasn't like that," he said. "I want to be an officer and maybe one day people will be talking good about officers. It'd be good to fix those problems."

Ojeda, 14, who sometimes considers being a lawyer or parole officer, said she has witnessed racial profiling and had seen family members get arrested. It left her troubled and wanting to make a difference.

"I want to keep my city safe. I love my city," she said. "I've heard stories about how police officers were. Some are really nice, some are really mean. It depends on the police officer."

Natalia Sanchez, Layla's mother, said she couldn't be more proud of her daughter.

"She is not naive to the stereotypes that are put on teens, whether they are of a certain race, gender or creed," Sanchez said. "However, she understands that police officers cannot be stereotyped as 'out to get someone,' either."

WATCHDOG REPORT

S.J. cops' internal inquiries fall short

Independent auditor says probes take too long, lack objectivity

By Sean Webby

swebby@mercurynews.com

San Jose police internal investigators sometimes take so long to probe misconduct complaints against officers that it does not allow the cop watchdog enough time to appeal cases that she feels have been mishandled, according to the annual report from the city's independent police auditor.

Generally, the SJPD's internal affairs unit must investigate a case against an officer within a year. Yet LaDoris Cordell said a dozen cases closed last year took longer than a year, including one case alleging excessive force that took more than 1,000 days to complete. The 2009 case of a San Jose State student beaten by police, for example, is still under investigation.

ONLINE EXTRA

For more about the S.J. Police Department, go to www.mercurynews.com/san-jose-police.

INSIDE

See the outcomes of force allegations against SJPD in 2010. **Page 5**

The report, expected to be formally presented to the City Council on May 10, also says the police internal affairs office sometimes shows a lack of objectivity, seemingly trying to go out of its way to make excuses for officers. And for the third time in six years, police investigators did not sustain a single allegation of excessive force or racial profiling against their own officers.

Although Cordell said her office agrees with the large majority of findings from the police internal affairs office, "We are concerned because the zero percent sustained rates may indicate a lack of objectivity in the IA investigation and analysis."

The report comes at a sen-

WEDNESDAY, MAY 4, 2011

Report

Continued from Page 1

sitive time as the department, under new police Chief Chris Moore, is trying to improve its relationship with some in the community, particularly the city's Latinos, some of whom believe officers are overaggressive and unfairly target them. Cordell and Moore have been trying to repair the relationship between their departments, which often in the past was openly hostile.

Moore said his department has already started to make some changes in response to Cordell's complaints. The chief added a sergeant to the internal affairs unit to help ease a backlog of cases and has begun training investigators about how to ask questions.

"I do believe that our IA process is a good one," Moore said. "Generally, I believe that they are objective, fair and thorough. For any one of those that is not present, the IPA process will help us identify those to improve."

The chief said he was not surprised by the lack of a sustained force or bias-based policing complaint, as there were so few filed, and the low rates are similar to those of other large departments.

Last year, 81 people complained that San Jose officers used excessive force against them. Of those, 44 percent were lodged by Latinos, who make up a third of the city's population. In comparison, whites made 22 percent of the force complaints; blacks, 12 percent; and Vietnamese, 2 percent.

OUTCOMES OF FORCE ALLEGATIONS AGAINST SJPD OFFICERS IN CASES CLOSED IN 2010

Exonerated: 66%
Unfounded: 13%
Not sustained: 10%
No finding: 8%
Complaint withdrawn: 3%
Sustained: 0%

The report can be viewed online at www.sanjoseca.gov/IPA/reports/10ye.pdf.

Source: San Jose Independent Police Auditor

None of the cases was sustained, the only finding that triggers serious discipline against an officer.

But Cordell's report, the first that she has crafted since she took office last year, cast doubt about some cases.

The report documents examples of police investigators "interpreting the facts to justify their officers' conduct," ignoring their own duty manual, asking leading questions and using technicalities to explain away officer misbehavior. In one example, the IPA reported that police investigators justified an officer calling a woman "dumb" by referencing an alternate definition of the word in Webster's Dictionary and concluding that the officer actually meant that she was physically unable to speak.

"There are no surprises here," Cordell said of the report's critiques, saying the department was already aware of them. "We will monitor these concerns in 2011, and we are hopeful that they will be responded to in a meaningful fashion by SJPD leadership."

Most police departments use their own officers to investigate citizen complaints

about officers. San Francisco is a unique example in which an independent agency probes alleged officer abuses. In San Jose, the police auditor monitors internal investigations to make sure they are thorough and objective. If it sees any issues, it can report them to the police chief and the city manager, but it has no power to investigate the complaints or to impose any discipline.

The IPA report says investigators sometimes used "leading questions," during their probes, seemingly intended to "lead" the person to give the investigators the answers that they wanted.

Some investigators refused to ask some questions forwarded by Cordell or her chief assistant, Shivaun Nurre, a lawyer and former county counsel. IA investigators declined to ask these questions on the grounds they were "irrelevant," according to the report.

Moore said that practice

was quickly changed under his new command.

The report also says 49 cases (26 of them force cases) took more than 300 days to complete, including 13 that took more than a year and three cases that took more than 500 days.

"When there is insufficient time for re-investigation and re-analysis, the IPA oversight responsibility is rendered useless," the report concludes.

But Moore said the fact that many investigations dragged on for so long was "beyond our control." He did not elaborate.

To illustrate its critiques of the SJPD's timeliness and objectivity in investigating its own officers, the report cites a case of an off-duty police officer who was accused of threatening his neighbor.

Although the complainant provided investigators with documentation to prove the officer's identity, police investigators required the complainant to attend a photo lineup.

When the complainant did not attend, the investigators did not act for six months.

Four days after the officer retired, IA investigators confirmed the officer's identity.

The case was closed, under the category of: "No Finding."

Contact Sean Webby at 408-920-5003.

When hateful people speak, we must speak louder

By **LaDoris Cordell**

Today, like never before in this country, words of hate and words of extremist provocation are being hurled by people — most of whom are ignorant, some of whom are calculating and manipulative, all of whom are counting on the rest of us to remain silent.

Do not misunderstand me. I am a staunch supporter of the First Amendment to the U.S. Constitution. I believe, as did the Founding Fathers, that freedom of speech is absolutely essential to a democracy. Because of the First Amendment, anyone in this country can express her or his views without

the threat of punishment by the state.

Dr. Martin Luther King, when he spoke out against the Vietnam War, did so under the protection of the First Amendment. Many in this country despised him for his views, but he knew that unlike in totalitarian regimes, his words were protected. He had the right to disagree.

And disagree, he did, in the most eloquent fashion. He didn't call names, he didn't threaten, he didn't belittle. His were words of peace and nonviolence, while still critical of our government's stance on the war.

I am not asking that the words of those who subtly and not so subtly encourage violence be suppressed or muzzled. The moment that happens, we create a slippery

slope such that further restraints on all speech are fair game. No, let these ignorant hateful people speak. But when they speak, our responsibility is to speak — louder and longer.

When Gabrielle Giffords and her congressional district appeared in cross hairs on the website of someone who could have occupied the White House and who still has aspirations to do so, where were we? Why did it take the attempted assassination of Giffords to highlight the danger inherent in such a graphic? Where was the groundswell of outrage demanding the removal of those cross hairs the minute they went up on the Web?

I was silently disgusted, as were, I'm sure, many of you. But, silent disgust in the face of indi-

viduals whose words are inflammatory and dangerous, is not only woefully inadequate, it is woefully wrong.

As leaders in the public and private sectors, we set the tone, we create the environment, we send the message to those who live and work in this region about what it is we stand for. It is our obligation to make it clear to all within earshot that in this the 10th largest city in the nation, in this the most innovative region in the nation, that there is no place for those who spew the verbiage of violence.

But what of the anti-social remarks that we occasionally hear in our daily lives — the racist joke, the homophobic slur, the sexist remark? Make no mistake, those words constitute violent verbiage, too. Quietly uttered slurs are no

less damaging than the outright exhortations for violence. And yet, so many times we say nothing in response because it is far simpler to remain quiet, to go along with the laughter.

Ending the violence starts with each and everyone of us.

We end the violence when we demonstrate the courage to speak up, no matter how uncomfortable we make others and no matter how uncomfortable we make ourselves. By speaking up, we fulfill the legacies of Dr. King, Gandhi, Cesar Chavez, Rosa Parks, Dolores Huerta, and our own Jim McEntee, all of whom devoted their lives to living in a world free of violence.

Sticks and stones may break our bones; may words no longer hurt us.

LADORIS CORDELL, a retired Superior Court judge, is San Jose's independent police auditor. She wrote this article for this newspaper.

A FAIR HEARING

City tries new approach to handling complaints about police

Residents, officers talk through disputes in front of retired judges

By Sean Webby

swebby@mercurynews.com

When Lisa Johnson had a run-in with a San Jose police officer, she didn't have many options: She could fume or lodge a complaint and go through the lengthy internal affairs

process.

But this wasn't about an allegation of an improper use of force or other serious police misconduct. Johnson, a 39-year-old nurse, felt the officer had patronized her when she asked why the officer had questioned her 12-year-old son about a school incident without her being notified. Then when she called to talk with him some more, she said, he hung up the phone on her.

San Jose Independent Police Auditor LaDoris Cordell, in cooperation with the Police Department, has crafted a new and unique third option for Johnson and others who feel disrespected by officers: Talk it out in front of a retired judge, shake hands, drop their complaints and walk away.

The new process, which has been used three times so far, is an attempt to alleviate the lowest level

of complaints usually looked into by the department's Internal Affairs unit. It keeps such complaints out of an officer's personnel file. It saves the city thousands of dollars in arbitrations. And it gives unsatisfied residents the rare opportunity to tell law enforcement what they really think.

"You can say exactly what you want to say to the officer," said Johnson. "I could say, 'I felt like

showing my foot up your butt.'"
Cordell's concept, which she says could one day grow to encompass more serious complaints, is based on a growing police oversight model in the United States. Similar programs are used in San Francisco, Denver, New York City and Washington.

The IPA and the Police Department

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Mediate

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ment, long at loggerheads, have worked more closely together since the appointment of Chief Chris Moore early this year. The department is trying to soften a reputation among some as being overly aggressive, especially toward minorities. The IPA is working toward crafting a better, more effective way for people with complaints about officers to get them fairly investigated and get some resolution.

In 2010, there were 77 "courtesy" allegations against San Jose officers. The Police Department's internal affairs

unit investigated them all. Two were sustained.

Cordell, a retired judge, said she hopes that the image of officers will improve because of the program.

"This mediation program is a stereotype-buster, plain and simple," Cordell said.

None of the officers involved in the mediations agreed to be interviewed. The people who brought the complaints said they thought the process was positive. But Michelle Mansell, 40, of San Jose, said she wasn't sure the officer was truly sorry or even empathetic.

She said the officer threatened to arrest her after she emotionally reported that a neighbor had killed a cat. She said he asked her if she

was taking medication and whether she had custody of her children.

"He was treating me like he was mad at me, with really condescending questions implying something was off about me," Mansell, who works with autistic children, said. "In my line of work, I always have to be courteous and I always do it. I have to or I will lose my job."

Cordell used her connections on the bench to find two judges who agreed to voluntarily oversee the mediations.

Retired judges James Emerson and Robert Foley readily volunteered.

"One of the most important things that will come out of this informal attempt to

dispose of some of those incidents is that the citizen wants to be heard," Foley said. "That's what I am there for, I want to hear what you have to say. Maybe you misperceived the officer. Maybe the officer misperceived you."

Assistant Police Chief Diane Urban said she was "extremely proud of the officers for being willing to engage in what is an unprecedented collaboration to solve a case where there is a miscommunication or misconception."

Urban added "When people have a chance to vent on both sides, when there is good communication, then there is a high rate of satisfaction."

Contact Sean Webby at 408-920-5003.

TUESDAY, DECEMBER 20, 2011

Opinion

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San Jose police officers should carry cameras

By LaDoris Cordell

Thursday morning saw San Jose's eighth officer-involved shooting this year, the fourth to end in a fatality. The circumstances of the shooting are under investigation by the San Jose Police Department. Undoubtedly, there will be a review and an assessment by the district attorney; and because a member of the public registered a concern about the shooting with us, the Office of the Independent Police Auditor will ensure that the investigation into the question of whether or not there was any police misconduct is fair, thorough and objective.

But already, the finger-pointing has begun. The officers' version of the incident has the deceased in a bedroom brandishing a gun at the officer; and the civilian witness's version has the officer shooting at

an unarmed man in his bedroom. This "he-said, she-said" response is nothing new. It happens all the time when there are controversial police incidents; in most instances, the final determination, whatever it is, leaves one side or the other dissatisfied. If the officer is absolved of any misconduct and the shooting deemed justified, a public outcry ensues with shouts of biased policing, frequently emanating from communities of color. If the officer is deemed to have violated department policy, police officers and their multitude of supporters in the community express their outrage. And what we all end up with is a city divided by anger and mistrust.

Had the involved officers been wearing cameras, the incident would have been recorded, and there would be no finger-pointing. Instead, we would all know

what happened in that bedroom Thursday morning. Cameras would have provided instantaneous accountability. Attached to the officers' uniforms, these small cameras can be activated whenever there is a police interaction with the public. The footage is stored digitally for an indefinite period so that it can be retrieved when needed.

Recently the Phoenix Police Department bought 50 cameras with a \$500,000 grant from the U.S. Department of Justice's Smart Policing Initiative. A three-month trial of the cameras that ended in June resulted in footage, some of which is being used as evidence in court in 62 criminal cases. The push for cameras in Phoenix was the result of several police incidents that angered members of communities of color,

including one in March 2010 in which an African-American city council member was wrestled to the ground and handcuffed by a white officer. We shouldn't wait for an explosive incident like that to occur before bringing cameras to the San Jose Police Department.

Over the past 10 years, claims against cities in the United States stemming from police incidents amounted to \$22 billion dollars. If officers were to utilize cameras while on patrol, claims based upon allegations of police misconduct brought against cities would surely drop dramatically. Similarly, those claims in which police misconduct is confirmed by footage would be quickly settled without litigation. In the end, cameras would lower costs, increase police and public accountability, and

build trust between the community and law enforcement.

San Jose rightfully prides itself as the capital of Silicon Valley.

As such we ought to be leading the way in policing technology by outfitting every police officer in the San Jose Police Department with cameras. Police Chief Chris Moore has, on many occasions, stated his strong desire to bring on-police cameras to San Jose, so leadership is there. The mayor and City Council are on record for their support of effective policing and for building trust between officers and the public. The political will is there. The federal money is there, too, if we but ask.

LaDoris Cordell, a retired Superior Court judge, is San Jose's Independent Police Auditor. She wrote this article for this newspaper.

Appendix M: 2011 IPAAC Members

Name	Employer	Occupation
Alvarado, Elisa	Teatro Vision	Artistic Director & LCSW
Astacio, Mauricio	The Wine Club	Sales & Marketing
Bailey, Robert	Pratt & Whitney Space Propulsions(Ret.)	Naval Officer/Rocket Scientist
Barousse, Joshua	ASPIRE Program	Academic Advisor
Bui, Mydzung	Santa Clara Valley Health & Hospital	School Psychologist Clinical Psychology Post-Doc
Callender, Norma	Self-employed	Semi-retired Independent Paralegal
Fadem, B.J.	Law Offices of B.J. Fadem & Assoc., APC	Attorney
Freeman, Nancy	San José State University Library	Community Volunteer
Kelly, Kenneth	County of Santa Clara (Ret.)	Environmental Educator
Martinez, Telina	Fresh Lifelines for Youth	Director of Law Programs
McKee-Stovall, Delorme	Santa Clara County Office of Human Relations	Human Relations Manager
Morales, Hilbert	Editor	El Observador
Ramirez, Yesenia	Enlace Program Specialist	Evergreen Valley College
Saban, Panteha	Santa Clara County Public Defender's Office	Attorney
Shelton, Merylee	San José City College	Professor
Sivertsen, Wiggysy	San José State University	Professor
Taliva'a, Alofa	Volunteer	Community Activist
Vasquez, Herman	California Commercial Cleaning, Inc.	Director Sales/Human Resources
Watson, Otis	Comerica Bank	Banking/Financial Services
Wong, Jorge	Asian American for Community Involvement	Director of Behavioral Health Services
Young Colar, Linda	Small Business Owner and Consultant w/Keller Williams Realty & DBM	Realtor & Career Management



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

Judge Teresa Guerrero-Daly, former Independent Police Auditor, designed this logo.

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Tel: 408.794.6226

TTY: 408.294.9337

Fax: 408.977.1053

www.sanjoseca.gov/ipa

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