

2012 IPA Year End Report



Issued April 2013

by

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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

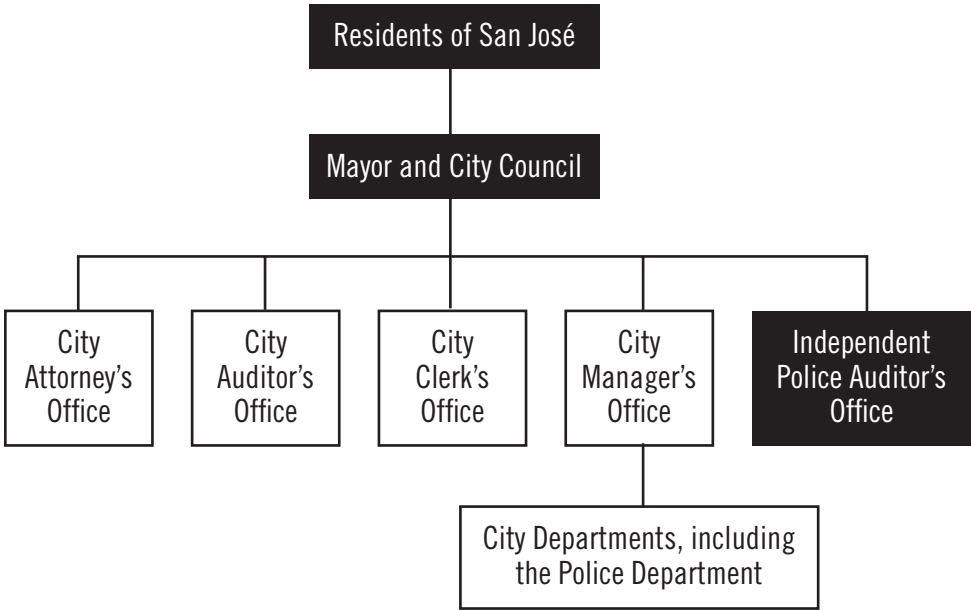


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Chapter One: Overview

In 2012, there were dramatic changes in the San José Police Department (SJPD) ---the departure of Chief Chris Moore, the search for a new police chief, numerous police officer retirements and resignations, and budget cuts that resulted in the City's first-ever layoffs of police officers. And yet, the work of our office continued, unabated.

IPA's Mandated Responsibilities

Section 809 of the San José City Charter sets forth the role and the responsibilities of the Independent Police Auditor office: (1) receiving complaints from the public about police conduct, (2) auditing investigations completed by the Internal Affairs Unit (IA), (3) conducting outreach to inform the public about the work of our office, and (4) recommending improvements to SJPD policies and procedures.

In 2012, we fulfilled and exceeded those responsibilities. **Our intake of complaints from members of the public nearly equaled the number of complaints that were initiated at the Internal Affairs Unit.** Historically, our office has lagged behind IA in the number of intakes. Over the last few years, that trend has changed dramatically as many more complainants have chosen to initiate their complaints at our office. Increased awareness about the IPA office, a product of our vigorous and extensive outreach to those who live and work in the City of San José, is undoubtedly responsible for this upward trend.

We audited more than 80% of all of the complaints that were investigated and closed by IA (345 of 411). Our audits ensure that the investigations and findings made by IA about alleged police misconduct are fair, thorough, and



Judge Cordell describing the role of the IPA to SJSU students.

objective. In 2012, we agreed with IA in 84% of the cases that IA sent to us for audits (292 out of 345). This also means that in 16% of the cases sent to us by IA, we either disagreed or had concerns about their findings and/or investigations. To bring better understanding to the public about our audit process, in this Report we list brief descriptions of every case in which we disagreed and had concerns in 2012. We have also included summaries of all cases in which we “agreed after further.” In such cases we initially disagreed with IA but after discussions that frequently led to further action by IA, we subsequently agreed. Finally, we include a sampling of the 345 cases in which we agreed with the assessments of IA, without having to request any further investigations or analyses.

Our six-person staff must utilize creative and cost-effective ways to inform thousands of people about our office's role in performing civilian oversight of law enforcement. **In 2012, we included informational inserts about our office in utility bill mailings to over 190,000 households in the City.** In an effort to reach out to teens, we used our Student Guide Initiative to



Judge Cordell speaking to members of the Santa Teresa Foothills Neighborhood Association.

provide thousands of guides about police practices to students in our public high schools.

In 2012, we brought forward 18 recommendations to improve SJPD policies and procedures, all of which were adopted by SJPD after meaningful discussions with then-Chief Chris Moore. These recommendations ranged from improving service to the public in the Police Administration Building lobby, to requiring officers to log in whenever they are driving city-owned vehicles, to revising the Department's policy that allows officers to serve civil processes.

In January 2012, we formally presented to the Mayor and City Council an audit of the more than one hundred recommendations that our office has made to SJPD between 1993 and 2009. This was the first time that the IPA office had followed up with SJPD to assess which of our recommendations had actually been implemented by the Department. That audit can be found in Chapter Two of our 2011 IPA Year End Report.

The chapters in this Report discuss, in greater detail, our work in all of these mandated areas.

More IPA Activities in 2012

The IPA-SJPD Mediation Program included 12 mediations in 2012, nearly triple the number of

mediations that were undertaken in 2011, when we initiated this program. The participants in these mediations are complainants and police officers who voluntarily meet to discuss the incidents that gave rise to the complaints. The discussions take place in a confidential setting with retired judges as the mediators. The Honorable James Emerson, a retired Santa Clara County judge, generously volunteered his services as a mediator for all of the mediations in 2012.

The purpose of the IPA-SJPD Mediation Program is to divert selected complaints about Courtesy and Bias-Based Policing from the standard IA investigation process, and instead resolve them in a non-adversarial setting. For this reason, all complainants who participate in the program agree to withdraw their complaints against the officers. You can read more information about the mediations that occurred in 2012, including summaries of the complaints that gave rise to the mediations, on page 12 of this Report.

Homeless encampments in the City of San José were especially controversial in 2012.

Residents are understandably concerned about the litter and occasional criminal activity at the encampments; and the homeless are understandably concerned about protecting their civil rights. After a complainant contacted our office about the City's clean-up efforts and complained that the activities had unlawfully deprived him of his belongings, **a member of our staff, accompanied by SJPD officers, went on site and observed the clean-ups of several encampments.** After she described her observations of the clean-ups, we became concerned that the clean-up process was not consistent with existing law and City protocol.

We subsequently raised our concerns with City management and recommended ways to ensure that the encampment clean-ups are conducted in a fairer manner. **As a result, the City has revised**

its clean-up protocol that addresses the rights of property owners and the rights of the homeless in a manner that ensures compliance with the law. The work of our office in initiating the creation of the City's protocol was of such significance that it was reported in the New York Times, the Los Angeles Times, and in the Mercury News. (You can read these articles in the Appendix K to this Report.) Throughout the year, we gave presentations about our office to the homeless and to their service providers. And at the City's invitation, we participated in a community meeting in the Communication Hill neighborhood where the City's encampment clean-up program was a hot-button issue.

In 2012, our office undertook the first-ever overhaul of our database system that we utilize to track and audit complaints. The database system initiated in 1996 has, over the years, become increasingly outdated and cumbersome. IPA Senior Analyst Vivian Do, drawing on her database expertise and marvelous facility with detail, assumed the key role in managing this huge project. The IPA's new audit and tracking system is now in test mode; we anticipate that it will be fully operational in Spring 2013. Completion of this project would not have occurred without the cooperation of SJPD and the invaluable assistance of Vijay Sammeta (San José's Acting Chief Information Officer), Krishna Sastry (IT Senior Systems Application Programmer) and her terrific team.

The Teen Leadership Council (TLC) that our office created in April 2011 was engaged in a variety of activities in 2012, all of which are detailed in the Outreach Chapter in this Report. Highlights of the year were a TLC retreat, a tour of the State Capitol, the production of a public service announcement in conjunction with CreaTV, and presentations by guest speakers who generously gave of their time to attend our monthly Saturday morning meetings.



Judge Cordell and Inspiring Youth Awardees at the Youth Commission's annual conference.

Our office received recognition and awards for our work in 2012. **IPA Senior Analyst Diane Doolan Diaz received a Pride of San José Award** for her superb work as an outreach specialist and for her groundbreaking efforts that created the Teen Leadership Council. **Judge Cordell was a part of a team of City employees who received a Pride of San José Award** for the development and implementation of the City's protocol for the cleanup of homeless encampments. **Three of our TLC members were recognized by the City's Youth Commission** with Youth Inspiration Awards for their outstanding leadership. And for their academic achievements, another **three TLC members were awarded laptop computers and printers by Local Union 393, Plumbers, Steamfitters & Refrigeration Fitters.**

We began the Student Guide Initiative in 2011 and completed it in 2012. With the generous financial support of the Mayor, City Council members, the City Manager's office, SJPD, and the San José Police Officers Association, we obtained more than 10,000 copies of the "Student's Guide to Police Practices" (Guide) for distribution to all freshmen in San José's public high schools. This Guide, written by our office, informs young people and their parents about their rights and responsibilities when interacting with police officers. We also distributed DVD's to teachers that



The City's Homeless Encampment Response Team, including Judge Cordell, was honored by Mayor Reed with a 2012 Pride of San José Award.

explained how they should explain the Guides to their students. In 2012, we met with the superintendents, principals, and assistant principals of the San José Unified High School District, the Eastside Union High School District, and the Campbell Unified High School District to inform them about the purpose of the Guide and to develop plans for the Guide's distribution to their freshmen. **We have provided 8,000 Guides to the Eastside and Campbell school districts for distribution to their students.**

In 2012 the support of the IPA Advisory Council (IPAAC) was vital to the work of our office. The 21 members, all of whom volunteer their services, met quarterly with our staff. They provided mentoring for some of our TLC members, assisted in fundraising efforts, and participated in our outreach events. The IPAAC also served as a "think tank" for our office, providing to us ideas and suggestions about how we can better reach out to the community.

The "IPA Roadshow," produced by CreaTV, is a local cable television program on which Judge Cordell interviews individuals in San José about law enforcement-related topics. In 2012, her guests included San José Police Chief Chris Moore, the Mexican Consul General of San José, Sergeant Todd Trayer of the Internal Affairs Unit of SJPd, three members of the Teen Leadership Council, Honorable Teresa Guerrero-Daley, the first Independent Police Auditor, and District Attorney Jeff Rosen. The "IPA Roadshow" series airs on Wednesdays at 7 p.m. Comcast cable subscribers in San José can watch the program on Silicon Valley Channel 30 every Wednesday, and via live stream and video on demand at www.CreaTVsj.org.

In 2011, Judge Cordell published an op-ed in the Mercury News advocating that SJPd equip its officers with Body Worn Cameras. These cameras are not only cost-effective, but beneficial to both officers and community members who are often at-odds after controversial use-of-force incidents. Following the op-ed's publication, **in**



Judge Cordell delivering the keynote address at the Annual Project Cornerstone event.

March 2012, Judge Cordell accompanied Chief Chris Moore and District Attorney Jeff Rosen to Washington, D.C. There they met with high-ranking staff at the Justice Department to discuss federal funding for the purchase of the cameras and storage of the cameras' data. IPA staff subsequently participated in a county-wide Digital Cloud Task Force that has developed a Model Protocol for the operation of the cameras and for the retention of the data. You can read Judge Cordell's op-ed in Appendix L of our 2011 IPA Year End Report.

Finally, word of the good work of our office has reached beyond the City of San José. In 2012, **the IPA was contacted by Anneke Osse, a consultant to the United Nations, for advice and assistance** in creating a civilian oversight program for the country of Kenya. Thereafter, the IPA participated in Skype conferences with Ms. Osse and representatives of the Kenyan government who sought advice about how best to create an office in Kenya similar to ours.

THE IPA-SJPD MEDIATION PROGRAM

In 2012, the IPA-SJPD mediation program continued to bring complainants and police officers together to talk, in a civil and respectful fashion, about complaints of alleged misconduct. There were 12 mediations, nearly triple the number of mediations when the program was initiated in 2011. The Hon. James Emerson (Ret.) generously volunteered his services as a mediator in all 12 of the mediations.

The average years of service of the officers who voluntarily participated in the mediations was 16. The mediations involved one female officer and twelve male officers.

The average age of the complainants who participated in the mediations was 44. The ethnicities of the complainants were African American (1), Latino (6), and Caucasian (5). There were five female complainants and seven male complainants.

Brief summaries of IPA-SJPD mediations in 2012

- A complainant alleged that on two separate occasions, police officers were discourteous and demonstrated bias against her because she is transgendered.
- A complainant alleged that a police officer was discourteous to her when she called SJPD about a burglary case.
- A deaf complainant alleged that a police officer improperly cited him for trespassing at the airport.
- A complainant alleged that a police officer was rude to and dismissive of her when she reported the theft of her car.
- A complainant alleged that an off-duty police officer improperly used her police powers to intimidate him.
- A complainant alleged that two police officers harassed him, improperly made him sit on the curb, and showed bias against him because he is Latino.
- A complainant who reported that he had been assaulted, alleged that the responding police officer treated him like a criminal.
- A complainant alleged that a police officer spoke discourteously to him during a pedestrian stop.
- A complainant alleged that an officer used profanity and acted in an aggressive manner toward him.
- A complainant alleged that an officer had a dismissive attitude toward her and failed to investigate her report about child abuse.
- A complainant alleged that an officer yelled at him and discriminated against him because he is Latino.

COMMENTS BY OFFICERS AND COMPLAINANTS ABOUT THE MEDIATIONS

(taken from surveys completed by mediation participants)

Officers' Comments:

- “The mediator did a good job of explaining the law and how the law is applied.”
- “The mediator made a potentially uncomfortable and potentially angry situation as neutral and professional as possible.”
- “I felt the judge did the absolute best he could to reach a satisfactory conclusion for the complainant given the strong and somewhat erratic flight of ideas and opinions that the complainant had. . . I thank the judge for his patience and diplomacy in the matter. I will, however, say that I have learned from this and therefore, was not a waste of time for me.”
- “Mediator did a great job. Process would have worked better in different situation than this . . . lack of focus [on the part of the complainant.]”

Complainants' Comments:

- “The process is a good idea, though I was a bit let down because I believe the officer did not really fully understand what she did wrong.”
- “Confusing, but I got the point.”
- “I appreciate the mediator volunteering his time in coming to this meeting, but I still feel there was justification made as far as workload for the SJPD . . . I’m not dictating or telling the police how to do their job. I was only saying how I felt. I hope that something was taken away positive from here because my motivation was not to get anyone in trouble but what happened to me shouldn’t be minimized or justified [.]”

Chapter Two: The Complaint Process from Intake to Audit

The Office of the Independent Police Auditor (IPA) was established 19 years ago. Around the country, the public demanded the establishment of civilian oversight offices to provide a system of checks and balances on their local police departments. The residents of San José were no exception. Thus, the Office of the IPA was established. In 1996, the IPA office became a permanent branch of local government after the voters amended San José’s City Charter to add Section 809.

I. Step One: Intake

The complaint process begins when a complainant files a Conduct or Policy complaint with the Internal Affairs (IA) Unit of the San José Police Department (SJPD) or with the IPA. Complaints or concerns may be filed in person, by phone, fax, email or postal mail with either office. With the complainants’ consent, the IPA or IA staff record the complainants’ statements to ensure that the complainants’ accounts of the incidents are captured accurately. The complaints are then forwarded to IA for classification and investigation. This initial process is called **intake**. This year, 329 complaints and concerns were received—a 7% decrease in the number of complaints and concerns received in 2011.

In 2012, 47% of complainants brought their complaints and concerns directly to the IPA office, while the other 53% contacted IA. Similarly, in 2011, 48% of complainants came directly to the IPA office.

Illustration 2-A: Complaints Received from 2009 to 2012

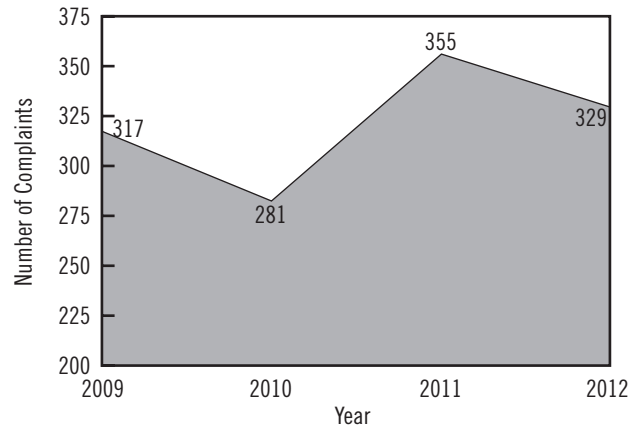
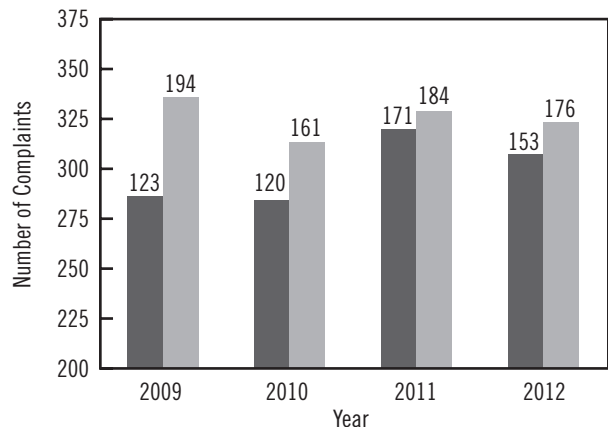


Illustration 2-B: Complaints/Concerns Filed at IPA and IA from 2009-2012



	2009	2010	2011	2012
IPA Intake	39%	43%	48%	47%
IA Intake	61%	57%	52%	53%

A. Why Each Complaint Matters

- **Holding Officers Accountable**

Every time a complaint is filed, the complaint must be reviewed by IA. No complaint is too big or too small.

- **Mediation**

Many times, complainants say they just want to talk with the officer “face to face.” Mediation provides a calm and respectful setting for both the complainant and the officer to talk things

out. This promotes a better understanding between the officers and the community they serve.

- **Counseling**

If an officer gets too many complaints, the officer will receive mandatory Intervention Counseling to identify and correct problematic behaviors.

- **Policy Changes Based on Trends**

We cannot change what we do not know. When people voice repeated concerns about SJPD policies, the IPA has the unique opportunity to make policy recommendations to the Police Chief. This can have a tremendous impact on policing across the entire City.

- **Understanding Community Cultures**

Each complaint tells a story. Collectively, these stories help the SJPD and the IPA understand the cultural climate in San José, even if a complaint does not result in discipline or a policy recommendation.

B. Demographics of Complainants and Subject Officers

1. Complainants

During the intake process, the IPA office gathers demographic data. In 2012, 73% of complainants chose to identify their ethnicities during the intake process.

- Hispanic/Latino complainants filed 28% of the total complaints/cases in 2012. Hispanics/Latinos comprise 33% of the population of San José.
- Caucasian complainants filed 24% of the total complaints/cases in 2012. Caucasians comprise 29% of the population of San José.

The Players—Understanding the People Involved in the Complaint Process

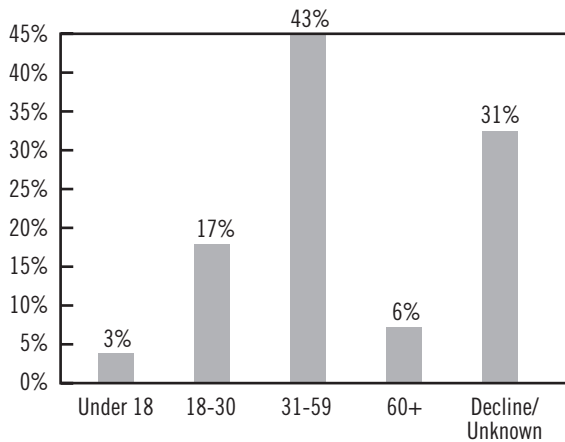
- **Complainant**—The complainant is the person who describes a concern about alleged officer misconduct or a SJPD policy (or lack thereof).
- **Subject Officer**—The subject officer is the officer who allegedly engaged in misconduct.
- **Witness Officer**—The witness officer is an officer who witnessed the incident. The complaint is not against this officer.
- **Civilian Witness**—A civilian witness is a person with firsthand knowledge about the incident that gave rise to the complaint.
- **Internal Affairs Investigator**—The Internal Affairs investigators are police officers. They are assigned to the Internal Affairs Unit, and receive and investigate the complaints. The investigator writes an analysis that weighs the evidence and applies the relevant Duty Manual sections. The IA Commander determines the appropriate findings. The investigation is then sent to the IPA office.
- **IPA Staff**—The IPA staff receive complaints and audit IA investigations to ensure that those investigations are fair and objective.

- African American complainants filed 9% of the total complaints/cases in 2012. African Americans comprise 3% of the population of San José.
- Asian American/Pacific Islander complainants filed 5% of the total complaints/cases in 2012. Fifteen percent of the population of San José identifies as Asian American/Pacific Islander.

Table 5 in Appendix J provides details on the other ethnicities of complainants and the proportions of the ethnic populations in San José according to the 2010 U.S. Census.

In 2012, 69% of complainants disclosed their ages during intake. Approximately 43% of them were adults, ranging between the ages of 31-59, with just 6% over 60 years of age.

Illustration 2-C: Age Range of Complainants in 2012



2. Subject Officers

We obtain demographic data about subject officers from the SJPD. The SJPD is comprised of officers from a variety of backgrounds and cultures. Table 3 in Appendix J provides a general breakdown of the ethnicity of officers employed by the Department as of December 2012. The ethnicity data reflects officers employed during the 2012 calendar year. The data reveal that the ethnicity of subject officers in 2012 continues to closely mirror the ethnicity of officers within the Department.

- Caucasian officers were identified as subject officers in 52% of complaints; Caucasian officers comprise 55% of all SJPD officers.
- Officers identified as Hispanic/Latino comprise 24% of the Department and were named in 28% of complaints in 2012.
- African American officers are 4% of the Department and were subject officers in 4% of complaints.
- Asian American/Pacific Islander officers were subject officers in 10% of complaints and are 11% of SJPD officers.

Male and female officers received complaints comparable to their representation in the Department.

Illustration 2-D: Gender of Subject Officers in 2012

Gender	Subject Officers	%	SJPD Sworn Officers	%
Male	204	94%	952	90%
Female	12	6%	102	10%
Total	216	100%	1054	100%

*Does not include officers named in Department-Initiated Investigations and Non-Misconduct Concerns.

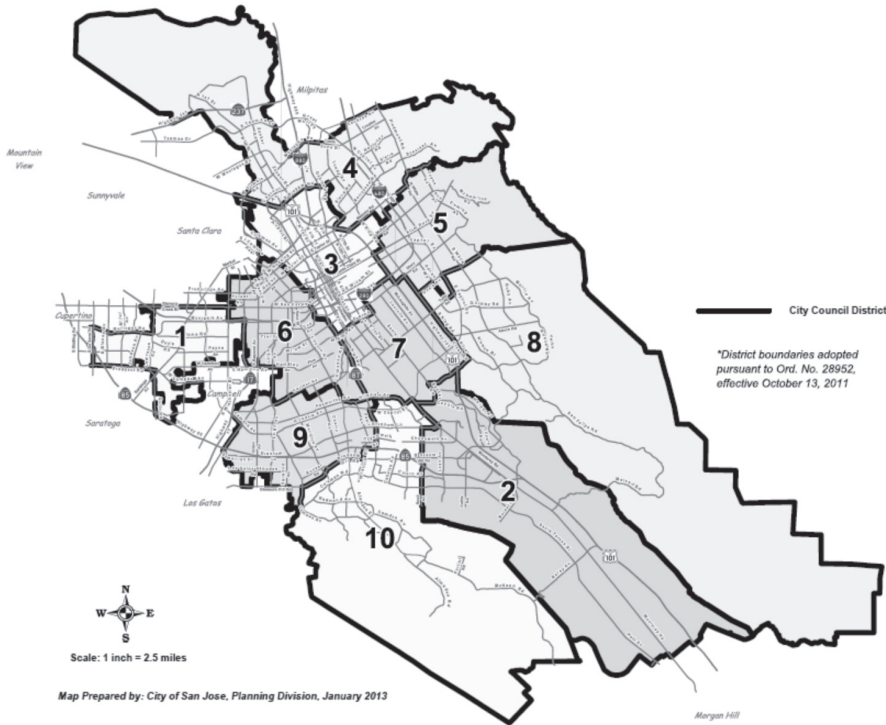
C. Complaint Filings in 2012 by City Council Districts

Illustrations 2-E and 2-F show the locations of incidents by City Council District that prompted complaints in 2012. This data does not reflect other factors, such as population size, crime rate, or the number of officers assigned to patrol each district. Nearly one-quarter of complaints came from incident locations in District 3, and nearly another one-quarter came from areas outside of San José or unknown locations. Last year saw similar results, with District 3 receiving 29% of the complaints. District 3 includes Downtown San José.

Illustration 2-E: Council District of Incident Locations That Prompted Complaints and Concerns in 2012

Council	Number	%
District 1	15	5%
District 2	12	4%
District 3	79	24%
District 4	11	3%
District 5	28	9%
District 6	26	8%
District 7	29	9%
District 8	22	7%
District 9	18	5%
District 10	12	4%
Unknown/Outside City Limits	77	23%
Total Cases	329	100%

Illustration 2-F: Map of San José City Council Districts



II. Step Two: Classification

After a complaint is made, IA classifies it. Complaints fall into three categories: Conduct Complaints, Policy Complaints, and Non-Misconduct Concerns.¹ The IPA staff reviews IA’s classification decisions early in the process to ensure that allegations of misconduct are properly classified. Illustration 2-G is a breakdown of the different types of complaints received in 2012. This illustration shows that 75% of all complainants were conduct complaints.

Illustration 2-G: Complaints/Concerns Received in 2012

Matters Received in 2012	IPA	IA	Total	%
Conduct Complaints	110	138	248	75%
Policy Complaints	17	9	26	8%
Non-Misconduct Concerns	22	27	49	15%
Other	4	2	6	2%
Total	153	176	329	100%

*Excludes Department-Initiated Investigations

A. Conduct Complaints

Conduct Complaints are those that allege that SJPD officers broke one or more of the rules they must follow. Most of these rules are specified in the SJPD Duty Manual. Any member of the public may read the Duty Manual on the SJPD website (www.sjpd.org/Records/Duty_Manual_2010_Electronic_Distribution.pdf) and on the IPA website (www.sanjoseca.gov/ipa/).

Conduct Complaints contain individual **allegations**. An allegation is an accusation that an SJPD officer violated policy, procedure, or the law. A Conduct Complaint can have more than one allegation. There are eight types of allegations that, if proven, may lead to officer discipline. **Complainants made 248 Conduct Complaints containing 625 allegations in 2012.** Illustration 2-H explains each allegation and lists examples of allegations from cases that the IPA audited in 2012.

¹ Additionally, IA has discretion to classify a matter as “Other.” Six cases were classified as “Other” this year because (a) the complaint concerned an incident occurring many years ago, (b) the complaint did not involve any SJPD officers and (c) the complaint was duplicative of an existing case. The IPA reviews all cases classified as “Other” to ensure this classification is appropriate.

Illustration 2-H: Misconduct Allegations

MISCONDUCT ALLEGATIONS, LISTED BY FREQUENCY

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

- 237 allegations (38%)
- **Example:** An officer allegedly failed to investigate a hit-and-run accident when one of the drivers involved in a vehicle collision fled the scene.

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

- 101 allegations (16%)
- **Example:** An officer allegedly told a complainant, "You're a freaking idiot!" and then walked away after giving him the middle finger.

Force: The amount of force the officer used was not "objectively reasonable," as defined by SJPD Duty Manual, section L 2602.

- 98 allegations (16%)
- **Example:** A Complainant alleged that, after he was handcuffed, SJPD officers threw him to the ground. While the complainant was on the ground, one officer allegedly placed his knee on complainant's back and dislocated his shoulder. When assisting the complainant to a standing position, the same officer allegedly deliberately pulled the complainant up by his injured shoulder.

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

- 67 allegations (11%)
- **Example:** Officers allegedly stopped a woman driving away from her house, reached into her car to turn off the ignition, handcuffed her, and walked her back to her house during the execution of a search warrant of her house.

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

- 61 allegations (10%)
- **Example:** A complainant alleged that an officer had no right to conduct a pat search during a vehicle stop, even though the complainant, who had been ordered to remain in his car, exited his vehicle and approached the officer.

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.

- 33 allegations (5%)
- **Example:** An Officer allegedly said to a complainant, "Come here you dirty Mexican."

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

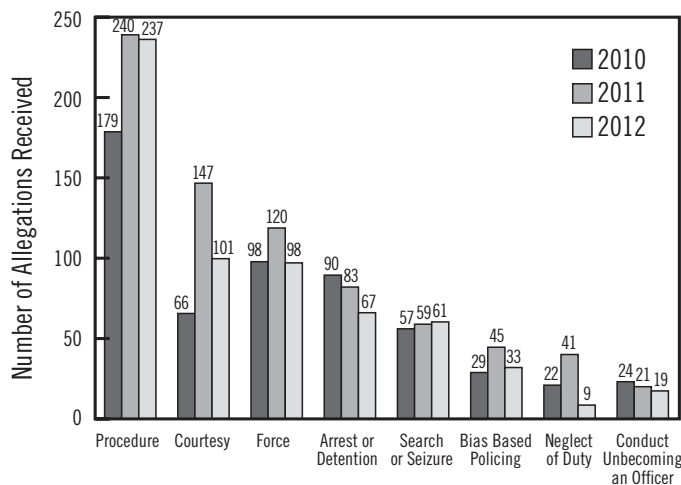
- 9 allegations (1%)
- **Example:** An officer allegedly failed to thoroughly investigate an accident after a woman drove into the complainant's house and then fled.

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.

- 19 allegations (3%)
- **Example:** A complainant alleged that an officer fondled her breasts and sexually harassed her.

Illustration 2-I shows the types of allegations in Conduct Complaints that were received from 2010-2012. In 2012, there was a decrease in all types of allegations with the exception of a slight increase in Search/Seizure allegations. In 2012, SJPD officers received 46 fewer Courtesy allegations than in 2011.

Illustration 2-I: Allegations Received from 2010-2012



B. Policy Complaints

Policy Complaints are complaints that are not directed against an individual officer, but are complaints about SJPD policies or procedures, or about the lack of policies. These Policy Complaints are typically forwarded to SJPD’s Research and Development Unit for review.

IA and the IPA received 26 Policy Complaints in 2012. Of these, 38% complained of SJPD’s lack of response to calls for service, and lack of investigative resources. Complainants stated that they provided SJPD with significant investigative leads without any follow up by officers. SJPD has publicly stated that they are understaffed, and do not have the resources to complete thorough investigations in all cases.

C. Non-Misconduct Concerns

Non-Misconduct Concerns are complaints that do not rise to the level of a violation of policy, procedure, or law that could result in officer

discipline. Once classified as a Non-Misconduct Concern, the case is forwarded to the IPA so that the basis for this classification may be reviewed. If there is a concern about the NMC classification, the IPA can review any investigatory steps taken by IA. The IPA has the ability to appeal the classification of these matters if informal discussions with IA staff prove unsuccessful.

When an officer receives a Non-Misconduct Concern, it is no longer considered a “complaint.” However, the subject officer’s supervisor receives notice and addresses the matter with the officer. Although the officer cannot be formally disciplined at this point, this procedure provides a means to notify the subject officer and his/her supervisor that a member of the community was concerned enough to alert SJPD or the IPA about the officer’s behavior.

Finally, the matter is closed as a Non-Misconduct Concern after the supervisor confirms that the matter has been addressed with the subject officer. Once a case is closed as a Non-Misconduct Concern, the officer’s name and allegations are removed, but the allegations are tracked for policy purposes.

In 2012, 49 complaints (15% of all complaints) were classified as Non-Misconduct Concerns.

D. Department-Initiated Investigations

Department-Initiated Investigations are complaints about officer misconduct that are initiated by the Department, as opposed to complaints initiated by the public. IA and SJPD Command staff exclusively handle these matters. The IPA has no role in the classification, review, or audit of these investigations. Annually, the Department presents a report to the City Council about Department-Initiated Investigations.

III. Step Three: Investigation

After the intake and classification process, IA investigates all Conduct Complaints. IA investigations may include the review of police reports, medical records, photos, and the CAD². IA may also conduct complainant, witness, and officer interviews to further understand the complaint. This evidence is collected to determine what facts support or refute the allegations in the complaint. The evidence is then analyzed in light of relevant SJPD policies and procedures.

The IPA office does not investigate complaints. However, the IPA monitors the progress of all investigations. This allows the IPA to assess the objectivity and thoroughness of the investigation, the fairness of the interview process, the collection of supporting documentation, and the analysis presented by the IA investigator.

IPA's Role in the Investigation Process

While IA investigates the complaint, the IPA monitors the investigation in the following ways:

- reviews Conduct Complaints received at IA to confirm that all of the complainants' allegations are accurately represented in the complaints;
- reviews the progress of investigations prior to officer interviews to confirm the interviewer has vital information such as medical records and Taser downloads; and
- attends officer interviews, or if the IPA is unable to attend, requests that IA ask certain questions of the officers.

Attending these subject officer interviews is an important way for the IPA to monitor IA investigations. IA must notify the IPA of officer interviews in (1) all complaints opened at the IPA office and (2) all complaints containing **Force or Conduct Unbecoming an Officer** allegations. IPA staff may request notifications of IA interviews in other cases. Only the IPA and the Assistant IPA can attend officer interviews. When neither the IPA nor the Assistant IPA are able to attend officer interviews, they frequently send questions to IA to be asked in the interviews.

IV. Step Four: Findings Made By Internal Affairs

In each complaint, the IA investigator must conduct a full and fair review of all available information and determine whether or not the alleged misconduct occurred. Findings are based on an objective analysis of this information. The possible findings are: Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other. Illustration 2-J lists all of the findings that IA made in 2012.

In general, officer discipline is imposed only if there is a Sustained finding on an allegation. The standard of evidence used by IA is "preponderance of the evidence." Thus, in order to make a Sustained finding, the evidence must indicate that it is more likely than not that a violation of the Duty Manual occurred.

² The CAD (Computer-Aided Dispatch) is a log of all of the events from the moment the police are called, until the moment they leave. The information is logged by dispatch as it is relayed by the officers and the reporting parties.

Illustration 2-J: Findings for Misconduct Allegations

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 proper³.” 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.
- 386 allegations (43%) were Exonerated in 2012.

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.
- 103 allegations (11%) were Not Sustained in 2012.

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

- **Result:** This finding results in officer discipline.
- 14 allegations (2%) were Sustained in 2012.

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.
- 229 allegations (25%) were Unfounded in 2012.

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 did not follow through with necessary information for IA, or the officer is no longer employed by SJPd.

- **Result:** The officer is not disciplined.
- 66 allegations (7%) were closed with No Finding in 2012.

Withdrawn: “The complainant affirmatively indicates the desire to withdraw his/her complaint.” This means the complainant said he/she wanted to drop the complaint.⁴

- **Result:** This finding does not result in officer discipline.
- 63 allegations (7%) were Withdrawn in 2012.

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.
- 41 allegations (5%) were closed as Other in 2012.

³ All definitions in quotations in this table are from the 2010 Duty Manual, section C 1723.

⁴ IPA staff routinely follows up to ensure that the complainants’ decisions to withdraw their complaints are entirely voluntary.

A. How Allegations Were Closed by IA in 2012

Illustration 2-K lists the total number of allegations closed by IA in 2012 and findings.

Illustration 2-K: Dispositions of Allegations in 2012*

	Arrest/ Detention	Bias- Based Policing	Courtesy	Conduct Unbecoming an Officer	Force	Neglect of Duty	Procedure	Search/ Seizure	Total	Percent
Sustained	1	0	0	0	0	0	12	1	14	2%
Not Sustained	0	1	55	3	7	1	30	6	103	11%
Exonerated	77	0	16	0	107	3	144	39	386	43%
Unfounded	2	39	50	6	23	8	98	3	229	25%
No Finding	8	3	15	0	12	0	20	8	66	7%
Complaint Withdrawn	2	5	19	3	3	3	25	3	63	7%
Other	8	1	6	3	7	3	10	3	41	5%
Total Allegations	98	49	161	15	159	18	339	63	902	100%

*Excluding Department-Initiated Investigations

B. The Sustained Rate

The **Sustained rate** is the percentage of Conduct Complaints that are closed with one or more Sustained findings by SJPD Command staff relative to all closed Conduct Complaints. The Sustained rate for complaints filed by the public decreased dramatically from 10% in 2011 to just 3% in 2012. This year had the lowest number of Sustained cases in almost 20 years

Illustration 2-L: Sustained Complaints Over Five Years

Year of Complaint	Sustained Rate	Sustained Complaints	Closed Complaints
2008	5%	19	348
2009	7%	20	291
2010	7%	15	228
2011	10%	24	246
2012	3%	10	302

V. Step Five: IPA Audit

After IA completes its investigation, writes an analysis, and comes to a finding, it forwards its case to the IPA for audit. The IPA is required to audit all cases with Force allegations, and at least 20% of all other cases. In 2012, the IPA fulfilled this requirement by auditing all Force cases (83) and 75% of all remaining non-Force cases (261).

IPA staff reviews various issues during the IPA audit to determine if IA's investigations and analyses were fair, thorough, and objective. These issues include the application of policy to the facts, the presence/absence of interviews/supporting documentation, and IA's analysis of the evidence.

Illustration 2-M: Issues Reviewed During IPA Audit

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, the IPA makes one of the following determinations:

- **Agreed** with IA’s handling of the case (257 or 74% of audited cases in 2012),
- **Agreed After Further**, such as receiving from IA a satisfactory response to an IPA request for additional clarification or investigation (35 or 10% of audited cases);
- **Closed With Concerns**, which indicates the IPA did not agree with the IA investigation and/or analysis, but the disagreement did not warrant a formal disagreement (30, or 9% of audited cases); or
- **Disagreed**, meaning the IPA determined that IA’s investigation and findings were not thorough, objective, and fair (23 or 7% of audited cases).

Illustration 2-N: 2012 IPA Audit Determinations

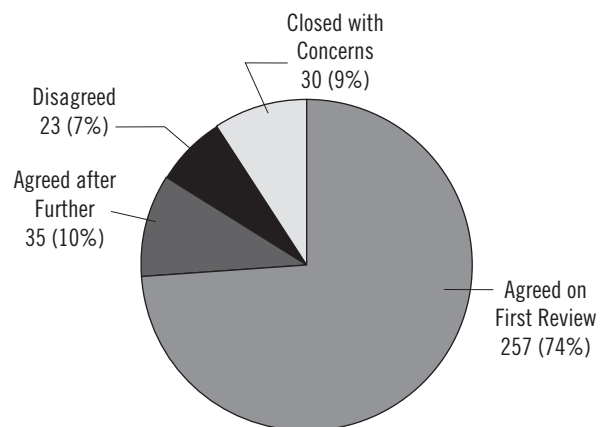


Illustration 2-0: IPA Audit Determinations in Investigated Cases in 2011 and 2012

Audit Determination in Investigated Cases	2011		2012	
	Audits	%	Audits	%
Agreed at First Review	160	63%	257	74%
Agreed after Further	48	19%	35	10%
Disagreed	15	6%	23	7%
Closed with Concern(s)	33	13%	30	9%
Total Complaints Audited	256	100%	345	100%

The 2012 IPA audit determinations are similar to last year’s determinations. In 2011, the IPA agreed with 82% of IA’s determinations (Including “Agreed at First Review” and “Agreed After Further”). In 2012, the IPA agreed with 84% of IA’s investigations and analyses. Also, it is significant to note that

the IPA agreed on first review with 74% of IA’s investigations and findings in 2012, reflecting a 11% increase over last year. This indicates that the IPA found that a majority of IA’s initial investigations and analyses were fair and objective.

VI. Officer Discipline, Complaint Rates and Experience Levels

A. Officer Discipline

SJPD disciplined 11 officers in 2012 as a result of Sustained findings in Conduct Complaints. This is a substantial decrease from the 42 officers disciplined in 2011, the 16 in 2010, and the 20 in 2009. This reflects the lowest number of officers disciplined in the nearly 20 years that the IPA has been auditing complaints from members of the public.

Illustration 2-P: Discipline Imposed on Subject Officers in 2011 and 2012

Type of Discipline	2011		2012	
	# of Times	% of All Discipline	# of Times	% of All Discipline
Training	7	17%	0	0%
Counseling	2	5%	0	0%
Training & Counseling	10	24%	9	82%
ALL TRAINING AND/OR COUNSELING	19	45%	9	82%
Documented Oral Counseling (DOC)	10	24%	1	9%
DOC & Training	0	0%	1	9%
Letter of Reprimand (LOR)	1	2%	0	0%
ALL DOC & LOR	11	26%	2	18%
10-Hour Suspension	3	7%	0	0%
20-Hour Suspension	2	5%	0	0%
40-Hour Suspension	1	2%	0	0%
ALL SUSPENSIONS	6	14%	0	0%
Disciplinary Transfer	1	2%	0	0%
Settlement Agreement	2	5%	0	0%
Resigned in Lieu of Termination	1	2%	0	0%
Termination	2	5%	0	0%
ALL TRANSFERS, SETTLEMENTS, RESIGNATIONS, TERMINATIONS	6	14%	0	0%
TOTAL DISCIPLINE IMPOSED	42	100%	11	100%

Additionally, the severity of discipline dropped in 2012. The discipline imposed this year was limited to counseling and training. In 2011, however, 28% of all discipline imposed included suspensions, disciplinary transfers, and terminations.

B. Complaint Rates and Experience Levels

The data collected by IA and the IPA list subject officers' names in Conduct Complaints that were closed during the 2012 calendar year. In 2012, 216 officers were named in conduct complaints (20% of all SJPD officers). Of the officers named in complaints, referred to as "subject officers," most (178 or 82% of total subject officers) received only one complaint. Thirty subject officers received two complaints (14% of total subject officers). Five subject officers received three complaints and three subject officers received four complaints. Illustration 2-Q provides a five-year overview of complaints received by individual officers. This data reflects only those cases in which individual officers are identified by name either by the complainant or through the IA investigation process. There were 72 conduct complaints this year in which officers could not be identified ("unknown" officers).

Illustration 2-Q: Five-Year Overview of Complaints Received by Individual Officers*

Officers Receiving	2008	2009	2010	2011	2012
1 Complaint	298	178	196	201	178
2 Complaints	67	30	37	42	30
3 Complaints	16	6	4	8	5
4 Complaints	10	3	2	4	3
5 Complaints	2	1	1	0	0
6 Complaints	1	0	0	0	0
Total Number of Officers Receiving Complaints	394	218	240	255	216

* Subject officer names are not retained in complaints classified as Non-Misconduct Concern, Policy, or Withdrawn.

Our review of the years of experience associated with each subject officer provided some interesting information. This data, however, requires an initial clarification. As with any other employees, police officers can begin their careers with the SJPD at any given time. For this 2012 IPA Year End Report, data reflecting the total number of sworn officers employed by SJPD was captured on January 1, 2013. For each complaint, however the experience level of the subject officers is captured at the time of the complaint incident – any date during the 2012 calendar year. Additionally, throughout the year, some officers move from one experience level to another and therefore can belong to two groups of "years of experience." Also, the total number of sworn SJPD officers with any given years of experience may increase with new/lateral hires or decrease due to retirements, resignations, or termination.

Despite these data constraints, two strong trends emerged. Most of the subject officers named in complaints (81 or 38%) had over sixteen years of experience with SJPD. Officers with eleven to fifteen years of experience comprised 21% of subject officers. Together, officers with eleven or more years of experience with SJPD comprised over one-half of officers named in complaints. And, of those 30 subject officers who received two complaints during the year, more than one-half had eleven or more years of experience. Officers with less experience received fewer complaints relative to more experienced officers. Officers with 0-1 year of experience were named in only 6% of all complaints received in 2012; the data was the same for officers with 2-4 years of experience. Illustration 2-R provides additional detail.

Illustration 2-R: Years of Experience of Subject Officers

Years of Experience	Total Subject Officers		Total SJPD Sworn Officers	
	Officers	%	Officers	%
0-1+	13	6%	95	9%
2-4+	13	6%	6	1%
5-6+	29	13%	109	10%
7-10+	35	16%	122	12%
11-15+	45	21%	249	24%
16+	81	38%	473	45%
	216	100%	1054	100%

We examined additional data to determine whether officers with a defined level of experience received a specific type of allegation more than other allegation types. See Table 6 in Appendix J for data showing all types allegations filed against officers by years of experience.

- There were 177 allegations contained in the Conduct Complaints filed against officers with 16 or more years of experience. Of these allegations, 42% (75) were Procedure and 21% (37) were Courtesy.
- There were 101 allegations contained in the Conduct Complaints filed against officers with eleven to fifteen years of experience. Of these allegations, 45% (45) were Procedure and 17% (17) were Courtesy.
- Force was the type of allegation filed most frequently against officers with seven to ten years experience (28% of the 68 total allegations) and against officers with five to six years experience (35% of the 52 total allegations).

Contrary to our expectations, officers with more years of experience received a greater percentage of Courtesy and Procedure allegations relative to other types of allegations and relative to officers with fewer than five years of experience. Past indicators tended to show that more experienced officers had greater skills in resolving incidents through verbal dialogue; this conversational approach used to de-escalate incidents is often referred to by law enforcement as “verbal judo.” Likewise, we had expected that more experienced officers would have a better command of the various Duty Manual sections and their applications. Because the Duty Manual is long and detailed, we had expected that officers who had used the Manual for a longer period of time would not have as many procedural allegations filed against them relative to the other types of allegations.

Chapter Three: Use of Force

This chapter provides data from Force Cases closed by Internal Affairs and audited by the Independent Police Auditor’s office in 2012.

I. Force Cases and Allegations

A. Overview

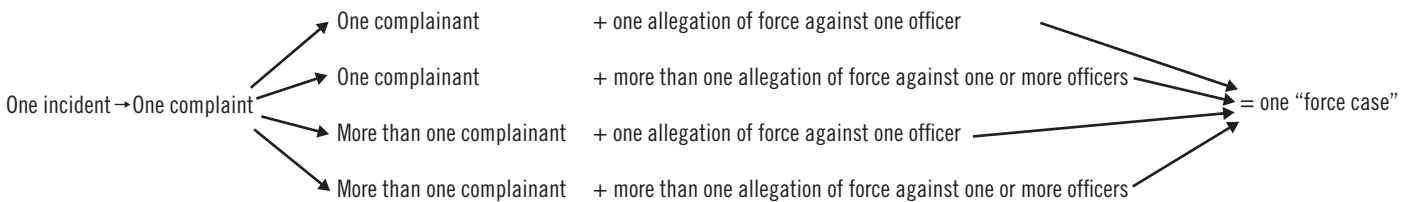
Police work poses both expected and unexpected dangers. On occasion, the use of force by officers is necessary. A police officer who has reasonable cause to believe that a suspect has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.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

officer. The Independent Police Auditor (IPA) 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

In this report, a “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 types of cases that have one thing in common — an officer’s use of force.⁴ Each of the scenarios below is an example of a Force Case.

Illustration 3-A: How Force Cases are Defined

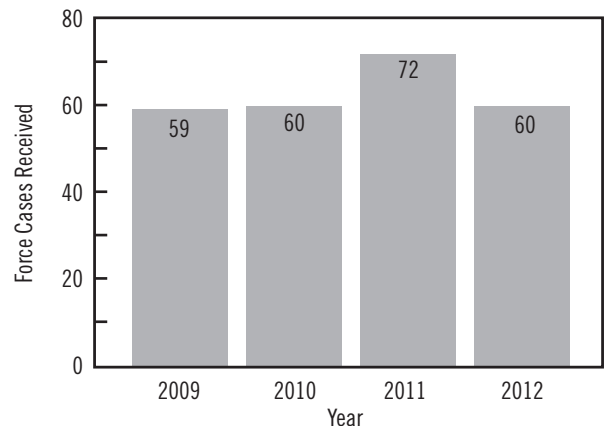


An IA investigation of a Force Case should answer three questions: (1) Was the force response lawful? (2) Was the force response reasonable? (3) Was the force response within SJPD policy? The IA investigation must examine all the facts and circumstances associated with the incident in order to determine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

Sixty (60) Force Cases were received in 2012.⁵ That number is lower than the Force Cases received in 2011 but comparable to the number of Force Cases received in 2009 and 2010. Illustration 3-B shows

the number of Force Cases received from 2009 through 2012.

Illustration 3-B: Force Cases Received from 2009 through 2012



⁴ Use of the term “Force Case” assists in making comparisons from year to year.

⁵ Even if a case is filed in 2012, it may not necessarily be closed in 2012.

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 3-A “How Force Cases are Defined,” each single complaint may contain more than one Force allegation. For example, a complainant might allege that one officer shoved him against a fence and then another officer tackled him to the ground. This example reflects one Force Case with two possible force allegations. Of the 625 allegations contained in complaints from members of the public received in 2012, sixteen percent (98) were Force allegations. Data from 2011 shows that the percentage of force allegations relative to other allegations was also sixteen percent despite the fact that a larger number of force allegations (120) were received during that year. See Table 1 in Appendix J for detail. Illustration 3-C shows the number of Force allegations received from 2009 through 2012.

Illustration 3-C: Force Allegations Received from the Public from 2009 through 2012

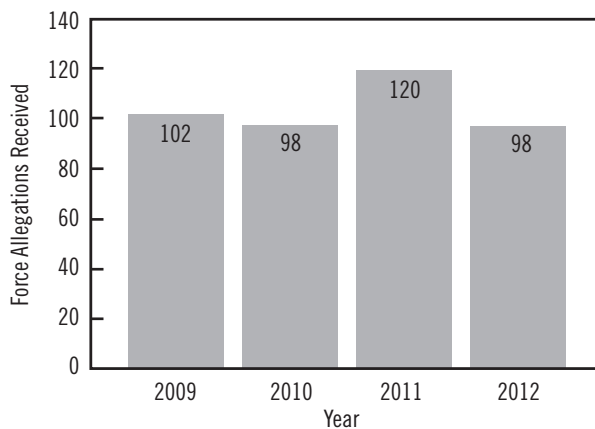


Illustration 3-D shows the number of Force Cases and the number of complaints received from the public from 2009 to 2012. Although the number of Force Cases has remained relatively steady between 2009 and 2012, the percentage of Force Cases compared to all complaints has steadily declined since 2009.

Illustration 3-D: Force Complaints and Allegations — 4 Year Overview

Year	Total Force Allegations	Total Force Complaints	Total Number of Complaints	Force Complaints as % of Total Complaints
2009	102	59	214	28%
2010	133	60	216	28%
2011	120	72	355	20%
2012	98	60	329	18%

*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 obtained information on ethnicity from 336 individual complainants in 2012. We were not able to capture the ethnicity of all complainants because some declined to disclose this information to us. Illustration 3-E shows the ethnicity of the complainants who filed Force Cases, the ethnicity of all complainants, and the percentage of those ethnic groups within the San José population.

Illustration 3-E: Force Cases Received in 2012 — Complainants by Ethnicity*

Ethnicity From Complainants' Surveys & Intakes	Force Complainants		Total Complainants		% of San José Population**
	Number	%	Number	%	
African American	6	9%	30	9%	3%
Asian / Pacific Islander	4	6%	18	5%	15%
Caucasian	10	15%	82	24%	29%
Filipino***	1	2%	5	1%	6%
Hispanic / Latino	31	48%	94	28%	33%
Native American	0	0%	2	1%	1%
Vietnamese***	5	8%	14	4%	11%
Other	1	2%	14	4%	2%
Decline / Unknown	7	11%	77	23%	0%
Complainants' Responses to Surveys / Intakes	65	100%	336	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.

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 3-F, 3-G and 3-H show the ethnicity of 89 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 3-F: Force Cases Closed in 2012 — Ethnicity of Persons Against Whom Force Was Allegedly Used

	Number of persons	Percentage of total persons	Percentage of San José population*
African American	8	9%	3%
Asian	7	8%	15%
Caucasian	17	19%	29%
Filipino	0	0%	6%
Hispanic / Latino	50	56%	33%
Native American	0	0%	1%
Vietnamese	3	3%	11%
Other	2	2%	2%
Decline/unknown	2	2%	0%
Total persons	89	100%	100%

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

Illustration 3-G: Force Cases — Gender of Persons Against Whom Force Was Allegedly Used

	Number of persons	Percentage of total persons
Male	67	75%
Female	22	25%
Total persons	89	100%

Illustration 3-H: Force Cases — Age of Persons Against Whom Force Was Allegedly Used

	Number of persons	Percentage of total persons
Under age 20	12	13%
20-29 years	15	17%
30-39 years	21	24%
40-49 years	21	24%
50-59 years	8	9%
60 and over	6	7%
Unknown	6	7%
Total persons	89	100%

III. Force Cases Closed and Audited in 2012

A. IPA Audit Determination

The IPA is mandated to audit all complaints in which force is alleged. In 2012, the IPA audited 83 Force Case investigations. The IPA agreed with IA's findings in 77% of these cases after a first review. In 10% of the Force Cases, the IPA requested that IA provide additional documentation, obtain

additional interviews or evidence, and/or complete re-analyses of the facts and supporting rationales. And, in 13% of Force Cases, the IPA concluded that the IA investigation was not complete or objective ("disagreed") or the IPA closed the case despite having some reservations about the IA investigation and/or analysis ("closed with concerns").

Illustration 3-I: IPA Audit Determinations of Force Cases Closed in 2011 and 2012

IPA Audit Determination	Explanation of IPA Audit Determinations in Force Cases	2011 Audits	2012 Audits
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	42 (54%)	64 (77%)
Agreed After Further	After assessing IA's initial investigation, the IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	13 (17%)	8 (10%)
Closed with Concerns	IPA closed the case despite having some reservations about the IA investigation and/or IA analysis	15 (19%)	5 (6%)
Disagreed	IPA audit concluded that the IA investigation was not thorough, complete or objective.	8 (10%)	6 (7%)
Total Force Cases Audited		78 (100%)	83 (100%)

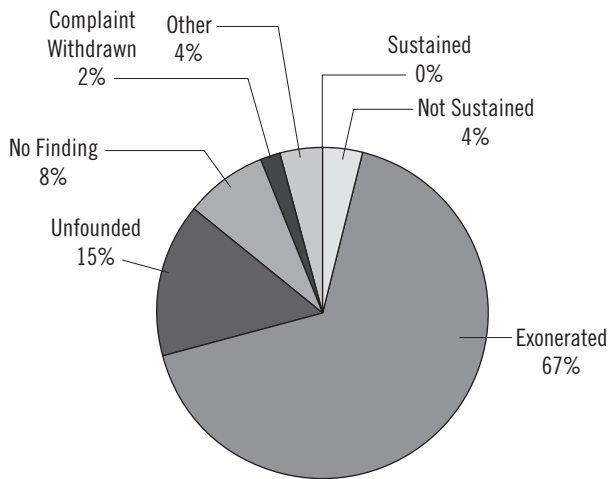
Illustration 3-I reflects that the IPA agreed with about half of the IA investigations after first review in 2011. In 2012, that figure increased to more than three-quarters of the Force Cases. The percentage of Force Cases in which the IPA disagreed with or had reservations about the IA investigation and/or analysis decreased from 29% in 2011 to 13% in 2012.

B. IA Findings for Force Allegations

Illustration 3-J provides general information about how IA treated Force allegations in the complaints that they closed in 2012. Not one of the 159 Force allegations closed in 2012 was "Sustained." 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. The disposition of Force allegations closed in 2012 closely mirrored how Force allegations were closed in 2011.

Illustration 3-J: IA Findings for Force Allegations in Cases Closed in 2012



IV. Data Tracked from Force Cases

The IPA tracks data from Force Cases received in 2012 and from our audits of IA force investigations closed in 2012. 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, witness 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. Types of Force Applications

We collect data about the types of force used in order to track the frequency as shown in Illustration 3-K. 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. Also, 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 applications against multiple officers in one complaint. Additionally, an allegation of force may focus only on one application of one type of force, or it may encompass multiple applications of force. Our review of the data showed that the 159 Force allegations encompassed 221 applications of force.

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 3-K: Force Cases – Types of Force Application Alleged in 2012

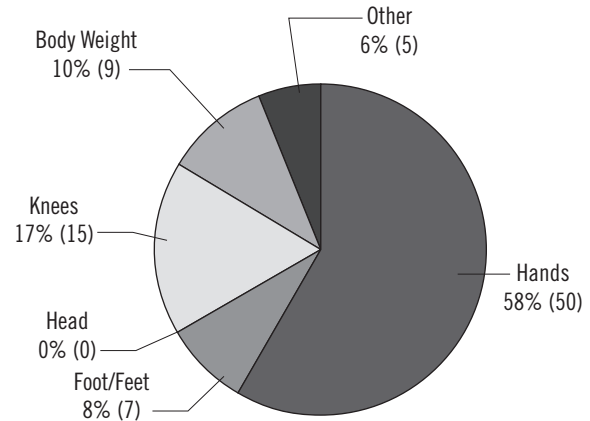
Type of force	Number of Applications	% of Total Force Applications
Canine bite	1	0.5%
Car impact	1	0.5%
Chemical agent	2	1%
Gun	3	1%
Control hold	86	39%
Take down	60	27%
Body weapons	40	18%
Baton	15	7%
Flashlight	0	0%
Taser	10	5%
Other	3	1%
Total Force Applications	221	100%

Illustration 3-K shows that “control hold” was the type of force most frequently alleged within Force Cases in 2012. The next most frequently alleged type of force was “takedown.” The use of “body weapons” and “batons” were the third and fourth most frequently alleged types of force. This data is similar to that in 2011.

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 2012, there were 86 control hold applications that formed the bases of Force allegations. Most of these, 58% (50) involved an officer’s use of his/her hands.

Illustration 3-L: Methods of Alleged Applications of Control Holds (86 total)

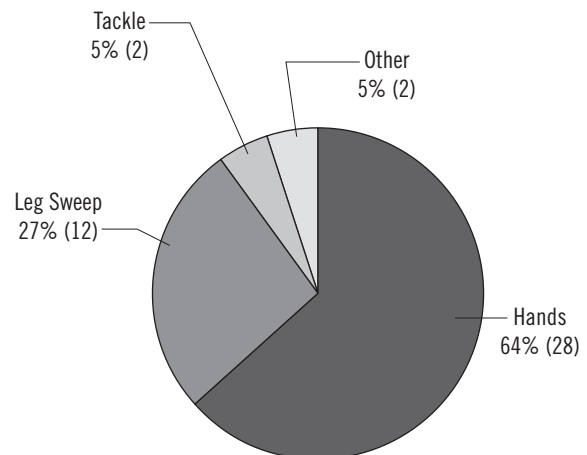


Another 17% (15) complained of officers’ use of knees as a constraint.

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 tackle the suspect to the ground. An officer may force a suspect against a car in order to better control his movements during handcuffing. In 2012, there were 44 takedown applications that formed the bases of Force allegations. Most of these, 64% (28) 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) used “leg sweeps” in twelve cases and

Illustration 3-M: Method Used for Alleged Takedowns (44 total)

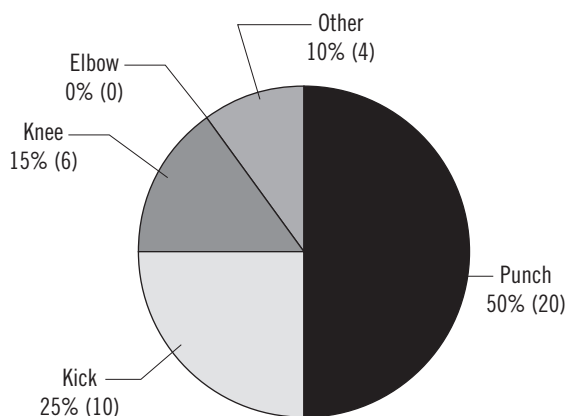


“tackled” suspects in two cases. The IPA tracked complainants’ descriptions of what objects they were forced against during the takedown applications. Complainants alleged that 36 takedowns were against the ground, eleven takedowns were against walls, and ten takedowns were against cars.

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 2012, there were 40 body weapon applications that formed the bases of Force allegations. Most of these, 50% (20) involved officers’ use of hands/fists to punch or hit suspects. In ten Force Cases, complainants alleged that officers kicked suspects. In six Force Cases, complainants alleged that officers struck suspects with their knees. In ten Force Cases, complainants alleged that officers struck suspects with their knees.

Illustration 3-N: Method Used for Alleged Applications of Body Weapons (40 total)



B. 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, 61% (51 of 83), complainants’ descriptions of force were fairly consistent with the force described by the officers. However, in 27% (22) of cases, the force alleged by complainants was significantly inconsistent with the force described by the officers. No determination regarding consistency was made in 12% (10) cases. 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. Additionally, in a significant percentage of Force Cases, the IPA noted that the complainant and/or the subject of the force was likely under the influence of alcohol (29%) and/or drugs (27%) — substances that can impair the ability to perceive and/or recall details.

Illustration 3-O: Consistency between Complainants’ and Officers’ Accounts of Officers’ Use of Force

	Number of Force Cases	% of Total Force Cases
Mostly consistent	51	61%
Significantly inconsistent	22	27%
No determination	10	12%
Total number of Force Cases	83	100%

C. Injuries Allegedly Sustained as a Result of Force

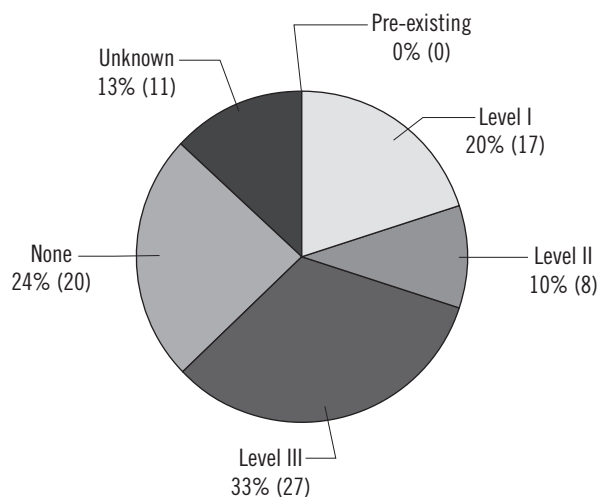
1. Level of Injury Alleged by Complainant

Illustration 3-Q provides data about the levels of injury alleged by complainants. We tracked six categories of injury — Level I, Level II, Level III, “none,” pre-existing,” and “unknown.” Level I reflects the most serious injuries and Level III reflects the least serious injuries. Examples of these three levels are shown in Illustration 3-P.

Illustration 3-P: 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 3-Q: Complainants’ Alleged Levels of Injury



Data from Force Cases closed in 2012 show that allegations of Level III injuries account for the highest percentage of alleged injuries. There were 27 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 complainants were consistent with the injuries reflected in medical reports and records. In 35% (29 of 83) of the cases, the injuries described by complainants were consistent with the injuries reflected in medical reports/records. In 29% (24) 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 refused to sign a medical release or if the complainant was not the person injured and therefore could not authorize the release of another person’s medical records. In eight percent of the cases (7), the injuries described by the complainant were significantly inconsistent with the injuries described in their medical reports/records. In 28% (23) 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 3-R provides data showing the parts of the body that complainants reported were impacted

Illustration 3-R: Location of Alleged Force Applications

Location of Force Applications	#	%
Head	27	18%
Neck	9	6%
Torso	60	40%
Limbs	51	34%
Unknown	3	2%
Total	150	100%

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.

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

Illustration 3-S: Officer-Involved Shootings in 2012

Case	Ethnicity	Mental Illness History	Person Armed?	Police Weapons Used	Prior Criminal Record	CIT* at Scene?	Cause of Injury/Death	Within Policy?
1	Vietnamese	No	Gun	Gun	Yes	No	Death/Gunshot	Pending
2	Caucasian	No	Gun	Gun	Yes	No	Injury/Gunshot	Pending

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

In 2012, there were two officer-involved shootings resulting in injury or death, and one in-custody fatal incident. In 2011, there were eight such incidents. 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 3-U. 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's 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.⁶ 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 3-T, 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.⁷ In 2012, there were several complaints from the public following media accounts of officer-involved shooting incidents.

Illustration 3-T: 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.

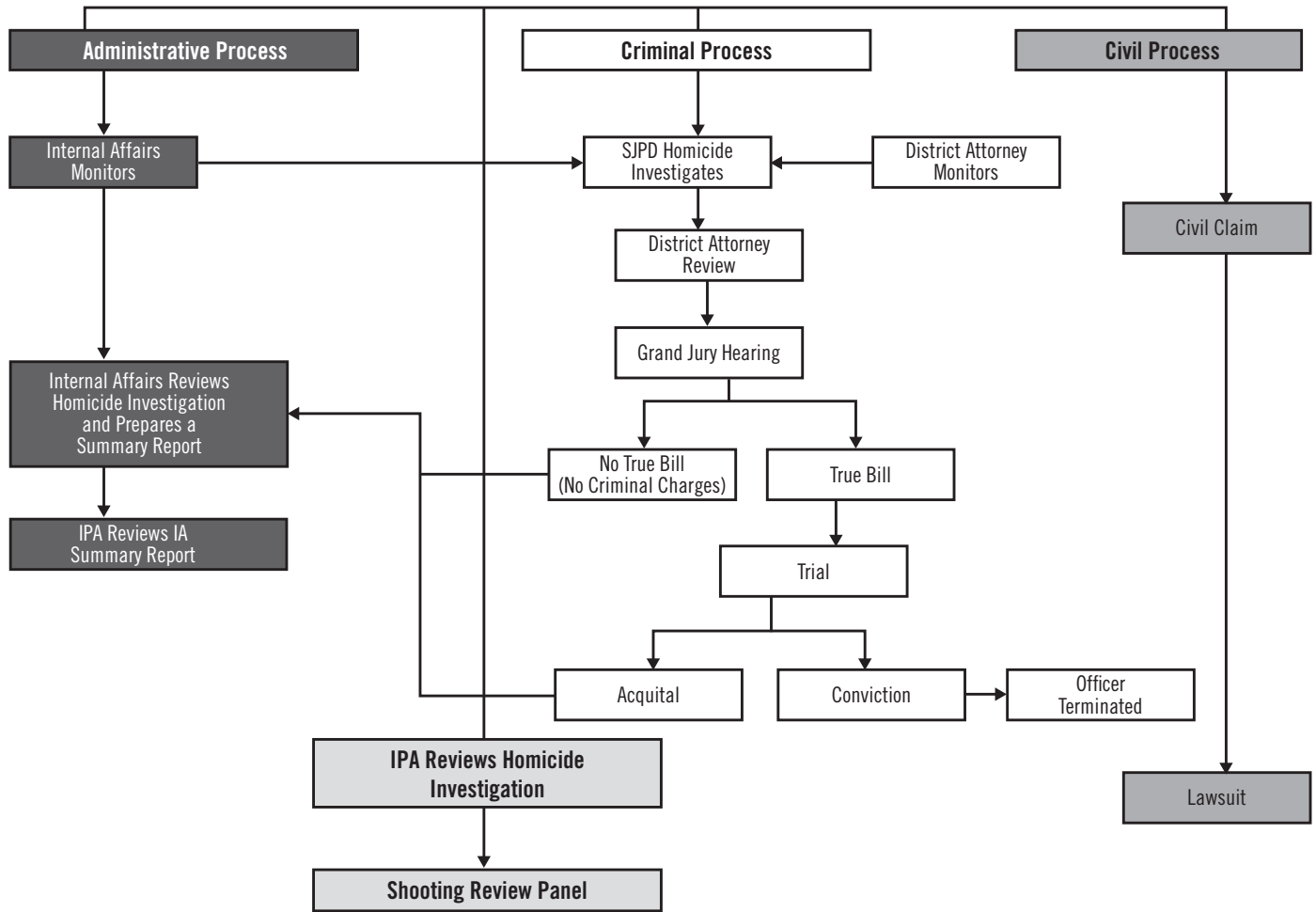
The purpose of the Shooting Review Panel is limited to determining whether, given the circumstances of the incident, any training or equipment needs exist and whether any changes to SJPD policies are warranted. Last year, the IPA voiced concerns that these review panels were not convened until months or even 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. In 2012, eight review panels were convened to review incidents occurring in 2009, 2010 and 2011. The number of reviews held in 2012 reflects a significant improvement over the prior two years in which no panels were held.

⁶ 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.

⁷ 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).

Illustration 3-U: Officer-Involved Shooting Review Process



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, was 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 Four: IPA Audits In 2012 — A Focus On Transparency

I. Overview

The IPA office audits the investigations and findings of the Internal Affairs Unit (IA) for all complaints from the public alleging improper use of force by San José police officers. We also audit a minimum of 20% of IA investigations into other types of alleged officer misconduct. When we perform an audit, we assess whether or not Internal Affairs' investigations and determinations about alleged police misconduct were conducted in a fair, thorough, and objective manner. We then close each audit in one of the following ways: agree, agree after further, close with concerns, or disagree.

Internal Affairs closed 411 cases in 2012. We audited 84%, or 345 of these cases. In 74% of our audits, we agreed with IA's conclusions and did not ask IA to undertake additional actions. In another 10% of the cases, we agreed after IA took further actions that we requested. Typical "further actions" included expanding IA's investigations and re-examining their analyses. The result was that we "agreed" and "agreed after further" with IA's conclusions in 84% of our audits in 2012. In just 16% of our audits we disagreed and had concerns about IA's investigations and/or analyses.

The "agreed after further" closings are especially significant because they reveal the open and respectful lines of communication that exist between the IPA office and IA. Additionally, when IA undertakes further action on these cases, their subsequent investigations are more thorough and their analyses have greater objectivity. In some instances, we persuaded IA to change their findings to ones more favorable to the subject officers than IA's initial findings. Conversely, there were instances where IA persuaded us that their

conclusions were appropriate after we asked IA to re-examine their analyses.

Transparency is critical to maintaining the public's trust in the work of the IPA office. The better that the public understands our role in the complaint and audit processes, the more willing the public will be to seek the services of our office, should the need arise. However, the laws governing confidentiality limit our ability to be transparent. For example, we are prohibited by law from revealing to the public the identities of complainants and the identities of officers investigated for alleged misconduct. We also cannot disclose the discipline, if any, imposed upon officers deemed to have engaged in misconduct. A breach of confidentiality is a serious matter that can result in criminal prosecution.

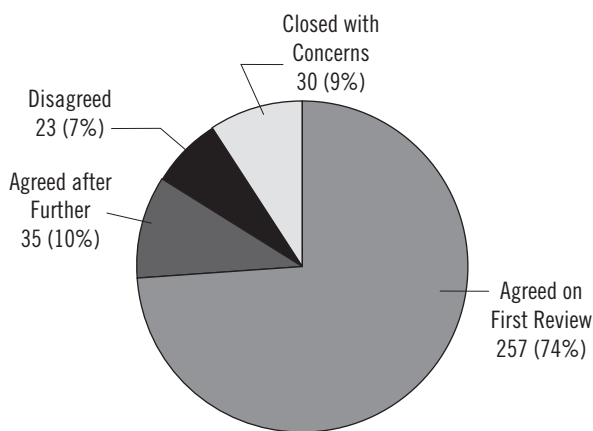
In an effort to promote transparency about our audit process, while strictly adhering to the requirements of confidentiality, this Report presents summaries of all of the cases that our office audited in 2012 in which we agreed after further, closed with concerns, and disagreed. We have "sanitized" these summaries so that the identities of the complainants and subject officers are protected from public disclosure. Similarly, this Report includes summaries of cases in which we agreed with IA's investigations and conclusions without asking IA to take further action. Because we initially agreed with IA in more than 300 cases, we present a representative sample of these summaries.

Our goal in providing this information about our audits is to ensure that the public understands that independence and objectivity are an integral part of the work of the Independent Police Auditor. The table and charts below demonstrate that the IPA's

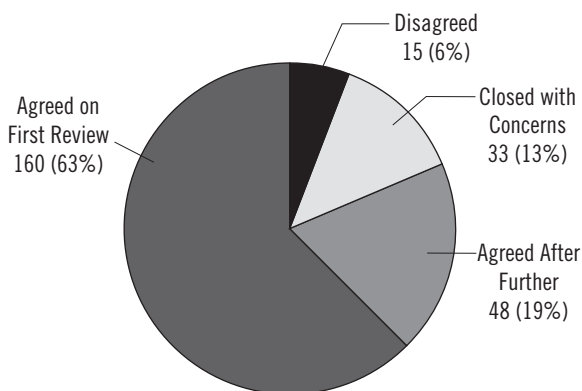
civilian oversight audit process, while it can always be improved, does work.

Audit Determination in Investigated Cases	2011		2012	
	Audits	%	Audits	%
Agreed on First Review	160	63%	257	74%
Agreed after Further	48	19%	35	10%
Disagreed	15	6%	23	7%
Closed with Concerns	33	13%	30	9%
Total Complaints Audited	256	100%	345	100%

2012 IPA Audit Determinations



2011 IPA Audit Determinations



II. Audit Summaries

A. 2012 IPA Audits: Agreed on First Review

Cases # Case Descriptions

1. The complainant and his ex-girlfriend share custody of a child. Officers were called to do a civil standby and enforce a new temporary visitation order. The complainant was served with this order, but did not believe it to be valid. He became very aggressive and would not comply with its terms. The complainant alleged the officers used profanity, derogatory language (Courtesy), and one of the officers drew his baton over his head (Force).

IA's Conclusion: IA interviewed three witnesses, the subject officer, and a witness officer, all of whom said they did not hear the officer use any profanity or derogatory language. Therefore, IA concluded that this did not occur. IA also concluded that drawing the baton was justified given the complainant's aggressive behavior towards the officers.

IPA Agreement and Rationale: Based on IA's thorough investigation including officer and witness interviews, the IPA agreed.

2. The complainant and her 16-year old son were leaving a gym late one evening when a man came up to the open passenger side window and punched complainant's son in the face. Officers responded, but complainant could not provide a description of the attacker or his car. Officers gave her an orange incident card, and did not take a report. The complainant was upset that officers did not take a report (Procedure).

IA's Conclusion: After reviewing the CAD, IA concluded that the complainant's son declined a report, and the complainant stated she would request a report be taken the following day after she asked to see the gym surveillance video. IA interviewed the complainant's son who confirmed he did not request a report be taken. IA concluded that the alleged acts did not occur (Unfounded).

IPA Agreement and Rationale: Based on IA's thorough investigation including interviews of the complainant and the complainant's son, IA appropriately concluded that the alleged acts did not occur, and the IPA agreed.

-
3. The complainant was stopped for a traffic violation and said the officer was rude, aggressive and disrespectful toward her during the traffic stop. The complainant stated that the officer accused her of not being a good parent and told her that she needed to keep her car and house clean. The complainant was also embarrassed that the officer performed a sobriety check. (Courtesy)

IA's Conclusion: IA interviewed the subject officer and two witness officers. The subject officer denied making the rude comments, and the witness officers denied hearing them. (Courtesy) IA concluded there was insufficient evidence to clearly prove or disprove that the comments were made, so made a finding of "Not Sustained." Regarding the sobriety check, the subject officer stated that the complainant's pupils were dilated and the officer had an obligation to determine if the complainant was fit to drive. IA re-classified this allegation as a Non-Misconduct Concern.

IPA Agreement and Rationale: Based on IA's interviews of the subject officer and witness officers, the IPA agreed with IA's conclusions.

-
4. The complainant was involved in a traffic collision with an unlicensed driver and transported to the hospital. No officer responded to the hospital to obtain the complainant's statement. However, when the complainant obtained the police report, she was found at fault. She believed that the other driver should have been cited and his car impounded. (Procedure)

IA's Conclusion: Officers have the discretion whether or not to issue citations. Further, towing the driver's car to his place of choice, as opposed to impounding the vehicle was within departmental procedure.

IPA Agreement and Rationale: Based on IA's reliance on relevant Duty Manual provisions, IA concluded that the officer did not violate procedure, and the IPA agreed.

-
5. The complainant dropped off his 3-year old daughter at his girlfriend's mother's house, and when he returned to pick her up, his girlfriend's mother would not release her to the complainant. He called officers to assist him, but the officers stated that since the child was in a safe place, and the complainant was a registered sex offender and living in a motel, they would not release his daughter to him. (Procedure)

IA's Conclusion: IA contacted the social worker who confirmed that the mother of the child expressed concern over the safety of her child in the complainant's custody. She was also fearful of the possibility of his fleeing with the child. Based on this information, IA concluded that the officers were not required to release his daughter to the complainant, and thus, did not violate Procedure.

IPA Agreement and Rationale: Based on IA's thorough investigation including the interview of the social worker, IA concluded that the officers did not violate Procedure, and the IPA agreed.

-
6. Officers conducted a narcotics search warrant at the complainant's home. The complainant did not believe the officers had legal cause to search the home. She also stated that the officers damaged her personal property during the search, such as cutting into the fabric of the furniture. (Procedure)

IA's Conclusion: IA reviewed the search warrant and concluded that it was valid, having been written by homicide detectives, and executed by the gang unit. Officers are required to conduct the search in a reasonable manner. Based on the photos of complainant's home after the search, the search was not unreasonable.

IPA Agreement and Rationale: Based on IA's thorough investigation including reviewing the search warrant and photos of the complainant's house, IA concluded the search was lawful and reasonable. The IPA agreed.

7. The complainant stated that he was driving shortly after midnight and was stopped for driving without his headlights on. The complainant got out of his car and approached the officer. The officer conducted a pat search and complainant said that the officer told him that he was stopped because the officer wanted to. (Courtesy) The complainant received a citation, but thought he should have only received a warning. (Procedure)

IA's Conclusion: IA reviewed the officer's notes on the complainant's citation and concluded that the pat search was proper. The complainant approached the officer after multiple orders to stop, thereby becoming a safety threat. The officer's conduct did not rise to the level of a courtesy violation, and IA classified this allegation as a Non-Misconduct Concern.

IPA Agreement and Rationale: Based on IA's thorough interview with the complainant, as well as the description of events on the citation, IA concluded that the officer appropriately performed a pat search, and the officer's statements did not rise to the level of a Courtesy violation. The IPA agreed.

-
8. The complainants alleged that officers stopped them and made degrading comments based on their race (Bias-Based Policing and Courtesy). They further alleged that the officers failed to provide identification when asked and inappropriately accused them of engaging in prostitution (Procedure).

IA's Conclusion: In addition to gathering relevant documents, IA

interviewed both subject officers and two civilian witnesses. The descriptions provided by the subject officers and both civilian witnesses (including a friend of the complainants), significantly contradicted the complainants' descriptions of the incident.

IPA Agreement and Rationale: IA properly weighed and evaluated the credibility of all statements. The IPA determined that the IA investigation was fair, thorough and complete

-
9. Some months after his arrest, the complainant alleged that a SJPD officer used excessive force resulting in broken bones when he was arrested on drug-related charges (Force). He also alleged the subject officer used profanity (Courtesy).

IA's Conclusion: In additional to gathering relevant documents (including medical records), IA interviewed the subject officer and four witness officers. IA used diligent efforts to locate and interview two civilian witnesses. IA determined that, although force was used to affect the arrest, the amount of force was reasonable and unlikely to cause the injury alleged by complainant. Medical records showed that the injury was likely sustained while complainant was incarcerated. The finding on the force allegation was Exonerated; the finding on the courtesy allegation was Not Sustained.

IPA Agreement and Rationale: The IPA determined that the IA investigation was fair, thorough and complete.

10. The complainant alleged that after he was handcuffed, SJPD officers threw him to the ground. While the complainant was on the ground, one officer placed his knee on his back and then deliberately pulled the complainant up by his injured shoulder (Force).

IA's Conclusion: In additional to gathering relevant documents (including medical records), IA interviewed the subject officer, one witness officer and three civilian witnesses. IA determined that, although force was used to affect the arrest, the amount of force was reasonable. Officers responded to the scene after the reporting party said that the complainant had climbed onto the house balcony and yelled death threats. The complainant acknowledged that he had violated a restraining order and had been drinking. The complainant and a witness both stated that the complainant attempted to reach for his cell phone while officers were trying to handcuff the complainant. Officers observed that the complainant, who had not been searched for weapons and was struggling against the officers, reached into his waistband. The officers, who feared that complainant was reaching for a weapon, took the complainant to the ground and used their body weight to hold and gain compliance. The subject officer stated that he knew that the complainant's arm had been likely been injured during the takedown and helped the complainant to stand by avoiding pressure to the injured arm. The finding on the force allegation was Exonerated.

IPA Agreement and Rationale: The IPA determined the IA investigation was fair, thorough and complete.

11. The complainant alleged that officers improperly used force and searched him during their initial contact with complainant and during his subsequent arrest (Force, Search/Seizure).

IA's Conclusion: IA gathered relevant documents, including dispatch records and the police report. Dispatch records reflected that a reporting party was worried that a man, who was lying in a sidewalk at night, had been hit by a car. Both dispatch records and the police report indicate that the complainant was belligerent when contacted and threatened to jump over the overpass. The complainant, himself, acknowledged that he threatened to kick the officers. The police report showed that the complainant threatened to harm himself, threatened to harm officers and that the complainant appeared to be under the influence of drugs. The complainant had some crystal-like substance and a glass pipe. The complainant was arrested for resisting arrest and drug-related charges. IA made an Exonerated finding on the force and search allegations.

IPA Agreement and Rationale: The IPA determined that the IA investigation was fair, thorough and complete. The documents and complainant's statement provided an adequate basis to support the IA findings so that interviews of the subject officers were not required.

12. The complainant, an assault victim, alleged that the initial SJPD investigator assigned to her case did a good job but that the second SJPD investigator assigned to her case mishandled it and didn't complete what the complainant

believed was necessary follow-up.
(Procedure)

IA's Conclusion: IA gathered relevant documents; no SJPD officers were interviewed. The evidence IA assembled revealed that the initial investigator completed the case and forwarded it to the District Attorney. The District Attorney decided not to file charges due to significant doubts about obtaining a conviction. IA closed the Procedure allegation as Unfounded.

IPA Agreement and Rationale: The IPA determined that the IA investigation was fair, thorough and complete.

13. The complainant stated that he attended a festival downtown and admitted that he had been intoxicated. He alleged that he was detained and then arrested after he refused to complete a sobriety test. Several officers used force on him, including one officer who twisted the complainant's arm behind his back. After the complainant was released from jail, he sought medical attention and was diagnosed with a broken left wrist (Force).

IA's Conclusion: IA gathered relevant documents (including medical records), and interviewed three subject officers, two witness officers and two civilian witnesses. There was no dispute that complainant was highly intoxicated when he was arrested for being drunk in public. The complainant acknowledged that he would have refused the sobriety tests had he been asked to complete them. The complainant also acknowledged that he did not mention any wrist injury to any

officer or to the nurse at the jail. After he was booked, he was placed in a cell with other inmates and could not recall if he had gotten into a fight. None of the five officers and two civilians who were interviewed knew that the complainant had an injury. The officers described the complainant as verbally abusive at the scene but not physically combative. Officers described using minimal force to handcuff the complainant. IA obtained video from the booking station at the jail. In the video, complainant was seen putting his weight onto his left wrist without hesitation or wincing. IA determined that the force used by the officers at the scene was probably not the cause of the complainant's wrist and that the complainant's injury likely occurred at a time when he in the custody of officers with the Sheriff's Department. IA closed the force allegation as Unfounded.

IPA Agreement and Rationale: The IPA determined that the IA investigation was fair, thorough and complete.

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14. The complainant's RV was towed. The complainant alleged that the officers should have given her three days' notice before towing the RV, that she should have been allowed to remove her belonging before the tow, and that officer improperly used force when he pulled on her shirt collar thus preventing her from re-entering the RV, and that officers laughed at her when she fell down (Procedure, Force, Courtesy).

IA's Conclusion: IA reviewed the relevant documents and conducted interviews. IA determined that the complainant was unreasonable in her

assertion that she should have been warned and the RV not towed. The complainant was warned that the RV would be towed 11 days prior to the tow. The RV was not properly registered and, despite her assertions, the complainant did not have the permission of the property owner to park on his property. The RV had been the source of many neighborhood complaints to the police including concerns about sewage problems and drug sales. IA interviewed several independent civilian witnesses who stated that the complainant removed many boxes and bags from her RV. The complainant acknowledged that she retrieved five to six boxes of items before the RV was towed. IA determined that the officer properly used the minimal amount of force to prevent the complainant from re-entering her RV after she ignored the directions of the officers. The Procedure and Force allegations were Exonerated and the Courtesy allegation was Not Sustained.

IPA Agreement and Rationale: The IPA determined that the IA investigation was fair, thorough and complete. The documents and civilian statements provided an adequate basis to support the IA findings so that interviews of the subject officers were not necessary.

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15. The complainant alleged that the subject officer criticized his driving at the scene of a vehicle accident and then began driving by his home on a weekly basis (Courtesy, Procedure).

IA's Conclusion: After examining the collision report, photographs from the scene of the accident, and

other documents, IA Exonerated both allegations. The accident report was detailed and stated that the complainant was responsible for the collision.

Although the complainant left the scene of the accident, he was stopped by police shortly thereafter and appeared both disoriented and confused. The alleged comments of the subject officer were not discourteous within the context of the motor vehicle accident. In addition, the involved subject officer was assigned to the neighborhood where the complainant resided.

IPA Agreement and Rationale: It was not misconduct for the subject officer to drive by the complainant's home. The IA investigation was thorough, fair and unbiased.

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16. The complainant claimed that he was nearly struck by a patrol car when the subject officer recklessly drove onto the sidewalk near an elementary school. The complainant confronted the officer and alleged that the officer responded with insults and profanity (Procedure, Courtesy).

IA's Conclusion: In addition to examining the relevant documentation, IA photographed the location of the incident and canvassed for surveillance video in the surrounding area. The subject officer was interviewed along with two witnesses. The investigation revealed that the subject officer was involved in a school safety presentation at the time of the incident. He drove his patrol car onto the sidewalk so that young students could safely look inside the vehicle without standing in the road.

According to the subject officer, he never came close to striking the complainant; rather, it was the complainant who approached the subject officer and began cursing in a loud voice. IA made a finding of Exonerated.

IPA Agreement and Rationale:

Witness statements supported the subject officer's version of the incident. A review of the complainant's statement revealed several inconsistencies that called into question his credibility. The IA investigation was thorough, fair and unbiased.

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17. After the complainant's daughter lost custody of the son, the complainant alleged that the SJPD was responsible. Despite her numerous requests for assistance over the years, she felt officers failed to properly document and report potential child abuse. Had the SJPD properly intervened, she alleged, her family would have received the services necessary to remain intact (Procedure).

IA's Conclusion: IA examined lengthy documentation dating back to 2009 regarding complainant's nine contacts with the SJPD regarding possible child abuse. In each incident, the involved officers both completed crime reports and forwarded the documentation to Child Protective Services (CPS). The evidence revealed that the complainant herself had also made numerous calls directly to CPS. IA made finding of Unfounded.

IPA Agreement and Rationale: The IA investigation was thorough, fair and unbiased.

18. The complainant requested the assistance of the SJPD after a verbal altercation with her adult daughter. The complainant was offended when a responding officer asked her about her mental health and spoke out of earshot with her family members. She alleged that the officer refused to provide his badge number when requested (Courtesy, Procedure).

IA's Conclusion: IA examined relevant documentation and interviewed a witness to the event. The subject officer's documentation of the incident was that the complainant yelled at the officer and would not let him speak. The complainant's daughter stated that the subject officer verbally provided his badge number to the complainant and that the complainant was irate during the incident. IA concluded that most of the officer's alleged actions, even if proven to have occurred, did not amount to misconduct. Furthermore, while SJPD officers are required to provide their badge numbers in writing when requested, exceptions do exist. Here, IA concluded that a risk to the subject officer's safety might have occurred had he stopped to write down his name and badge number. IA made a finding of Exonerated.

IPA Agreement and Rationale: The IA investigation was thorough, fair and unbiased.

19. The complainant alleged that several subject officers failed to properly intervene when the father of her child refused to return the child to her in compliance with a court order (Procedure).

IA's Conclusion: IA reviewed relevant documentation, including the crime report and digital recording from the crime scene. The evidence revealed that a sergeant contacted the complainant at her home while two officers conducted a welfare check on the child. They found the child to be in no danger. She was safe, the house was clean and food was available. The child wished to remain with her father for the evening. Since it was late at night and since the child was in no danger, the officers allowed her to remain with her father overnight. The child's father agreed to return the child to the complainant the following day. IA made a finding of Exonerated.

IPA Agreement and Rationale: The officers' decision was consistent with the relevant SJPD policy that provides that the safety and welfare of the child are of paramount concern for the officers. The IA investigation was thorough, fair and unbiased.

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20. The complainant alleged that several subject officers drove their patrol cars on his street at excessive speeds. The police cars had their lights and sirens activated and the complainant saw no pedestrians in the area (Procedure).

IA's Conclusion: IA examined relevant documentation and consulted maps of the involved city streets. The investigation revealed that the involved officers were responding to an emergency after the fire department requested SJPD assistance. Due to a curve in the road, driving at the speed alleged by the complainant,

it would have been impossible for the officers not to have crashed their vehicles. IA made a finding of Exonerated.

IPA Agreement and Rationale: The officers were responding to a significant fire with their lights and sirens activated. Their actions were consistent with SJPD emergency response policies and with the law. The IA investigation was thorough, fair and unbiased.

IA's Conclusion: The complainant did not provide any details of how she was battered or to what extent, although it was clear that she was upset with how she was treated by the subject officer

IPA's Disagreement: If the IA investigator had interviewed the complainant, she would have provided the details of the altercation. We requested that IA interview the complainant.

Outcome: IA interviewed the complainant and then the IPA agreed.

B. 2012 IPA Audits: Agreed after Further

Cases # Case Descriptions

1. IA investigated a Procedure allegation and then closed the case without making a finding due to the subject officer's pending retirement.

IA's Conclusion: Since the subject officer's retirement was imminent, IA closed the complaint with "No Finding."

IPA's Disagreement: IA made findings for three allegations in the complaint involving this same subject officer. Therefore, there was no legitimate reason to withhold making a finding for the fourth allegation. We asked that IA make a finding.

Outcome: IA made a finding for the remaining allegation and then the IPA agreed.

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2. IA closed the case without interviewing the complainant after she alleged she had been mistreated by an officer when she reported an incident of domestic violence.

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3. IA properly relied upon a thorough investigation that was conducted by the SJPD criminal division into the complainant's allegations that the subject officer laughed at her and called her "stupid." IA then made a finding of Exonerated for the Courtesy allegation. The IPA disagreed with the Exonerated finding because the investigation revealed no evidence, other than the complainant's assertion, that the officer had been discourteous to the complainant.

IA's Conclusion: The SJPD investigation showed that the complainant lacked credibility because her claim of sexual assault was unfounded and her claim that she was sober while speaking with the officer was contradicted by eight independent witnesses.

IPA's Disagreement: We believed that since the complainant's credibility had been so discredited by the SJPD investigation that it reasonable to conclude that the incident described

by the complainant did not happen. We recommended that IA change the finding to Unfounded.

Outcome: IA changed the finding from Exonerated to Unfounded and then the IPA agreed.

4. IA made a finding of “Not Sustained” for a Courtesy allegation. The complainant claimed that an officer who responded to a domestic disturbance was discourteous to him when the officer asked, “Why all the drama in your house?”

IA’s Conclusion: Since there were no independent witnesses to the subject officer’s alleged discourteous statement to the complainant, the finding should be “Not Sustained.”

IPA’s Disagreement: We believed that the subject officer’s comment was neither profane nor derogatory. While he could, arguably, have been more tactful when characterizing the upset in the residence as ‘drama’ we believe that his comment was benign and within the Department’s policy. We recommended that the Courtesy allegation be classified as a Non-Misconduct Concern.

Outcome: IA reclassified the Courtesy allegation as a Non-Misconduct Concern and then the IPA agreed.

5. The IA investigation revealed that an officer failed to report the names of two officers whom she supervised and who were possibly involved in an altercation with the complainant. The supervising officer felt it would be unfair to label the two officers as subject officers if it

was uncertain they were involved in the incident.

IA’s Conclusion: The IA investigation was unable to determine the identities of the two unknown officers who apparently used their batons to strike the complainant and his friend. Therefore, IA made a finding of “Not Sustained.”

IPA’s Disagreement: It was not appropriate for the supervising officer to determine what officers should be investigated as subject officers; that determination is made by the Internal Affairs Unit. The supervising officer should have included information about the officers’ identities in the memorandum to Chief Moore. Instead, the supervising officer deliberately omitted material information provided to her by one of her officers.

Outcome: IA opened an administrative investigation into the conduct of the supervising officer; then the IPA agreed.

6. IA investigated a complaint that an officer violated Procedure when he allegedly failed to contact the complainant before towing the complainant’s vehicle. IA then reclassified the allegation as a Non-Misconduct Concern.

IA’s Conclusion: The IA investigation uncovered nothing to suggest that he officer failed to make a reasonable attempt to contact the vehicle driver prior to authorizing the towing.

IPA's Disagreement: Had the officer failed to attempt to contact the complainant then, that failure would have constituted misconduct. But since the officer did attempt to call the complainant, there was no misconduct. We believe the finding should be changed to Unfounded.

Outcome: IA reinstated the Procedure allegation and made a finding of Unfounded; then the IPA agreed.

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7. Complainant filed a Neglect of Duty allegation against a subject officer who took her relative into custody following a citizen's arrest but who failed to conduct any interview of the relative prior to the arrest. IA made a finding of Exonerated.

IA's Conclusion: According to the report by the security officer, the subject officer had sufficient cause to believe that the citizen's arrest was lawful and valid.

IPA's Disagreement: The IA analysis did not address the requirement in Duty Manual section L 3502 that the arresting officer must interview the alleged perpetrator before making a citizen's arrest. There is no discussion in the IA analysis about the requirement that officers interview the alleged perpetrator."

Outcome: IA interviewed the complainant and the IPA then agreed.

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8. IA investigated the complainant's allegation that an officer in the police lobby failed to provide privacy to the complainant when he reported that he had been sexually assaulted. The complainant also claimed that he was

subsequently arrested in retaliation for reporting the sexual assault because the suspected perpetrator was the owner of a business allegedly frequented by police officers. IA sustained the Procedure allegation about the lack of privacy. With respect to the retaliatory arrest allegation, IA classified it as a Non-Misconduct Concern.

IA's Conclusion: The complainant's arrest did not occur until 12 days after he reported the sexual assault. There was no indication the officers who arrested the complainant knew about the assault or that the arrest was in any way connected to the sexual assault report.

IPA's Disagreement: If the conduct complained of had been proved to have occurred, then it would have been misconduct, and not a non-misconduct concern. We asked that the Arrest/Detention allegation be reinstated with a finding.

Outcome: IA reinstated the Arrest/Detention allegation; the IPA then agreed.

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9. IA investigated complainant's claim that officers were discourteous to her when she reported that she had been the victim of a sexual assault in a hotel. The IA investigation showed that the officers had tape recorded their interview of the complainant, but the recording did not capture their entire conversation with her. IA made a finding of Unfounded for the Courtesy allegation.

IA's Conclusion: The subject officers denied that they were less than courteous

and professional and their denials were substantiated by their recorded statement of the complainant. The investigation conclusively proved the act alleged did not occur.

IPA's Disagreement: The tape recording captured only part of the interaction between the officers and the complainant. For this reason an Unfounded finding is inappropriate.

Outcome: IA changed the finding for the Courtesy allegation to Not Sustained; the IPA then agreed.

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10. IA investigated the complainant's claim that an officer did not properly investigate a hit-and-run accident by failing to interview a third witness. IA did not interview the subject officer and made a finding of Exonerated.

IA's Conclusion: The subject officer contacted two witnesses, neither of whom could identify the suspect and hit-and-run vehicle. Since there is nothing in the San José Duty Manual that requires an officer to take a statement from a person who did not witness the collision of a vehicle accident, there was no misconduct.

IPA's Disagreement: Without interviewing the subject officer, IA jumped to the conclusion that this third witness did not or could not have provided important information about a hit-and-run accident. The subject officer should have been interviewed about why he determined there was no need to identify this person and why he failed to record her statement about how

she recognized the car she claimed was involved in the accident.

Outcome: IA interviewed the subject officer and the IPA then agreed.

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11. IA's investigation and analysis determined that the subject officer's excessive speed did not constitute misconduct. IA made a finding of Exonerated.

IA's Conclusion: The subject officer steadily reduced his speed from the high of 79 mph, to an average speed below the posted speed limit of 65 mph. He drove in a manner that did not hinder the flow of traffic and did not jeopardize the safety of the complainant or the public.

IPA's Disagreement: The subject officer's excessive speed was clearly established by the GPS. IA focused upon the officer's reduction in speed and not on the fact that the officer had been speeding. Were a civilian to have driving 79 mph on the highway, it would not be a defense that his driving did not hinder the flow of traffic and did not jeopardize the safety of his passenger or the public. The subject officer was merely transporting a suspect arrested solely for possession of a baseball bat (seized by officers as an illegal weapon) to the police department for booking; there were no exigent circumstances.

Outcome: IA changed the finding from Exonerated to Sustained; the IPA then agreed.

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12. IA investigated the complainant's allegation that officers failed to secure

her residence after they executed a search warrant. When she returned home, she found that her house had been burglarized. IA made a finding of Not Sustained.

IA's Conclusion: One of the subject officers said that he placed his hand on the door and verified that it was locked. Based on the photos of the front door, there was no evidence indicating the door would be unable to close or be properly secured upon the officers' departure. There were no independent witnesses or evidence to corroborate or dispute [the complainant's] claim or the officers' statements. The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint

IPA's Disagreement: Before leaving the residence, two officers confirmed that they repaired part of the door frame that had been broken by the ramming of the door, using a hammer and nails. One of the subject officers took photographs of the front door. The officers' statements which were uncontroverted, together with the photographs of the door, conclusively establish that the house was secured when the officers completed their search. We believe that the finding should be Unfounded.

Outcome: IA changed the finding from Not Sustained to Unfounded; the IPA then agreed.

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13. IA investigated the complainant's allegation that an officer improperly seized her cell phone that she left with a clerk at a gas station. IA's investigation

showed that the clerk at the gas station denied that the complainant left her cell phone there. IA did not interview the subject officer and made a finding of Unfounded.

IA's Conclusion: Two employees at the gas station stated that the complainant never left her cell phone with the clerk as she alleged. One of the employees also stated that no police officer came to the station to retrieve a cell phone. Therefore, the investigation conclusively proved the act or acts complained of did not occur.

IPA's Disagreement: The complainant insisted that the gas station where she left her cell phone was at a different location one than the station investigated by IA. We asked that IA's investigation include the other gas station.

Outcome: IA conducted a further investigation and determined that complainant's story lacked credibility; the IPA then agreed.

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14. IA investigated an allegation that an officer had violated procedure when he admonished the complainant not to be rude to employees of a senior center and when the officer directed the complainant to leave the center or be arrested. IA made no findings for the two Procedure allegations because the subject officer retired from the Department.

IA's Conclusion: Because the subject officer retired from the San José Police Department and is no longer employed by the City of San José, the finding is "No Finding."

IPA's Disagreement: IA's completed investigation showed that the subject officer's conduct was entirely proper and within Department policy. Had the subject officer not retired, he would have been Exonerated. We believed that this finding should appear in his personnel file, especially since any potential employer would likely deem a "No Finding" to be questionable.

Outcome: IA changed the finding to Exonerated; the IPA then agreed.

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15. IA investigated the complainant's allegation that an officer improperly failed to photograph the complainant's head injury. IA made a finding of Unfounded.

IA's Conclusion: The medical report showed that the complainant had a 0.5 centimeter superficial laceration that did not require further treatment. It is reasonable to believe that the officers would not have observed the injury and it is doubtful that the complainant mentioned the injury to the subject officer.

IPA's Disagreement: The Unfounded finding does not match IA's analysis. The resulting finding should have been Exonerated."

Outcome: After IA changed the finding from Unfounded to Exonerated, the IPA agreed.

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16. IA investigated the complainant's allegation that an officer did not accurately report the statement of her minor daughter who witnessed

a domestic violence disturbance in which the complainant claimed she had been battered. IA made a finding of Exonerated.

IA's Conclusion: A Digital Crime Scene search revealed an audio recording of an officer's interview of the complainant and her daughter in which the daughter said that she did not see her father strike her mother.

IPA's Disagreement: Because the officer who took the minor's statement was not listed in the incident report or in the CAD, we asked that IA clarify why this officer's information was not mentioned in the police reports.

Outcome: IA provided clarification about the role of the officer who interviewed the minor officer. IA explained that the officer was not listed in the CAD because he was an investigator with the Family Violence Unit and was, therefore, part of the patrol response to the domestic violence incident. The officer forwarded his completed investigation to the District Attorney's office and that office subsequently declined to file charges. The IPA agreed.

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17. IA investigated an allegation that the complainant's son had been detained solely because he was "a white boy on a skateboard with a baseball hat." IA did not interview the officer and classified the Arrest/Detention allegation as a Non-Misconduct Concern.

IA's Conclusion: The subject officer detained the complainant's son based on information provided by a witness

and not because he was a “white boy on a skateboard with a baseball hat.” The detention was based on reasonable suspicion and the complaint is classified as a Non-Misconduct Concern.

IPA’s Disagreement: There was a detention in this case. The subject officer’s conduct should be reflected as an arrest/detention allegation with a finding of Exonerated.

Outcome: After IA reinstated the Arrest/Detention allegation made a finding of Exonerated, the IPA agreed.

18. IA investigated an allegation that the complainant’s car had been “egged” by a police officer with whom he had had a civil dispute several years earlier. IA characterized the allegation as Conduct Unbecoming an Officer and subsequently made a finding of “Not Sustained.”

IA’s Conclusion: The IA investigation was unable to prove that the vandalism was committed by the subject officer. There was not sufficient evidence to prove clearly or disprove the allegation made in the complaint.

IPA’s Disagreement: The facts pointing to the subject officer’s involvement were tenuous. We believed that a finding of Unfounded was appropriate.

Outcome: After IA changed the finding from Not Sustained to Unfounded, the IP agreed.

19. IA investigated the complainant’s allegations that she was falsely arrested and that her arrest was motivated

by racial bias. The complainant is African American. IA made a finding of Exonerated for the Arrest allegation and classified the Bias-Based Policing allegation as a Non-Misconduct Concern.

IA’s Conclusion: The complainant provided no evidence beyond her own supposition that the officer’s removing her cigarette and pushing her were motivated by racial bias.

IPA’s Disagreement: If IA’s investigation had shown that the subject officer was racially motivated, his actions would constitute misconduct. Therefore, IA should have classified this matter as a Conduct complaint and made a finding.

Outcome: After IA reinstated the Bias-Based Policing allegation and made a finding, the IPA agreed.

20. IA investigated the complainant’s allegations that officers who responded to a domestic disturbance were discourteous to her and failed to ask her questions or to let her talk. IA did not interview the officers. IA made a finding of Unfounded for the Courtesy allegation and classified the Procedure allegation as a Non-Misconduct Concern.

IA’s Conclusion: The complainant’s claim that the officer said in Vietnamese, “We’re so tired of it” was contradicted by an officer’s translation of that portion of his statement. The officers did not use any profane, coarse or derogatory language. The complainant’s numerous allegations did not rise to the level of violations of Department policy.

IPA's Disagreement: The Courtesy allegation should be re-examined in light of contradicting translations of the statement, and the current definition of C 1308 should be applied to the facts. The complainant alleged that the officers did not ask her questions or let her talk and did not make her feel comfortable. The matter is not appropriate for a Non-Misconduct Concern classification.”

Outcome: After IA changed the finding for the Courtesy allegation from Unfounded to Exonerated and reinstated the Procedure allegation, the IPA agreed.

21. IA investigated an allegation that an officer improperly disclosed confidential information about her son. She claimed that her spouse had information about the disclosure and that she possessed emails pertinent to the alleged unauthorized disclosure. IA did not contact her spouse nor read the complainant's emails. IA made a finding of Unfounded.

IA's Conclusion: No copies of a confidential police report were released. The complainant did not disclose any further information to substantiate her claim that a third party was able to pay for and obtain a copy of the report. The investigation conclusively proved that the act complained of did not occur.

IPA's Disagreement: The IA investigation was not thorough. IA failed to contact the complainant's spouse who was a primary source of her information. Also, IA did not read the emails in the complainant's possession which, according to her, would assist

in establishing that the confidential information was unlawfully released by someone at SJPD.

Outcome: After IA re-opened its investigation, the IPA agreed.

22 & 23. IA investigated the complainant's allegation that when he was pulled over at a DUI checkpoint, an officer improperly retrieved his registration from his glove compartment. IA did not interview the officer, closed the complaint as “Withdrawn” and classified the allegation as a Policy complaint.

IA's Conclusion: The IA investigator offered to email the complainant's concerns to the Traffic Enforcement Unit supervisors so that they could talk with him about his concerns. The complainant agreed with this process.

IPA's Disagreement: The IA investigator improperly told the complainant that the search of his vehicle was lawful. As a result, the complainant opted to focus on changing Department policy rather than to pursue the incident as a Conduct complaint. Additional investigation and analysis was required in order to arrive at a conclusion about the propriety of the subject officer's conduct.

Outcome: IA informed our office that the SJPD will henceforth include in the standard briefing the specific requirements for DUI checkpoint stops about the retrieval of documents from drivers' cars, such as registration information. The IPA agreed.

24. IA investigated a claim that the complainant's son, in the midst of a violent psychotic episode at the home, had been subjected to excessive force by officers. The incident reports showed that the officers deployed a taser and used batons to subdue his son. There were no officer interviews. IA closed with a finding of Exonerated.

IA's Conclusion: IA reviewed the video taped recording and concluded that it was consistent with the incident report. The recording showed that the officers calmly and repeatedly made simple command; the officers used force when the complainant's son failed to comply.

IPA's Disagreement: We asked IA to provide to us the taser download information so that we could determine if that information matched the subject officer's description of his use of the taser on the complainant's son.

Outcome: After IA provided the taser download information, the IPA agreed.

25. IA investigated allegations that an officer directed a racial slur at complainant's teenage son when they arrested him. IA treated the racial slur as a Bias-Based Policing allegation and as a Courtesy allegation. After interviewing several officers, IA made a finding of Unfounded for the Bias-Based Policing allegation and Not Sustained for the Courtesy allegation.

IA's Conclusion: There were no independent witnesses to this investigation and the investigation failed to disclose sufficient evidence to clearly

prove or disprove the Bias-Based Policing allegation. The subject officer denied calling the complainant's son a "beaner." Other officers at the scene never heard the subject officer make any comment that was remotely close to the alleged slur.

IPA's Disagreement: The two findings for the same statement were inconsistent. Unfounded means that it is conclusively proved that the officer did not make the statement. Not Sustained means that there is insufficient evidence to prove or disprove that the statement was uttered. The statement should be analyzed only as a Bias-Based Policing allegation with a finding of Not Sustained.

Outcome: After IA changed the BBP finding to Not Sustained and removed the Courtesy allegation, the IPA agreed.

26. IA investigated the complainant's allegation that an officer was discourteous when the officer referred to the complainant as a "child molester." The complainant had been assaulted by a man who believed that the complainant attempted to kidnap the man's granddaughter. The complainant asked the officer why the man had attacked him. In response, the officer said that it was because the complainant was a child molester. IA did not interview the officer. IA concluded that the officer's response was a Non-Misconduct Concern.

IA's Conclusion: Nothing prevented the officer from answering the complainant's question. The officer may have used the suspect's state of mind to speculate about the man's motivation for the attack.

IPA's Disagreement: The IA investigation did not disclose whether or not the subject officer knew, at the time that he answered the complainant's question, that the complainant was a convicted child molester. We asked IA to re-investigate to determine if the officer knew about the complainant's criminal history before he asserted that the complainant was a child molester.

Outcome: After IA further investigated and concluded that the complainant's criminal history was likely known by the officer when he answered the complainant's question, the IPA agreed.

27. IA investigated a complaint that alleged that officers were discourteous and engaged in bias-based policing when they called the complainant "muchacho" and did not believe her when she gave her female name. Complainant is a transgendered female. IA did not interview the officers. IA classified the Courtesy allegation as a Non-Misconduct Concern and made a finding of Unfounded for the Bias-Based Policing allegation.

IA's Conclusion: The subject officers did not exhibit or engage in any conduct throughout their encounter with the complainant that can be construed as bias-based. The complainant's subjective perception was not sufficient to show that the officers acted in a manner based solely on the complainant's subjective gender identity.

IPA's Disagreement: "Muchacho" translated as "boy" would have been discourteous to the complainant, a

transgendered female. The complainant's gender identity is objectively that of a woman. Her female appearance and her use of a female name are objective factors, not subjective.

Outcome: After IA reinstated the Courtesy allegation and performed a re-analysis of the Bias-Based Policing allegation, the IPA agreed.

28. IA investigated an allegation that an officer used excessive force on the complainant's teenage son when he was involved in a physical altercation on a middle school campus. IA made a finding of Exonerated.

IA's Conclusion: The disruptive behavior of complainant's son prompted school staff to call the subject officer for assistance. The subject officer used the amount of force necessary to take an aggressive subject (who was going to strike the subject officer with a skateboard) into custody.

IPA's Disagreement: We believed that the investigation was not thorough and asked that IA interview a civilian witness who was present when the complainant's son interacted with the subject officer, since the officer documented that a school employee witnessed part of the incident.

Outcome: After IA interviewed the civilian witness whose statement supported the officer's description of the incident, the IPA agreed.

29. IA investigated an allegation that officers used excessive force on the complainant when taking her into custody. The

complainant had been videotaped assaulting a customer in a pharmacy and the store manager called the police. IA made a finding of Not Sustained for an unknown officer.

IA's Conclusion: Since there was no independent witness to corroborate the complainant's allegation, there was insufficient evidence to prove clearly or disprove if an unknown officer either slammed her head into the ground or kned her in the head causing an abrasion on her eyebrow.

IPA's Disagreement: There were only two officers who, by their own admission, went hands-on with the complainant. Therefore, there are no "unknown officers" who used force on her.

Outcome: After IA replaced the unknown officers with two named officers, the IPA agreed.

30. IA investigated an allegation that an officer yelled at the complainant and made an obscene gesture at him after the officer stopped his car. IA made no finding because they were unable to identify the subject officer and because the complainant failed to provide additional information to assist IA in identifying the officer.

IA's Conclusion: The complainant stated that he was provided with a partial badge number. It is unknown if he heard the officer correctly or wrote down the wrong numbers. Because the complainant never got back to IA to give more information about the officer, IA was unable to identify the subject officer.

IPA's Disagreement: The IA investigation showed that it was more likely than not that the officer with whom the complainant interacted was identified by IA. IA's investigation into the partial badge number narrowed the possible subject officers to two, one of whom was not logged on at the time of the incident. The other officer was logged on at the time and location of the incident.

Outcome: After IA replaced the "Unknown" officer with a named officer, the IPA agreed.

31. IA investigated an allegation of Conduct Unbecoming an Officer after the complainant alleged that an officer improperly searched her and made derogatory and profane statements to her. When the complainant was stopped by the police, there was a civilian who witnessed the incident. IA made a finding of Not Sustained.

IA's Conclusion: The subject officer denied telling the complainant to lift her bra and said that the stop was conducted behind a building and not on the street. The investigation failed to disclose sufficient evidence to prove clearly or disprove the allegation made in the complaint.

IPA's Disagreement: IA assumed that the civilian witness, who had met the complainant minutes before the police approached them, was untruthful. That witness stated that he did not see the complainant lift her shirt and expose her breasts. We asked that IA re-evaluate its finding of Not Sustained, and consider a finding of Unfounded.

Outcome: After IA reviewed its analysis and persuaded us that the civilian witness’s statement was dubious and likely not credible, the IPA agreed.

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32. IA investigated an allegation that an officer improperly failed to enforce a no-contact domestic violence restraining order that the complainant had against her ex-husband when the two confronted one another at a restaurant. The complainant’s ex-husband denied that he was aware of the restraining order and was not arrested. IA made a finding of Not Sustained.

IA’s Conclusion: Because there were no independent witnesses or evidence to corroborate or dispute the complainant’s claim or the officers’ statements, the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint.

IPA’s Disagreement: The ex-husband was not credible because at the time he was questioned by IA, he was in jail facing criminal charges for violating the restraining order. It would not have been in his interest to admit that he was aware of the restraining order. We asked IA to reconsider its assessment of the ex-husband’s credibility.

Outcome: IA reconsidered its assessment of the ex-husband and persuaded us that the ex-husband was an unbiased and independent witness. The IPA agreed.

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33. The complainant alleged that unnecessary force was used on him by an officer during a car stop. IA investigated

and made a finding of Unfounded.

IA’s Conclusion: The complainant was unable to provide any evidence that the subject officer used force on him. He had no complaint of pain and no visible injuries to support his claim that the officer assaulted him. The witness officer never saw the subject officer kick the complainant’s leg out during the pat search. The force alleged did not rise to the level of “reportable force.”

IPA’s Disagreement: Given the nature of the force that the complainant alleged, it is unlikely that the complainant would seek medical attention. A force allegation is not limited to force that is “reportable.” The complainant’s statement was consistent with his 911 call and with his subsequent statements to IA. The IA analysis improperly gave more weight to the officers’ statements than to the complainant’s statements. We asked that IA perform a re-analysis of the force allegation.

Outcome: IA changed the finding from Unfounded to Not Sustained; the IPA agreed.

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34. The complainant alleged that the subject officer kicked him in the head and caused him serious injuries. The IA’s investigation showed that the officer identified by the complainant was not attached to that incident and was working in a different district at the time. The complainant promised to give to IA photographs of injuries that he claimed to have suffered, but he never did. IA made a finding of “No Finding.”

IA's Conclusion: IA sent a certified letter to the complainant asking him to provide a detailed statement about the use of force by the subject officer. The complainant never responded. Because the complainant was no longer available to clarify the issues about his force allegation, it was closed as "No Finding."

IPA's Disagreement: It was almost certain that the subject officer named by the complainant was not the officer who allegedly used force on him. Therefore, his name should be dropped and replaced with an Unknown Officer, with "No Finding."

Outcome: IA removed the subject officer's name from the Force allegation and replaced it with an Unknown Officer. The IPA then agreed.

35. Complainant was stopped for a traffic violation and was subsequently arrested. The complainant alleged that the subject officer lied when he said that the complainant caused an injury to his lip. IA classified the allegation of Conduct Unbecoming an Officer as a Non-Misconduct Concern.

IA's Conclusion: The officer had no visible injury and the complainant simply denied harming the officer. The proper forum for this type of allegation is the courtroom, not an IA investigation.

IPA's Disagreement: Most, if not all complaints are disputes of fact between officers and complainants. The IA investigation process, not a court proceeding is the appropriate forum. The CUBO allegation should be reinstated

and the credibility of the complainant should be closely scrutinized.

Outcome: IA classified the conduct as a Procedure allegation and made a finding of Exonerated; the IPA agreed.

C. 2012 IPA Audits: Closed with Concerns

Cases # Case Descriptions

1. **IPA Concerns:** The complainants brought Conduct Unbecoming an Officer and Courtesy allegations after a uniformed police officer used a "scared straight ruse" to frighten their teenage son by threatening to arrest him. Although IA sustained both allegations, we had concerns about IA's analysis. Both IA and a non-IA Lieutenant concluded that it was the adverse publicity following the incident, and not the actual conduct of the officer itself that was problematic. The Courtesy allegation was sustained based on the officer calling the teen "stupid." Although the subject officer admitted that he likely dropped the "F-bomb" a couple of times, IA disregarded this admission because a cell phone video of the incident did not capture it. Based on this analysis, we closed with concerns.

2. **IPA Concerns:** The complainant alleged that officers improperly detained him and searched his motel room. IA asserted that the complainant was not credible and that the officers he complained about were not the ones who searched the complainant's room. IA made a finding of Unfounded. We noted that the officer interviews confirmed that the complainant was detained and that

the complainant consented to a cursory search of his motel room. We received the closed IA investigation just 30 days prior to the expiration of the 365-day deadline. Because the rapidly approaching deadline would likely deter IA from conducting additional investigation/analysis, we closed the complaint with concerns.

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- 3. IPA Concerns:** The complainants alleged that the subject officer failed to diligently investigate an incident before making arrests. IA's analysis concluded that the officer was in violation of the Duty Manual and recommended a Sustained finding. When IA sent the case up the Chain of Command for a finding, the non-IA Lieutenant assigned to the case disregarded IA's analysis. Instead, he resolved all doubts in favor of the subject officer. The non-IA Lieutenant acknowledged that the subject officer's conduct violated Duty Manual section L 3502, but he characterized that violation as merely "technical," and then concluded that the officer's conduct was justified. We received the closed IA investigation after the 365-day deadline had passed, leaving us no time to pursue an appeal. Therefore, we closed with concerns.

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- 4. IPA Concerns:** IA classified an allegation of Force as a Non-Misconduct Concern. The complainant alleged that excessive force was used against his mother; he described that officers pushed his mother onto a couch, pulled her down the hallway, and pushed her out of a doorway. IA conducted no interviews. Classifying this allegation as a Non-Misconduct Concern was improper because had the complainant's force allegation been proven to have occurred,

then the officer's actions would have been misconduct, warranting discipline. The IA analysis improperly relied on speculation and not upon facts that could have been established by interviews of officers and the percipient witnesses.

When we forwarded our concerns to IA, IA responded that the alleged force did not meet the standard of "reportable force" and was therefore properly classified as a Non-Misconduct Concern. We responded to IA that "reportable force" is not the standard for determining if a force allegation should be investigated. Because the 365-day deadline was just five days away and, since we agreed with the remaining findings, we closed with concerns.

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- 5. IPA Concerns:** At the behest of a landlord, the subject officer secured the complainant's signature on a three-day eviction notice that the complainant had no legal duty to sign. It was our view that the subject officer exercised poor judgment and overstepped his authority. While we understand that officers have some discretion in mediating acrimonious situations, that discretion must be applied in a neutral and unbiased manner. IA resolved all doubts in this case in favor of the subject officer, and ignored significant discrepancies between the statements of a sympathetic witness and the subject officer.

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- 6. IPA's Concerns:** The complainant alleged that the subject officer was rude to him and ordered him to leave the police department lobby before he could complete his state-mandated registration as a sex offender. His account of the

officer's behavior was corroborated by an independent witness who said that the subject officer 'went off on' the complainant after the complainant expressed annoyance at being forced to wait in line too long. The independent witness felt that the complainant had been mistreated by the officer. IA concluded that the subject officer had not abused his authority and then made a finding of Exonerated. Although it might have been proper for the officer to order the complainant to leave the lobby, the officer's behavior that preceded the argument between the two could have been the impetus for the altercation. That behavior was not considered by IA in its analysis.

take the photographs. But IA concluded that the omission was inadvertent and that the photographs would have been of no evidentiary value. However, because IA did not interview the officer, it was improper for IA to speculate about the subject officer's motivation or intention. His intent was irrelevant to the determination of misconduct. It should be noted, however, that a different police officer who was subsequently assigned to take photographs of the complainant and her vehicle, made six attempts to contact the complainant who failed to respond or to assist in the investigation.

IA also concluded that the officer's alleged non-verbal conduct (eye-rolling) in response to the complainant was not discourteous and did not violate the Duty Manual. We believe that non-verbal conduct does fall under the definition of Courtesy in the Duty Manual. A proper analysis would have determined whether the eye-rolling by the officer, if it occurred, was discourteous.

7. **IPA's Concerns:** The complainant alleged that two officers tried to secure his services as an informant by threatening to tow his companion's truck. IA concluded that the propriety of the officers' conduct was a matter for the courts to decide. We disagreed. We believed there was some evidence that showed the officers may have engaged in improper tactics. There was insufficient time for the IPA to pursue an appeal, and one of the subject officers left the Department while the investigation was pending.

9. **IPA's Concerns:** The complainant alleged that the subject officer inappropriately questioned her about the amount of her monthly rent and laughed at her. She claimed that he told her that his pay was being impacted by her receipt of government subsidized rent and that her television was better than his own. These statements, if made, were clearly mocking and derogatory of the complainant. Without interviewing the subject officer, IA investigated allegations of Procedure and Courtesy and made findings of Unfounded. We requested that IA re-open its investigation and interview the subject officer. IA did so and

8. **IPA's Concerns:** The complainant alleged that she had been assaulted and that the subject officer failed to take photographs of her injuries and of the damage to her car.

She also claimed that the officer had been discourteous to her. The IA investigation showed that the officer admitted failing to

subsequently changed its finding for the Courtesy allegation from Unfounded to Not Sustained. However, IA's findings of Unfounded for the remaining allegations remained unchanged. With just eight days until the 365-day deadline, there was insufficient time for us to pursue an appeal.

10. IPA's Concerns: The complainant called the police for assistance after discovering that her son had broken into her neighbor's house. She claimed that the officer who responded was discourteous to her. IA did not interview any officers or any civilian witnesses. The investigation consisted of a review of the CAD and the dispatch recording. And yet, it took IA six months to close its investigation. IA made a finding of Exonerated. The IA analysis was based on speculation and supposition.

11. IPA's Concerns: The complainant made two calls for service to the SJPD on two different days. When no officers responded, she filed a complaint. Six months elapsed before IA contacted the complainant to investigate her complaint. Frustrated with IA's delay in investigating the matter, the complainant withdrew her complaint.

12. IPA's Concerns: The complainant alleged that police officers, assigned to provide security for Santa Clara Water District employees conducting cleanups of homeless encampments, improperly confiscated and destroyed his possessions. The IA investigation revealed that the officers were not aware of SJPD's long-standing policy for preserving belongings of the homeless during an encampment

cleanup because no one in leadership at SJPD had informed the officers of the policy.

13. IPA's Concerns: The complainant alleged that he was improperly issued a ticket by a SJPD officer in a neighboring city. IA's investigation dismissed the concern by stating that the SJPD Duty Manual did not prevent a San José officer from issuing a traffic citation in another city. In fact, Duty Manual section L 2420 does address this conduct. A thorough and complete analysis would have acknowledged this section and analyzed whether the officer acted in accordance with its provisions. Because the complaint was made 15 months after the citation was issued, IA closed with a finding of "Other."

14. IPA's Concerns: The complainant was informed by two police officers that he could not attend a City Council meeting based upon his disruptive conduct at a City Council meeting the week before. He alleged that he had been unlawfully banned from participating in the meeting. There were no officer interviews. IA resolved all doubts in favor of the officers and made a finding of Unfounded. IA's investigation consisted of examining just one document and interviewing one civilian witness, a city employee, who initiated the removal of the complainant. IA took 373 days to close the case, leaving us no time to pursue an appeal.

15. IPA's Concerns: The complainant arrived at the scene of a 3-car non-injury car accident and asked the officer to write a traffic accident report. She alleged that the officer improperly failed to write the

report. IA investigated this Procedure allegation and exonerated the officer. We disagreed with IA's analysis and finding. IA then opened a companion case in which the complaint was classified as a Policy complaint. We found no reason for IA to open a Policy complaint because the complainant alleged officer misconduct during the incident and did not complain about Department policy, in general.

16. IPA's Concerns: The complainant claimed that the officer who testified in court about her speeding citation was not the officer who issued the citation to her, suggesting a conspiracy between the officers. The IA investigation resulted in a finding of Unfounded. However, the investigation revealed that SJPD utilized the practice of having the officer who operates the radar device pre-sign citations. This practice of pre-signing citations is not in compliance with Duty Manual section L 7614. We agreed with the Unfounded finding, and recommended that SJPD comply with L 7614.

17. IPA's Concerns: The complainant was placed on a psychiatric hold and released after 12 hours, once he was deemed no longer a danger to himself or others. After his release, he asked SJPD for the return of his guns that had been seized by officers when he was taken to the psychiatric facility. SJPD refused to return the weapons to him. The complainant alleged that the refusal to return his guns was a Procedure violation. IA investigated his complaint and exonerated the officers. We questioned the procedures for the return of weapons when a person has been placed on a psychiatric hold, but

not formally admitted to a psychiatric facility. We asked for an opinion from the City Attorney's office to clarify these procedures.

18. IPA's Concerns: The complainant called SJPD dispatch to report that she had been the victim of a hate incident. Subsequently, she was unable to find any information on the SJPD website information about how to file a report about a hate-motivated incident or a hate crime. IA classified her complaint as a Policy complaint and referred the matter to SJPD's Research & Development Unit. We recommended that information about hate crime be made available to the public on the SJPD website.

19. IPA's Concerns: The complainant is an emergency medical technician (EMT) who treated a self-inflicted wound on a patient's neck and determined that it was a "scratch," requiring no further medical treatment. The EMT asked that the officers who responded to the scene transport the patient to EPS for psychiatric treatment. Without looking at the wound, the subject officer disagreed with the complainant's assessment and insisted that the EMT transport the patient to a medical hospital for further medical treatment. The complainant reluctantly transported the patient in an ambulance to a hospital and then filed a complaint about the officer's refusal to transport the patient. IA investigated and made a finding of Exonerated. We recommended that SJPD and the EMT company develop coordinated procedures for the transport of individuals.

- 20. IPA's Concerns:** The complainant's son was taken into custody after being subdued by several officers. She complained of the use of excessive force on him. IA investigated and exonerated the officers. We had three concerns: (1) the deployment of nine officers to apprehend a non-violent probationer with outstanding warrants for non-violent offenses; (2) the use of force by four officers to gain compliance from an unarmed, mentally ill suspect; and (3) the failure of two of the four officers to submit Force Response Reports. We recommended that SJPD refrain from the over-deployment of officers and that the SJPD's Crisis Intervention Training program be re-started as soon as possible.
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- 21. IPA's Concerns:** The complainant complained that when his father was unable to retrieve his wallet that fell inside his vehicle, the officer yelled at him when ordering him to show the officer his driver's license and threatened to throw him out of the car if he failed to comply. IA characterized these statements neither discourteous nor derogatory. Rather, IA concluded that the officer was simply advising the driver of what he would do if the driver did not provide his identification. IA made a finding of Exonerated. We believe that the statement was, in fact, discourteous and that the officer's advisory to the complainant's father should have been delivered in a more respectful fashion. The complainant's father died from cancer shortly after this incident. Subsequently, there were no witnesses to the incident other than the subject officer. We, therefore, closed with concerns.
- 22. IPA's Concerns:** The subject officer responded to a call for service from the complainant who was in a child custody dispute with her ex-husband. She alleged that the officer was rude and made discourteous comments. IA classified her allegation as a Non-Misconduct Concern. IA concluded that the officer's statements that the complainant should be happy that her ex-spouse was picking up the children early to save her costs on daycare were in fact, true. IA also concluded that officer merely expressed his belief that the complainant should be grateful that her ex-husband wanted to pick up the children early.
- IA's analysis minimized the officer's comments to the complainant by characterizing the officer's statements as simply his opinion and, and at the same time, factual. There is no evidence to support which parent was paying for the childcare. The complainant and her ex-spouse's daycare arrangement and the costs for it were irrelevant to a determination of whether or not the officer violated the Duty Manual's Courtesy rule. It was inappropriate for the officer to comment on the situation. IA's analysis was not objective and displayed a bias in favor of the officer.
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- 23. IPA's Concerns:** The complainant alleged that an off-duty officer used excessive force on him when the officer attempted to serve him with a civil summons at the complainant's home in a nearby city. The officer served the summons as a favor for his father who had sued the complainant. The officer and the complainant became involved in a physical altercation that resulted in

the officer performing a takedown of the complainant. IA investigated and made a finding of Exonerated. IA also concluded that there was no conflict of interest when the officer served the summons on behalf of his father. IA further found that the officer was not “representing the Department” when he served the civil summons.

IA’s analysis failed to mention the fact that the subject officer knew, before he served the summons, that the complainant had left a threatening voicemail message on his father’s answering machine. Thus, it was likely that the officer had a bias against the complainant when he served the summons. This bias, at a minimum, created an appearance of a conflict of interest in violation of Duty Manual section C 1450. The officer, when he announced himself as a SJPD officer, drew his firearm, and showed his badge was “representing the Department” as defined in Duty Manual section C 1411. We recommended that SJPD adopt a flat prohibition on the service of civil processes, with the exception for serving legal documents in the course of an officer’s mandated duties.

24. IPA’s Concerns: The complainant alleged that officers failed to investigate two incidents (1) a burglary of her marijuana dispensary and (2) a physical assault on her by a former employee. IA’s analysis determined that the failure of officers to investigate an alleged battery on the complainant was due to a lack of investigative resources. IA’s investigation failed to ascertain what, if any, actions were taken by officers to investigate the

assault on the complainant. The identity and the address of the alleged assailant were known to the officers who responded to the complainant, yet the complainant was advised that there were insufficient resources for an investigation by the financial crimes unit. Battery is not a financial crime.

25. IPA’s Concerns: The complainant was stopped by an officer for exhibition of speed. He alleged that the officer was rude and discourteous to him. The complainant was offered the opportunity by IA and the IPA to mediate his complaint with the officer. He declined to do so. IA raised the complainant’s unwillingness to participate in the voluntary mediation program as a negative reflection on his character and his credibility. IA concluded that the complainant was motivated by retaliation because of his refusal to mediate the complaint and made a finding of Unfounded. The complainant’s decision not to participate in the mediation was irrelevant to the IA investigation. The mediations are entirely voluntary. The willingness of the complainant and the officer to mediate or the reluctance of either to do so has no bearing on character assessment or the merits of the case and should play no part in the IA investigation and analysis.

26. IPA’s Concerns: The complainant watched a SJPD recruitment video at a local movie theatre and was troubled by the violent message of the video. He was also concerned that the recruitment video immediately preceded the showing of a violent feature film. He felt that the recruitment message was inappropriate.

IA closed this Policy complaint as “within Policy” and referred the matter to SJPD’s Research & Development Unit. Since there is no policy governing the review and approval of SJD recruitment videos that are shown to the public, closing this complaint as “within Policy” was improper.

27. IPA’s Concerns: The complainant was issued a citation for stopping his car beyond the limit line. He complained he did not commit the violation and that the officers could not have seen him cross the line from their position behind him. IA investigated and exonerated the officers. IA did not interview the subject officers. We asked that IA re-open its investigation and interview the subject officers to clarify where they were and what they saw when they stopped the complainant. IA refused our request to do so. IA took the position that the issuance of the citation was a matter for the traffic court. We believed that the officers should have been interviewed and that IA should have investigated the conduct of the officers in stopping the complainant and issuing him a citation.

28. IPA’s Concerns: The complainant complained that he was made to wait five hours in the police lobby to go through the pre-booking process. He also complained that an officer in the lobby was discourteous to him when he asked for directions to the restroom. IA classified the Courtesy allegation as a Non-Misconduct Concern. The IA analysis failed to analyze the officer’s comments to the complainant that we believed to be inappropriate and demeaning. IA should have investigated the allegation and made a finding.

29. IPA’s Concerns: The complainant alleged that during a car stop, the officer made him sit in the curb for 30 minutes, did not permit him to take a photograph of the position of his car, and improperly used force when he grabbed the complainant’s wrist. IA classified the force allegation and the curb-sitting as Non-Misconduct Concerns. IA classified the prohibition of the photograph as a Procedure allegation and made a finding of Exonerated. IA’s analysis justified the refusal to permit the complainant to photograph his car as an officer safety issue. We found this justification to be unconvincing. There was little to no analysis of why the complainant was ordered to sit on the curb. Whether or not the force used is “reportable force” is irrelevant to the investigation of a force allegation.

30. IPA’s Concerns: The complainant alleged that he called the SJPD five times over a period of three months to complain about noise disturbances in his neighborhood and requested that officers respond. He complained that the Department failed to respond. IA classified his complaint as a Policy Complaint and determined that the Department had acted “within policy.” The Chief of Police issued a memorandum during the period that the complainant called the SJPD, setting out a new response policy, some of which addressed noise complaints. It appeared to us that the Department had not followed the policy with respect to the complainant’s calls for service. Because the one-year deadline had passed, we had insufficient time to pursue this matter.

D. 2012 IPA Audits: Disagreed

Cases # Case Descriptions

1. IA determined that the officers' alleged laughing at complainant when the complainant urinated on himself was not discourteous.

IA's Conclusion: When the complainant urinated on himself while being detained by the subject officers, it was a minor part of the interaction. The complainant's response to IA's questions about the incident indicated that the complainant was not upset about what happened.

IPA's Disagreement: IA's characterization of the complainant's urinating on himself as "minor" was improper. We asked IA to classify as a Courtesy allegation the officers' alleged laughing behaviors when the complainant urinated on himself. IA declined to do so.

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2. IA determined that its investigation and analysis of an officer-involved shooting of a mentally ill person was thorough and complete. IA conducted no officer interviews and relied on the homicide investigation reports.

IA's Conclusion: A review of the police reports that included statements of officers and witnesses, along with physical evidence, showed that the officers' use of force was reasonable and within the established policies and procedures of the San José Police Department.

IPA's Disagreement: The IA investigation was not thorough or objective because it failed to address the

following issues: (1) the failure to call a CIT (Crisis Intervention Team) officer to the scene; (2) the training or lack thereof of the subject officer to effectively engage with suspects suffering from mental illness; (3) the reasons that the subject officer did not wait for the less lethal weapon to arrive; (4) the threat, if any, the decedent posed to the officers; (5) the reason that the subject officer placed himself in the line of fire of another officer; (6) the reason why the subject officer did not consult with his officers to formulate a plan of action; and (7) the alternative course of action, if any, that the subject officer could have undertaken to arrest the decedent.

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3. IA concluded that officers were justified when they arrested the complainant because the subject officer reported that he had been threatened by the complainant and the complainant's friends. IA did not interview the subject officer and resolved all doubts in favor of the officer.

IA's Conclusion: The subject officer reasonably believed that the complainant and his friends were gang members who were preparing to attack him and his family. Even though the subject officer shook hands with the complainant and his friends, that did not change the fact that a crime was committed.

IPA Disagreement: The IA investigation failed to probe the credibility of the "victim" officer, given the description of the incident provided by the complainants and his friends.

4. IA determined that it was proper to limit its analysis of a Neglect of Duty allegation to the use of force. IA concluded that the officer acted properly when he and the Regional Auto Theft Task Force searched a residence. The owner of the residence insisted that she had not given her consent to the officer to search her home. IA concluded that the owner had not complained of Neglect of Duty.

IA's Conclusion: The complainant made no complaint about Neglect of Duty about the search of her home. Her only complaint was about the force used by officers against her friend who was arrested for car theft.

IPA Disagreement: IA should have included an allegation of Neglect of Duty because the subject officer not only participated in the search, but he supervised the team of officers who participated in that search. Oversight of the entire investigation was the subject officers' responsibility.

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5. IA determined that an officer was entitled to express his opinion by calling the complainant "childish" and, therefore, was not discourteous. IA did not interview the officer. After the IPA requested that IA perform a re-analysis, IA reclassified the "childish" comment as a Non-Misconduct Concern.

IA's Conclusion: The subject officer simply expressed his opinion of the complainant's conduct, something that is within the officer's purview. The comment that someone is "acting like a child" or is "childish" is not discourteous or unprofessional.

IPA's Disagreement: IA reclassified the Courtesy allegation as a Non-Misconduct Concern only after we asked for further investigation. The complainant's description of the officer's derogatory language was a clearly discourteous and unprofessional.

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6. IA investigated the allegation that an officer issued a ticket to the complainant in retaliation after the complainant asked the officer for his name and badge number. IA concluded that the officer acted properly.

IA's Conclusion: The subject officer told IA that he issued the complainant a citation after the complainant asked for his name, but did not do so out of retaliation. Therefore, the subject officer was justified in giving a ticket to the complainant.

IPA's Disagreement: The subject officer confirmed that the complainant asked for his name and badge number after the subject officer took photographs that the officer later discarded, that he cited the complainant at the end of the stop, that he completed a field identification card at the scene, but later threw it away because he did not feel the card was of any value. We believed that this conduct was probative of the claim that the subject officer cited the complainant either to harass him or in retaliation for his asking for the officer's name and badge number. IA failed to consider these facts in its analysis.

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7. IA determined that the officers' use of force in repositioning the handcuffs on the complainant from behind his knees to

behind his back, without first removing them, was justified.

IA's Conclusion: Even though the IA investigation concluded that the officers intentionally replaced the complainant's handcuffs to their original position without first removing them, the officer's actions were reasonable for the safety of the complainant and the officers.

IPA Disagreement: The removal and replacement of the handcuffs could have been safely accomplished by having officers hold each of the complainant's arms while the handcuffs were unlocked, and then, re-handcuffed by one of the four remaining armed officers. There would have been no officer safety issue had the officers first removed the handcuffs and then replaced them on the complainant's wrists. The force used on the complainant was unnecessary and excessive.

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8. IA determined that their investigation showed there was insufficient evidence to prove or disprove the allegation that the officer used profanity against the complainant.

IA's Conclusion: There were no independent witnesses or evidence to corroborate or dispute the incident descriptions provided by the complainant and the officers. The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint.

IPA's Disagreement: The subject officer said that he didn't know if he used profanity, and that he "would not

be surprised" if he had used profanity. The subject officer never stated that he could not recall using profanity. Saying "I don't know" and "I would not be surprised [using profanity]" is not the same as saying, "I do not recall." IA improperly resolved all doubts in favor of the subject officer.

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9. IA determined that the complainant's allegation that an officer was discourteous to her did not occur. The complainant was likely experiencing a mental health crisis at the time of the incident. IA made a finding of Unfounded.

IA's Conclusion: The complainant's bizarre actions during her interaction with the officers raised a concern about her ability to accurately recall the incident. Therefore, her recollection of the incident could not be relied upon for the purpose of the IA investigation.

IPA's Disagreement: IA assumed that the complainant's mental health crisis so undercut her credibility as to render her statements valueless. However, most of the facts of this case supported, rather than undermined, the complainant's credibility. Because her statements have probative value, the Unfounded finding was inappropriate.

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10. IA determined that the officer did not violate Duty Manual section C 1411 when he served a civil summons on the complainant at the law firm that represented her. The officer served the papers as a favor for a fellow officer who was going through a divorce with his ex-wife, who was the complainant.

IA's Conclusion: The subject officer simply dropped the documents in an after-hours drop box at the law office, and therefore, did not represent himself to anyone as a member of the Department in violation of Duty Manual section C 1411.

IPA's Disagreement: An officer “represents” the Department just by virtue of his/her status as a SJPd officer. Because the subject officer was on duty and on patrol when he served the papers, he was a representative of the Department. Additionally, the fellow officer's ex-wife knew that it was a San José police officer who served the documents on the law firm because he provided his name and signature on the form.

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11. The complainant filed his complaint 15 months after the incident. Complaints must be filed within 12 months of the incident unless there are extenuating circumstances to permit the late filing. IA closed the case with “Other” because the one-year deadline had passed.

IA's Conclusion: Due to the timing of the case and other factors, there was no IA investigation. Instead, the case was closed as “Other.”

IPA's Disagreement: We asked that the complaint be re-opened, investigated, and findings made because of the seriousness of the allegation of Neglect of Duty and because there were extenuating circumstances that caused the complainant to file his complaint three months after the one-year deadline. Chief Moore agreed with us and via an

email to our office, directed IA to re-open and investigate. However, through a miscommunication, that Chief's directive never reached IA. The complaint was not re-opened and the 365-day deadline passed making it impossible to impose discipline on the officer, should any discipline have been warranted.

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12. IA determined that the officers did not violate procedure when they refused the complainant access to her diabetes medication after she made multiple requests over a 90-minute period of time.

IA's Conclusion: The audio recording and the complainant's description of the incident showed that she did not have life-threatening symptoms. The officers were trained and had sufficient experience to determine if the complainant was suffering a medical emergency. They determined that she was not.

IPA's Disagreement: Complainant is a diabetic and repeatedly told the officers that she felt ill and needed her medication. Once on notice that the complainant felt ill, officers were required to evaluate her and call emergency medical personnel, if appropriate. The fact that the complainant was not experiencing seizures is irrelevant. The officers failed to evaluate the complainant and repeatedly denied her access to her medication. Officers did not call an ambulance until 90 minutes after the complainant initially complained of feeling ill. IA's conclusion that there was no medical emergency is incorrect. The responding ambulance personnel told the complainant that she needed to go to the hospital.

13. IA determined that officers acted “within policy” during a homeless encampment cleanup in September 2011.

IA’s Conclusion: The homeless encampment clean-up was coordinated and run by the Santa Clara Valley Water District and the officers were on scene simply to ensure it was a peaceful process. The Department’s role with the homeless encampment clean-ups and the Department’s policy should be forwarded to the SJPD Research and Development Unit for further policy evaluation.

IPA’s Disagreement: The IA investigation showed that SJPD was not acting within policy on September 17, 2011. IA’s referral to Research and Development for further policy evaluation was not necessary because the City has already taken corrective action to ensure that encampment cleanup protocols remain consistent with the City’s guidelines issued in 1990.

-
14. IA declined the IPA’s request to add a Bias-Based Policing allegation to its investigation of a pedestrian stop of the complainant who alleged she was treated differently because of her appearance.

IA’s Conclusion: The IA investigator listened to the audio recording of the complainant and concluded that the complainant did not make a bias-based policing complaint against the officers. She was asked, more than once, what her complaint was and she did not clearly articulate the issue of bias-based policing.

IPA’s Disagreement: The complainant stated in the audio recording that she

dressed like a “chola” and that perhaps the subject officer stereotyped her because of the way that she dressed. She stated that she believed that she was stopped by the officers due to her appearance. The Bias-Based Policing allegation should have been added, investigated, and analyzed.

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15. IA determined that the officers did not act in a manner biased against males when they refused to arrest complainant’s wife for domestic violence.

IA’s Conclusion: The laws regarding domestic violence favor women over men. With respect to the victim of the assault (a male) who was allegedly hit in the back of the head, the perpetrator (female) did not have the intent to physically abuse the victim.

IPA’s Disagreement: IA’s analysis failed to consider the possibility that the subject officers were, in fact, reluctant to enforce the domestic violence protocols when the assailant was a woman and the victim a man. IA simply dismissed the possibility that the officers’ decisions were influenced by the genders of the parties. Also, we disagreed that intent to harm must be articulated at the incident scene before an officer can make an arrest for domestic violence.

-
16. IA determined that the officer’s car stop of the complainant in a neighboring city was proper because the officer believed that the complainant and his passenger were casing the officer’s neighborhood.

IA’s Conclusion: The subject officer had reasonable suspicion to detain and

investigate based on his observations, even though nothing was located in the car to rise to the level of probable cause to arrest for burglary.

IPA's Disagreement: The officer's account that he was apprehending "on-view" burglars in his neighborhood surfaced only after other police officers arrived. His account that he couldn't find his cell phone and had nothing to write on in his car lacks credibility, given that he was "on-call." Further, IA failed to assess whether or not the subject officer chased after the complainant in anger because the complainant had flipped him off. IA improperly resolved all doubts in favor of the officer and against the complainant.

-
17. IA exonerated the officers who repeatedly tased a male suspect after, unbeknownst to the officers, he had been severely beaten by civilian assailants. The suspect subsequently died.

IA's Conclusion: The officers were involved in a struggle that required them to make quick decisions to subdue the suspect. The struggle lasted several minutes, until the suspect was finally taken into custody.

IPA's Disagreement: IA's investigation was not thorough or objective for several reasons: (1) there was no examination of whether the officers' use of force was objectively reasonable; (2) there was no analysis of a Police Training Bulletin that governed Taser use; (3) the IA analysis did not examine whether officers complied with the Training Bulletin's directives; (4) there was no analysis of

the deployment of the Tasers by the two officers who tased the suspect a total of 21 times over a span of approximately 3 minutes; (5) not one officer was interviewed; (6) no trial testimony was provided; (7) there was no critical examination of the actual and specific force used by the officers; and (8) all doubts were improperly resolved in the officers' favor.

-
18. IA made a finding of Unfounded for a Procedure allegation regarding the failure of the officers to secure the complainant's bicycle. IA did not interview the officers.

IA's Conclusion: It was unreasonable to conclude that officers arbitrarily or punitively failed to secure the complainant's bicycle.

IPA's Disagreement: In the absence of officer interviews, there was no factual basis for IA to conclude that the officers did not see the complainant's bicycle, or that they were unaware that the bike belonged to the complainant. IA should have interviewed the subject officers. The finding of Unfounded was improper.

-
19. IA made a finding of Exonerated for a Courtesy allegation concerning the officer's alleged inquiry about the immigration status of the complainant during a car stop. The case was sent up the Chain of Command to a non-IA Lieutenant. The Lieutenant, after reviewing IA's analysis of an allegation of an unlawful pat search by the subject officer, made a finding of Unfounded.

IA's Conclusion: It is common practice for police officers to make “small talk” with individuals during a stop and therefore, the officer’s questions about the complainant’s immigration status were proper. The subject officer’s pat search of the complainant raised sufficient concern such that IA requested it be reviewed up the Chain of Command.

Non-IA Lt's Conclusion: The subject officer had reasonable cause to believe that the complainant posed a safety threat and so he conducted a lawful search.

IPA's Disagreement: The subject officer stated that he assumed that everyone he stops is armed and, therefore, conducts a pat search on everyone he encounters as a matter of course when he patrols alone. This conduct is improper and not supported by the legal standard that governs search and seizure. The “small talk” issue should have been analyzed as a Bias-Based Policing allegation, rather than as a Courtesy allegation.

After we disagreed, the finding of Unfounded for the pat search that was made by the non-IA Lieutenant was changed to Not Sustained by those in the Chain of Command. This change did not adequately address our concerns.

20. The complainant alleged that the subject officer failed to write a traffic collision report following a three-car non-injury accident. IA made a finding of Exonerated.

IA's Conclusion: Offices have discretion when deciding whether or not to write a

report about accidents where there is no property damage. Duty Manual section L 6901 had been revised gave the subject officer discretion not to write a report.

IPA's Disagreement: We were provided with no documentation that the subject officer had been made aware of the revised Duty Manual section at the time that he investigated the accident. The revision to section L 6901 gives officers discretion not to write a traffic collision report if the accident involves “two or less vehicles.” This accident involved three cars, which means that the subject officer would have been required to write a report. A finding of Exonerated was no appropriate.

21. The complainant alleged that the subject officer inappropriately directed derogatory language to him. IA made a finding of Not Sustained.

IA's Conclusion: When the subject officer allegedly told the complainant to “stop acting like a punk,” the statement was not derogatory or profane. Rather, the officer merely described the complainant’s behavior at the time. This scenario was merely one person’s word against the other.

IPA's Disagreement: After we disagreed, the case was sent up the Chain of Command to a non-IA Lieutenant who changed the IA finding to Exonerated. We, again, disagreed for the following reasons: (1) the Lieutenant did not record the interview of the subject officer and did not notify our office so that we could attend the interview; (2) the Lieutenant failed to conduct a thorough investigation

before making his finding; (3) while the Lieutenant found that the subject officer did, in fact, tell the complainant to “stop acting like a punk,” he determined that the utterance was not derogatory; and (4) the Lieutenant concluded that the words were appropriate for the officer’s safety. We noted that the complainant was handcuffed behind his back during the entire interaction so that he posed no physical threat to the subject officer. The name-calling by the subject officer did occur and was derogatory; thus, the finding of Exonerated was inappropriate.

-
- 22.** The complainant alleged that the subject officers had no right to detain him when he was sitting in his carport in his car. IA made a finding of Exonerated for the Arrest/Detention allegation.

IA’s Conclusion: The subject officers were in an area of gang activity when they saw the complainant and smelled an odor of marijuana coming from his car. They officers had reasonable suspicion to believe that the complainant was involved in a crime and, therefore, had the right to detain him.

IPA’s Disagreement: It is unlikely that the officers were able to smell the odor of marijuana when they were drove by in their patrol car, some 25 feet from the complainant. The officers subsequently found no marijuana on the complainant or in his car. IA failed to objectively consider these factors in its analysis.

-
- 23.** The complainant alleged that officers were rude to him and did not follow Procedure when they refused to retrieve a knife from a creek bed that he had

been inspecting. IA made a finding of Exonerated for the Procedure allegation and classified the alleged discourteous statements of the officers as a Non-Misconduct Concern.

IA’s Conclusion: It was too dangerous for the officers to climb down the creek bed to retrieve the knife. The risk to the public that was posed by the exposed knife was outweighed by the risk to the officer’s safety. It was not unreasonable for the officers to tell the complainant to retrieve the knife.

IPA’s Disagreement: The complainant alleged that the officers lacked respect for his safety and the safety the public. This allegation should have been investigated as a Conduct complaint. The IA interview of the complainant was akin to a cross-examination and was not an unbiased search for the facts.

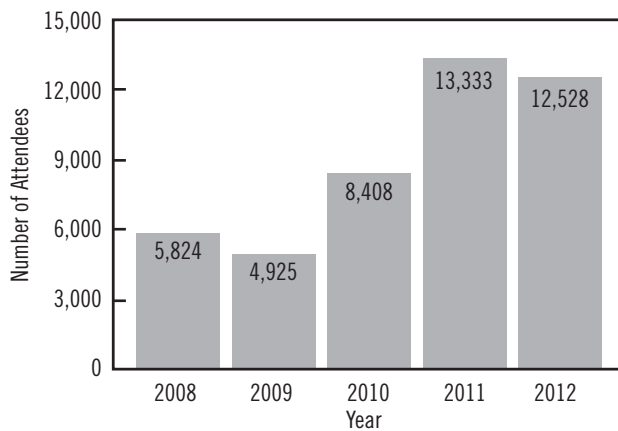
Chapter Five: Community Outreach

I. Overview

Community outreach is a top priority of the IPA office. In 2012, we participated in **174 outreach activities** involving approximately **12,528 members of the public**. These totals were achieved despite a considerable increase in the number of audits we completed in 2012 (up by 37%) and the absence of one full-time employee for some months. While our outreach activities declined by 19% in 2012 from 2011, there was only a 6% reduction in the total number of individuals we reached.

Typically, our outreach activities include participation in community events, presentations to the public and media interviews. A list of our outreach activities for 2012 is provided in Appendix F to this Report.

Illustration 5-A: Attendees at Community Outreach 2011 and 2012



Types of Activity/ Event in 2012	Events		Attendees	
	Events	%	Attendees	%
IPA Presentations	73	42%	5,923	47%
Community Events/ Meetings	101	58%	6,605	53%
2012 Community Outreach Totals	174	100%	12,528	100%

Not included in the 2012 outreach totals are figures from approximately ten activities that we participated in outside of San José and were not directly related to IPA functions. For example, the IPA conducted an interview of Ralph Nader for the Commonwealth Club, moderated a Black Law Students Association conference at Stanford University, and spoke to the Palo Alto Chapter of Amnesty International. At each of these events, the IPA was introduced as San José's Independent Police Auditor.

A. Presentations by the IPA and Staff

Presentations by the IPA and staff are the most effective means to accurately and thoroughly describe the purpose and functions of the IPA office. Presentations range in duration and often include question and answer periods so that audience members may request clarification or simply express their views and concerns. We delivered 73 presentations to 5,923 audience members in 2012. Audiences ranged in size from small groups (e.g., presentation to eight young men at Juvenile Hall) to larger events (e.g. contacted 131 people via IPA resource table at Family Day) to major gatherings (e.g., speech delivered to 2,000 people at Evergreen Valley College commencement).

Positive Public Response

We request attendees at IPA presentations to complete evaluation forms so that we can gauge the effectiveness of IPA presentations.⁸ In 2012, evaluations were completed by 1,130 attendees.⁹

⁸ The evaluation form is in Appendix H of this Report.

⁹ It 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 speaking at a monthly luncheon of the Santa Clara County Law Advocates.

The overwhelming majority (97.5%) of the responders 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?*
– 99% replied yes
- *Was the presenter knowledgeable about the subject matter?*
– 99% replied yes
- *Were the materials provided helpful?*
– 97% replied yes
- *Overall, how would you rate the presentation? (Excellent, Good, Average or Poor)*
– Excellent – 87.4%
– Good – 10.1%
– Average – 1.0%
– Poor – 0.1%
– No response – 1.4%

IPA Presentation at National Conference

In October of 2012, the IPA gave a presentation about community outreach to approximately 50 civilian oversight professionals from around the nation and the world at the 18th Annual NACOLE Conference in San Diego, California. NACOLE, the National Association for Civilian Oversight of Law Enforcement (www.nacole.org), is a nonprofit organization that brings together individuals and agencies working to establish or improve oversight of police officers in the United States. The IPA's presentation received positive reviews.

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, we may engage with attendees on a one-to-one basis or be introduced to large groups of attendees. We also attend monthly meetings and workgroups that involve participation from the local community. Although there was a 14% decrease in our number of community events/meetings attended, the IPA reached 6,605 people through such activities, a 7% increase over 2011. Because of our limited staff resources, it is important that we prioritize populations that are most likely to require our services and that we attend events that involve large audiences.

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 our attendance.¹⁰ Throughout 2012, the IPA met with the Mayor, City Council Members, City Council Appointees, and SJPD Command staff. The IPA attended

¹⁰ If the IPA or staff attends events or meetings that are primarily attended by city employees, those events and meetings are not included in the IPA community outreach numbers. Similarly, if the IPA or staff gives a presentation to a group that is comprised exclusively of city employees, such as SJPD officers, those numbers are not included in our IPA community outreach totals.

IPA Outreach: A Snapshot of August 2012

Typically, IPA outreach averages 14 activities per month. However, in August of 2012, our outreach included 19 different meetings, events and presentations in the community. We strive to meet the scheduling needs of the community and many August events occurred on weekday evenings and weekends. Activities began on the evening of Tuesday, August 7th, when we participated in six National Night Out events. The next morning, IPA staff attended the Mayor's Gang Prevention Task Force meeting at Victory Outreach. That week, the IPA spoke to the McLaughlin Corridor Neighborhood Association and met with the IPA Teen Leadership Council. During the second week of August, IPA staff conducted Spanish-language outreach at the Mexican Consulate, presented to participants of the Valley Homeless Healthcare Program, attended an Education Forum on Gang Violence at City Hall, and returned to the Mexican Consulate for an Anti-Hate Crime event. The IPA spoke at the Billy DeFrank LGBT Community Center on the evening of August 16th and was back out in the community on Monday morning, August 20th, presenting to members of the Sons in Retirement and to community members at the Employment Connection Center. IPA staff attended the Women's Equality Day Celebration that week at the Mexican Heritage Plaza. At the end of the month, IPA staff participated in a Digital/Cloud Task Force Meeting at the Office of the District Attorney and staffed a resource table at the annual Cambrian Festival. In addition to all of the above, the IPA and her staff continued receiving complaints, auditing closed investigations, and managing ongoing projects.

City events, including the Mayor's State of the City Address and the Annual Memorial Event for Fallen Police Officers. The IPA gave a presentation about the work of the IPA office to a group of SJPD officers newly assigned to the lobby of the SJPD Administration Building and to a group of SJPD lateral hires. IPA staff periodically attended a variety of City meetings, including Agenda Review meetings and meetings of the Public Safety and Neighborhood Services City Service Areas.

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 and to those who have mental health issues. We also target those who provide assistance and services to these populations.



Judge Cordell delivering the keynote address at SIREN's Anniversary Celebration. (With news reporter Damien Trujillo, seated.)

A. Outreach to People of Color and Immigrants

In 2012, we participated in **91 events involving people of color, immigrants, and agencies** that serve those populations. This outreach constituted 52% of the total number of IPA outreach activities. Examples include participation in an NAACP Forum at Emmanuel Baptist Church, attendance at the Vietnamese Forum & Resource Fair at Yerba Buena High School, and monthly participation in meetings of La Raza Roundtable. Nineteen of our IPA outreach activities in 2012 were conducted in Spanish or Vietnamese, with translation provided by IPA staff or community volunteers.

Illustration 5-B: Outreach to People of Color & Immigrants in 2011 and 2012

Year	Outreach Activities	% of Total	Attendees	% of Total
2012	91(out of 174)	52%	5,923	47%
2011	97(out of 216)	45%	5,504	41%

Twelve of the 91 IPA outreach activities targeting immigrants in 2012 occurred at the Mexican Consulate in San José. The IPA and the Consul General of Mexico signed an historic Memorandum of Understanding (“MOU”) in 2010 following anecdotal reports of concerns from Mexican Nationals 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 2012, we continued to staff these monthly sessions, speaking to **807 individuals at the Mexican Consulate** and distributing hundreds of information sheets, Student Guides, and IPA wristbands.¹¹

B. Outreach to Youth

The IPA and staff focused much of their outreach in 2012 on young people. IPA youth outreach encourages young people to consider positive ways to respond to law enforcement officers and teaches teenagers about their legal rights and responsibilities. In 2012, we participated in **53 events involving 2,207 teenagers** and the staff who work with them. Youth outreach activities comprised 30% of the IPA’s 174 outreach activities in 2012. The figures are consistent with youth outreach in 2011.

Not reflected in our youth outreach totals are the **349 young adults** who attended IPA presentations in 2012 at locations such as San José State University, the San José Conservation Corp, and

¹¹ The Mexican Consulate in San José serves the counties of Santa Clara, Santa Cruz, San Benito and Monterey. While many of the individuals contacted by IPA staff at the Consulate live or work in San José, some were visiting from surrounding cities.

Illustration 5-C: Outreach to Youth in 2011 and 2012

Year	Outreach Activities	% of Total	Attendees	% of Total
2012	53 (out of 174)	30%	2,207	18%
2011	65 (out of 216)	30%	2,230	17%

Santa Clara University. Since these audience members were between the ages of 18 and 24, they were included in the general outreach totals. We are aware of the unique challenges that young adults face as they transition to adulthood. Like teenagers, it is important for young adults to understand their legal rights and responsibilities when interacting with law enforcement. We look forward to increasing outreach to young adults in the San José community.

As described in Chapter 1 of this Report, the **Student Guide Initiative** created by the IPA in 2011 continued in 2012. We provided over 8,000 copies of the 4th edition of *A Student’s Guide to Police Practices* (“Guide”) to the East Side Union High School District and the Campbell Unified High School District in 2012 for distribution to their freshmen students at approximately 25 different schools. We also provided to school officials a “Teacher Training Video” to familiarize them with the contents of the guide (available at www.sanjoseca.gov/ipa), along with a slide presentation for use during their classroom presentations.

Designed to address common concerns expressed by youth about the police, the Guide has, since its creation in 2003, been a critical tool in IPA youth outreach. In addition to its use in the Student Guide Initiative, the Guide remains the basis of our presentations to teenagers. **Nineteen of our 73 presentations to the community in 2012 focused on the Student Guide.** We spoke to young people at Andrew Hill High School, California Youth Outreach, Del Mar High School, Fresh Lifelines for Youth, John Muir Middle School, Juvenile Hall, San José Community High

School, Shepperd Middle School, Stonegate Middle School, Sylvandale Middle School, the Bill Wilson Center, and Yerba Buena High School. Many of our presentations were made possible through the assistance of community agencies such as the Mexican American Community Services Agency (MACSA), the Girl Scouts Got Choices Program, Catholic Charities, and Asian Americans for Community Involvement (AACI).

The IPA continued to build future leaders in 2012 via the **IPA-Teen Leadership Council (TLC)**. Established in April 2011, the TLC is a diverse group of young San José residents, ages 15 to 18, who live throughout the City of San José. 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 that are on the minds of youth in San José; and (3) to develop their leadership skills. TLC members interact with city officials, community leaders and police officers, and they participate in IPA community outreach events.



Current TLC members with Emeritus members celebrating the holidays in December 2012.

The group meets at least once a month with the IPA and staff to work on projects and to discuss issues and concerns. A highlight of each meeting is a presentation by a guest speaker who discusses his/her own path to public service and leadership. Some of the speakers offer substantive training on particular topics (e.g. local truancy laws,

investigations of motor vehicle accidents, and basic legal rights). In 2012, TLC guest speakers included Mayor Reed, Judge (and former IPA) Teresa Guerrero-Daley, Telina Martinez-Barrientos from Fresh Lifelines for Youth, Laura Aizpuru-Sutton from the District Attorney's Office, Jose Franco and Mariel Caballero from the Public Defender's Office, Sgt. Jincy Pace from the SJPD IA Unit, Jermaine Hardy from the Probation Department's Juvenile Division, and Raul Perez from the City's San José Safe School Campus Initiative.

Due to generous funding from the Castellano Family Foundation, the Comerica Foundation, and a number of private individual donors, the first IPA-TLC Annual Retreat was held over two days in early Spring at the San José Airport Garden Hotel. In addition to team building exercises, the youth identified their goals, discussed leaders they admired, and identified their personal leadership characteristics. IPA staff and three IPA volunteers chaperoned the event.

The month of June 2012 was an exciting one for TLC members. They were featured in the first-ever IPA Public Service Announcement (PSA). The 60-second PSA was produced at local nonprofit CreaTV San José, and debuted on June 21, 2012, at a meeting of the City's Public Safety, Finance and Strategic Support Committee. It has run multiple times on CreaTV's local community cable channel and was screened at a La Raza Roundtable meeting on July 27, 2012. IPA presentations to youth often begin with a showing of the PSA. It is linked to the IPA website (www.sanjoseca.gov/ipa) and can be viewed by clicking on "IPA-Teen Leadership Council Public Service Announcement." It can also be viewed on-line at <http://www.youtube.com/user/sanjoseipa/videos>. More recently, the Public Defender's office graciously agreed to show the PSA in their waiting room on an ongoing basis. In addition, we distributed the PSA to a number of local television stations serving San José.



In Sacramento, each TLC member received a Certificate of Recognition from California Assemblymember Nora Campos.

A second highlight of the year made possible by TLC donors was a trip to the State Capitol in Sacramento on June 18, 2012. TLC members took a tour of the Capitol building and met with Assemblymember Nora Campos, a former San José City Councilmember. The Assemblymember presented each TLC member with a Certificate of Recognition and introduced them to the California legislature on the Galley floor at the start of an Assembly Session.



With smiles and grateful tears, TLC members Nallely Montes, Kayla Williams and Veronica Rubalcava received much-needed computers. (With Senior Analyst Diane Doolan Diaz and Judge Cordell, standing.)

Several outstanding TLC members received recognition in 2012 for their leadership ability, academic achievements, and community service. TLC members Aaron Gamboa, Nallely Montes, and Kayla Williams were recognized with Inspiring

Youth Awards at the San José Youth Commission's annual conference. The IPA delivered the keynote address at the conference and presented the recipients with their awards. On July 17, 2012, Local Union 393 Plumbers, Steamfitters & Refrigeration Fitters awarded Apple computers and printers to TLC members Nallely Montes, Veronica Rubalcava, and Kayla Williams, each of whom overcame significant hardships to excel at school and become the first in their families to attend college. The San José Police Officers' Association awarded a scholarship to Veronica Rubalcava upon her graduation from San José High School and her acceptance at U.C. San Diego.

III. IPA Flyer Mailed City-Wide



Office Specialist Jessica Flores and Assistant IPA Shivaun Nurre discussing recent outreach data.

The IPA office has just six full-time staff, only two of whom engage in public outreach in addition to their other job responsibilities. Given that the population in San José is estimated to be 1 million, we must be creative and cost-effective in conducting outreach. In 2012, for the first time ever, the IPA office reached 194,000 households by including an informational insert in a utility bill mailing by the City that was sent to property owners throughout San José at a cost of \$2,900.00. Many people phoned the IPA office about the insert, including several who did not know that our office existed. You can see the informational insert in Appendix G of this Report.

IV. 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 Year End Reports to City Council,
- "Frequently Asked Questions About the IPA Office" (2-sided information sheet),
- Brochures describing IPA functions and the complaint process, and
- Info Cards (wallet-size) providing IPA contact information and a brief description of IPA services.

The IPA staff 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 on page 101 of this Report or on our website at www.sanjoseca.gov/ipa. Also distributed throughout the year were several thousand bright green IPA wristbands that provide our main phone number.

V. Media



IPA Senior Analyst Diane Doolan interacting with a special group of attendees at an IPA presentation.

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 **67 times in 2012**. The topics that garnered the most media attention were on-officer cameras, the 2011 IPA Year

End Report, the seizure of property at homeless encampments, the resignation and recruitment of a SJPD police chief, and the insertion of IPA leaflets in City utility bills mailed in November 2012. A list of all of 2012 IPA media contacts is in Appendix I.

IPA Media Highlights in 2012:

- February 8, 2012 - A *San José Mercury News* article entitled "Police auditor to host cable TV show."
- April 13, 2012 – A *San José Mercury News* article entitled "Auditor tackles a fresh concern" which addressed issue about the police requiring some members of the public to sit on curbs during police encounters.
- May 1, 2012 - An opinion piece written by the editorial board of the *San José Mercury News* entitled "Police auditor has more good ideas for S.J."
- The airing of a number of "The IPA Roadshow" episodes recorded in 2011 on CreaTV San José Channel 30, which has an estimated viewership of 150,000 in San José and the surrounding area. Many of these episodes are currently linked to the IPA website www.sanjoseca.gov/ipa.
- June 5, 2012 – A one hour interview of the IPA on "Other Voices TV" at the Peninsula Peace and Justice Center. The episode was aired live and can be viewed on-line at <http://vimeo.com/43872978>.

While it is not possible to track every media reference to the IPA and the IPA office, we did note coverage by the following entities:

- Print: El Observador, the Los Angeles Times, Metro Silicon Valley, the New York Times, and the San José Mercury News
- Television: ABC Channel 7, CBS Channel 5 KPIX, Fox Channel 2 KTVU, NBC Bay Area, Telemundo, Univision Channel 14, and KTSF 26
- Radio: KCBS, KGO, KLIV, and KQED



Judge Cordell speaking to members of the Blackford Neighborhood Action Committee.

Not included in this section is the significant number of times the IPA was interviewed, quoted, or mentioned regarding non-IPA related matters. For instance, the IPA was interviewed a number of times in 2012 regarding various ballot initiatives and was referred to in articles regarding community events in the Palo Alto area. They are mentioned here because, regardless of the subject matter, the IPA was always identified as the City of San José's Independent Police Auditor.

VI. IPA Website & Facebook Page

Available on the IPA website (www.sanjoseca.gov/ipa) are IPA outreach materials, such as the Student

Guide, year-end reports, information about the complaint process, and general information about civilian oversight of law enforcement. Under the section **News & Announcements**, you can find links to current IPA developments, announcements and events. There were 24,778 visitors to the IPA website during 2012 and a total of 247,579 hits or files requested by visitors.¹² The IPA can be found on Facebook as “Office of the Independent Police Auditor, San José.”

VII. Independent Police Auditor Advisory Council

The Independent Police Auditor Advisory Council (IPAAC)¹³ 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. A roster of the 2012 IPAAC members is in Appendix L.



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.

¹² The 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.

¹³ The Independent Police Auditor Advisory Committee has changed its name to Independent Police Auditor Advisory Council.

VIII. Outreach by City Council District

In 2007, the City Council began requesting IPA 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 2012 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.

Illustration 5-D: Outreach by City Council District in 2011 and 2012

Council Districts	% in 2011	% in 2012
District 1	2%	1%
District 2	2%	3%
District 3	44%	41%
District 4	14%	11%
District 5	8%	10%
District 6	8%	5%
District 7	10%	13%
District 8	4%	5%
District 9	3%	2%
District 10	2%	3%
N/A*	3%	6%
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.

Neighborhood Events

Each year, some of our community outreach is directed to residents of a particular neighborhood or district. We participated in 35 such events and meetings in 2012, including:

- National Night Out events in Districts 2, 3, 5, 7, 9, and 10
- Community resource fairs and festivals in Districts 4, 7, 8, 9, and 10
- Public safety events in Districts 4, 8, and 10
- Senior walks sponsored by Districts 1, 6, 10
- “IPA Roadshow” presentations in most City Council districts (see below)

IPA Roadshow Presentations

Following her appointment in April 2010, the IPA conducted an IPA Roadshow presentation in every San José Council district. Due to popular demand, the program returned to most districts in 2011 and 2012. These were the “IPA Roadshow” presentations in 2012:

- **District 1** – November 1, Blackford Neighborhood Action Coalition, Starbird Youth Center
- **District 2** – December 13, Edenvale/Great Oaks Neighborhood Association, Edenvale Community Center
- **District 3** - October 10, McKinley-Bonita Neighborhood Association, McKinley Elementary School
- **District 5** – November 26, Hillview Neighborhood Association, Dorsa School; and November 28, District 5 United, Dr. Roberto Cruz Alum Rock Library
- **District 6** - November 26, Coalition for Justice & Accountability, Asian Americans for Community Involvement
- **District 7** - November 7, Catholic Charities Parents Group, Los Arboles School
- **District 9** – October 24, Erickson Neighborhood Association, Erickson Elementary School
- **District 10** - December 3, Santa Teresa Foothills Neighborhood Association, Santa Teresa High School

Chapter Six: IPA Recommendations

I. 2012 IPA Recommendations

When the electorate of the City of San José amended the City Charter in 1996 to create our office, they voted to include, among our responsibilities, that we recommend ways to improve how San José police officers perform their duties. When members of the public make complaints about the conduct of San José police officers, the issues that they raise in their complaints frequently provide bases for our recommendations to improve SJPD policies and procedures.

In 2012, our office made 18 recommendations to the SJPD, all of which the Department has agreed to adopt. The following are four recommendation highlights:

- **Require officers to log-in whenever they drive city-owned vehicles**, including when they are driving to and from their homes. This recommendation arose from a complaint that an officer had allegedly been speeding during his commute to his residence in another city. The officer had not logged onto the Automated Vehicle Locator/GPS during his commute, making it difficult to establish if he had, in fact, driven in the manner of which the civilian complained. (Recommendation #3)
- **Annually require that all tasers issued by the Department be calibrated**. This recommendation resulted from a complaint about an officer-involved shooting in which a taser had been deployed. In the ensuing police investigation about the shooting, the taser's use could not be confirmed because the device had not been recalibrated for several years. (Recommendation #8)
- **Revise the Duty Manual establishing a flat prohibition on officers serving civil processes except when mandated by law**. Two complaints gave rise to this recommendation. In one case, an on-duty officer, at the request of his friend, a fellow officer, served papers on a law firm that represented his friend's divorcing wife. In the other case, an officer (off duty), as a favor for his father, served papers on an individual (the complainant) that his father was suing. A physical altercation between the officer and the complainant ensued that resulted in the officer subduing and handcuffing the complainant. (Recommendation #11)
- **Require officers who tape record custodial interrogations to include the Miranda warnings in the recordings**. This recommendation arose from a complaint in which the officer's recording of the complainant did not include a Miranda warning. The complainant claimed that the officer did not give him the warning; the officer said that he did give the warning. (Recommendation #17)

2012 IPA Recommendations To SJPD

IPA RECOMMENDATIONS

RATIONALE

Recommendation #1:

Create written protocol requiring that all subject officer interviews conducted up the Chain of Command by non- IA officers (1) be recorded and (2) that the IPA be provided 48 hours notice of the interviews.

The IPA has audited cases in which second interviews of subject officers were conducted up the Chain of Command by officers not assigned to IA. The IPA had no notice of these interviews and because these interviews were not recorded, we were unable to review them in the audit process.

Recommendation #2:

Revise the tow hearing procedure to ensure that civilians understand that their “conversations” with the tow officers are, in fact, tow hearings; and require that all tow hearings be recorded.

The IA investigation reported that, “The complainant likely didn’t realize her conversation with the tow officer was, in fact, a tow hearing. Her confusion is understandable because ‘tow hearing’ is a misnomer. The name appears to indicate some sort of formal event, something similar to a traffic court hearing. The ‘hearing,’ however, can simply be a telephone conversation with an officer assigned to the SJPD Auto Desk who collects all the facts and renders a decision about fee waivers and the legality of tows.”

Recommendation #3:

Require officers to log any time that they are driving city-owned vehicles, including the times that they are driving to and from their homes.

A civilian tailed an officer who was allegedly speeding recklessly in a SJPD-owned unmarked MERGE Unit vehicle during his commute on Hwy. 101. The officer had not logged onto the Automated Vehicle Locator/GPS during his commute, making it difficult to establish whether he was driving in the manner the anonymous complainant described.

Recommendation #4:

Require officers to obtain parental and/or school permission before transporting minors (who are not suspects) in patrol vehicles.

The subject officer gave a school safety presentation at a local preschool. Afterward, he agreed to let a least one of the children ride in the car with him as he moved his vehicle a short distance. He acknowledged that he had not obtained parental permission for the ride. Had there been an accident and the child injured, the City might be exposed to liability.

IPA RECOMMENDATIONS

Recommendation #5:

Ensure that officers who request social security information from civilians, advise them that they have the option of declining to provide this information.

RATIONALE

The complainant was upset that a witness was asked to supply her social security number, which information was written by the officer on the “additional parties” form. Neither the complainant nor the witness was advised that she had an option not to provide the information.

Recommendation #6:

Discontinue the practice of signing affidavits of probable cause by officers who are not percipient witnesses.

The complainant was arrested for 647(f); the “Affidavit for Probable Cause” was signed by an officer who was not the percipient witness to the arrest, but instead by an officer who was given a synopsis of the events by the percipient witness officer.

Recommendation #7:

Require officers who draw and point their weapons at or in the direction of a person to document such action in the CAD or in an incident report.

The complainant alleged that an officer threatened him and pointed a gun at him during the timeframe when complainant and his wife (the officer’s sister-in-law) were in divorce proceedings

Recommendation #8:

Establish an Annual Taser Recalibration Day on which all Department-issued tasers are recalibrated.

The complainant’s father was shot and killed by an officer who, during initial contact, deployed his taser. In the ensuing investigation, the taser deployment could not be confirmed because the weapon had not been recalibrated for several years.

Recommendation #9:

Stop the practice of using Penal Code Section 849(b) “informally.”

The complainant was purportedly released under 849(b) but his release did not comply with the requirements of the statute. In discussions with IA, we were told that officers frequently release suspects under 849(b) “informally.” The statute provides only three situations that permit an officer to release an arrested individual. The complainant’s release did not fall under one of the three listed in 849(b).

Recommendation #10:

Include in standard briefings the requirements of limited searches for car registration documents at DUI checkpoints

The complainant was stopped at a DUI checkpoint. An officer retrieved his registration from his glove compartment without complying with limited search requirements.

IPA RECOMMENDATIONS

RATIONALE

Recommendation #11:

Revise DM section C 1411 to establish a flat prohibition on service of civil processes in any jurisdiction by officers, whether on or off duty.

An on-duty officer served a document on a law firm as a favor for his officer friend who was involved in a divorce proceeding. The officer maintained that he was not “representing” the Department when he served the document.

Recommendation #12:

Discontinue the practice of pre-signing LIDAR citations.

The LIDAR officer signed the speeding citation before it was issued; the citation was subsequently issued to the complainant, but not by the officer who signed it. L 7614 permits only the issuing officer to sign the citation.

Recommendation #13:

SJPD should discuss and develop with Emergency Medical Services (EMS) a protocol for the transport of individuals with medical issues, chronic inebriants, and those with psychiatric issues.

The complainant, a paramedic, medically cleared a person who had inflicted a scratch on her neck with a knife and requested that officers transport the person to EPS. The Sergeant on scene disagreed with the medical assessment. Instead he insisted that the person be treated at the hospital, requiring the ambulance to transport her.

Recommendation #14:

Create guidelines for officers who may interact with transgendered individuals so that officers can avoid using words that are offensive to this population.

The complainant, a transgendered female, was offended when officers allegedly called her “muchacho” and insisted that she was a man and that she lied when she gave the officers her legally changed female name.

Recommendation #15:

Include information on the SJPD website informing members of the public about how to file reports of hate incidents and hate crimes.

The complainant, the victim of a hate incident, was unable to find on the SJPD website information about how to file a report of a hate-motivated incident or a hate crime.

Recommendation #16:

Create a “Decline to Investigate” classification to fairly, uniformly and expeditiously address clearly implausible or incredible complaints.

Recommendation #17:

Include in the Duty Manual a requirement that whenever custodial interrogations are recorded, officers must include their Miranda warnings and the suspects’ responses in the recordings.

The officer tape recorded the complainant’s statement but did not include the Miranda warning in the recording. Complainant claimed that the warning was not given to him by the officer. The officer insisted that the warning was given.

IPA RECOMMENDATIONS**Recommendation #18:**

Require periodic training for officers assigned to the police lobby; review and improve the Gatekeeper system that tracks visitors waiting for service in the lobby

RATIONALE

The complainant waited for five hours to be processed for booking after the officers in the lobby lost track of him. The Gatekeeper computer system that tracks visitors allows multiple officers to access the database under one officer's name so that inadvertent or intentional misuse of the system cannot be monitored.

II. IPA's 2011 Recommendations: An Update on Implementation

In 2011, our office made 30 recommendations affecting SJPD policies and procedures, all of which were adopted by the Department. (You can read all the 30 recommendations in our 2011 Annual Report on the IPA website: www.sanjoseca/ipa.gov)

We have asked SJPD to provide to us an update on the implementation of these recommendations. The Department reported that 14 of the 30 recommendations have been fully implemented, and that the remaining 16 are either "in review" or "in progress."

Our office disagrees with SJPD's update responses to three of our 2011 recommendations:

- **Tracking Pedestrian and Vehicle Stops:** Recommendations #1, #19, and #20 proposed that officers document the identities of individuals who are the subjects of their pedestrian and vehicle stops, along with their activities during the stops. Chief Moore adopted these recommendations and subsequently issued Duty Manual section L 5108 directing officers to implement this documentation. Acting Chief Esquivel has suspended L 5108, pending its rewriting. To date, these recommendations have not been implemented. Please see Chapter Seven: Still Thinking Outside the Box for further discussion about this issue.

What follows is a chart that shows the status of all of the 2011 recommendations as reported to us by the Department, along with our responses.

Status: 2011 IPA Recommendations

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<p>Recommendation #1: Adopt a curb-sitting policy that requires officers to document in the CAD or in an incident report when curb-sitting is ordered, the ethnicity/race of the those ordered to curb-sit, and the specific reasons for the curb-sitting (e.g., officer safety because the officer was verbally threatened by the suspect, etc.)</p>	<p>Complainant and four others staged a peaceful protest in front of a church in December. 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. The incident was videotaped by a bystander.</p> <p>There were anecdotal reports from individuals, many of whom were people of color, who claimed that they were unnecessarily forced to curb-sit following minor traffic stops and pedestrian stops when they posed no threat to the officers.</p>	<p>In Progress Staff working on detention memo (R&D)</p>	<p>IPA disagrees with a rewriting of DM L 5108 that was authorized by Chief Moore.</p>
<p>Recommendation #2: Where a video exists, require (in the IA Guidelines) that IA question a subject officer about the incident before showing the video to the officer.</p>	<p>A subject officer was shown a video of an incident in an IA interview before being questioned about his conduct, thereby allowing him the opportunity to conform his responses to the IA interviewer to the video that had been taken by a bystander.</p>	<p>Completed Incorporated into IA's Procedural Manual.</p>	<p>Implementation verified.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<p>Recommendation #3: Provide training for all officers on service of Steagald warrants and adopt policy requiring all officers participating in service of any type of search warrant to read the warrant before executing service.</p>	<p>SJPD officers served a Steagald search warrant that restricts the items that can be searched. One of the officers unwittingly read a document that was not included in the Steagald warrant. The officers involved in the execution of the Steagald warrant had not read the warrant and they had not been informed of the restrictions of a Steagald warrant.</p>	<p>In Progress Provide training¹ by 4/19/13</p>	<p>Proof of implementation to be provided by SJPD on 4/19/13.</p>
<p>Recommendation #4: Improve oversight of SJPD officers' secondary employment & timecard submission.</p>	<p>A complainant alleged that three SJPD officers did not have proper secondary employment permits.</p>	<p>Completed Addressed in SEU Memo DM C1500 (SEU)</p>	<p>Implementation verified.</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. (Penal Code 832.7(b))</p>	<p>A complainant elected to withdraw his complaint and asked for the return of documents that he had submitted to IA. His request was erroneously refused by IA.</p>	<p>Completed City Attorney has reviewed and clarified with IA and IPA (IA)</p>	<p>IPA agrees.</p>
<p>Recommendation #6: Adopt a social media policy (Facebook) that addresses real and perceived conflicts of interest.</p>	<p>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.</p>	<p>Completed SJPD Memo 2009-027, DM C1450, and City Policy (R&D)</p>	<p>Implementation verified.</p>
<p>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) and include an advisory that officers may review only incident reports and the case files pertaining to the complaint under investigation.</p>	<p>The subject officer, in order to prepare for his IA interview, discussed the incident that gave rise to the complaint with a witness officer.</p>	<p>Completed This direction added to officer admonition by 2/28/13 (IA)</p>	<p>Implementation verified.</p>

¹⁴Training will consist of an email, bulletin, roll call, video, or Admin TV or any combination depending on topic

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<p>Recommendation #8: Adopt policies (1) that accessing criminal history by dept. members is prohibited unless for official business of SJPD; and (2) that access to criminal history of complainants and civilian witnesses is prohibited by subject and witness officers in IA investigations; include this admonition in notice and reminder letters.</p>	<p>The subject officer brought to the IA interview documentation of the complainant's criminal history, a listing of police contacts between the complainant and the police, and incident reports (not pertaining to the subject complaint) in which the complainant was the subject.</p>	<p>Completed 1) In DM at C 2002-2003 2) direction added to officer admonition</p>	<p>Implementation verified.</p>
<p>Recommendation #9: Whenever possible, require CIT officers, if available, to respond to calls for service at board & care facilities for the mentally disabled.</p>	<p>A complainant who was arrested at a board & care facility, became combative when being transported to the jail and had to be subdued with pepper spray and leg shackles.</p>	<p>Completed Already in Communications policy manual C1214 & R1216 (COM)</p>	<p>IPA disagrees; there is no specific reference to board & care facilities.</p>
<p>Recommendation #10: Require officers to lock the doors of cars or residences if the sole occupants are arrested.</p>	<p>A complainant was served with an EPRO at his residence and taken into custody. The vacant residence was left unsecured.</p>	<p>In Progress DM L 5414 already addresses this issue. Staff will review adding a "securing residence" to the DM by 4/19/13</p>	<p>Proof of implementation to be provided by SJPD on 4/19/13.</p>
<p>Recommendation #11: Adopt formal process for moving memos and bulletins into the duty manual in a timely fashion.</p>	<p>A complainant's car was ordered towed by an officer who was unaware of the revised tow procedures that had been published in the SJPD training bulletins, but not listed in the Duty Manual.</p>	<p>In Progress Process will be researched based on project priority (R&D)</p>	<p>Proof of implementation not yet provided by SJPD.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<p>Recommendation #12: Add to IA Unit Guidelines that IPA summaries are not to be abridged.</p>	<p>The summary of a complaint written by the IPA office was edited by IA without the IPA's consent. The edit deleted the majority of the complainant's allegations. These allegations were subsequently reinstated.</p>	<p>Completed IA provided training (IA)</p>	<p>Implementation verified.</p>
<p>Recommendation #13: Revise L5403 (towing) emphasizing "whenever possible" language when officers must contact vehicle owners to avoid tows; if the contacts are unsuccessful, then the officers must document the contact efforts.</p>	<p>Complainant's car was stolen. When it was recovered, she was not contacted by SJPD; instead, it was ordered towed. Complainant was required to pay the tow fee in order to recover her car.</p>	<p>In Progress Provide training by 4/19/13</p>	<p>Proof of implementation to be provided by SJPD on 4/19/13</p>
<p>Recommendation #14: Adopt a policy requiring officers who issue citations to write their notes on the back of the citations, and not maintain notes elsewhere</p>	<p>Complainant was cited for standing in the roadway. The officer wrote his comments about the stop on his separate and personal notepaper, instead of writing them on the back of the citation. The officer was subsequently unable to locate his notes.</p>	<p>In Progress DM L2503 and training (R&D) by 4/19/13</p>	<p>Proof of implementation to be provided by SJPD on 4/19/13.</p>
<p>Recommendation #15: Require officers executing a search warrant in a residence to take before and after photos of the scene, when practicable.</p>	<p>Complainants' residence was searched pursuant to a search warrant. They complained that the officers left their home in disarray. Photographs of the residence were taken by an officer before and after the search.</p>	<p>Staff will review adding this recommendation to DM section L 4811 by 4/19/13</p>	<p>Proof of implementation to be provided by SJPD on 4/19/13.</p>
<p>Recommendation #16: Establish written guidelines for use of informants; establish a policy that prohibits officers from using their personal funds to pay informants.</p>	<p>The complainant was a confidential informant who alleged that she had not been properly paid for her services.</p>	<p>Completed Addressed in DM L3600, specifically L3616-L3618 (R&D)</p>	<p>IPA disagrees; the DM fails to prohibit officers using their personal funds to pay informants "on the side."</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<p>Recommendation #17: Establish a policy for in- field strip searches.</p>	<p>While the rules for in-field strip searches are listed in Penal Code Section 4030, they do not appear in the SJPD Duty Manual.</p>	<p>Completed Addressed in DM L2911 (R&D)</p>	<p>IPA disagrees. The DM sections fail to set forth the stringent requirements necessary before strip searches can be conducted in the field.</p>
<p>Recommendation #18: Provide training for officers working the SJPD lobby about rules regarding accepting summons.</p>	<p>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.</p>	<p>In Progress Training on DM L4000) by 4/19/13 (R&D)</p>	<p>Proof of implementation to be provided by SJPD on 4/19/13.</p>
<p>Recommendation #19: Require officers to document in the CAD reasonable suspicion for detentions (during vehicle and pedestrian stops) when no incident reports are written.</p>	<p>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.</p>	<p>In Progress Staff is working on detention memo (R&D)</p>	<p>IPA disagrees with a rewriting of DM 5108 that was authorized by Chief Moore.</p>
<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>In Progress Staff is working on detention memo (R&D)</p>	<p>IPA disagrees with a rewriting of DM 5108 that was authorized by Chief Moore.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<p>Recommendation #21: Establish a policy for tobacco chewing/spitting.</p>	<p>Complainants were offended by officers who spit tobacco during their interactions. They found the spitting to be disrespectful and unprofessional.</p>	<p>Staff is working with the City's OER to research the use of "smoking and tobacco" products while working; staff will provide training to employees via training bulletin and Admin. TV by 4/19/13</p>	<p>Proof of implementation not yet provided to IPA.</p>
<p>Recommendation #22: Convene IA/IPA 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>Completed IA provides ongoing training (IA)</p>	<p>IPA agrees.</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 suffer from hearing loss.</p>	<p>Review IPA will follow up on this issue (IPA)</p>	<p>IPA agrees.</p>
<p>Recommendation #24: Adopt a policy for consistent application of Govt Code Section 3304 (tolling statute)</p>	<p>Tolling is required when a subject officer is criminally charged for conduct that gave rise to the complaint; it is also required when the complainant faces criminal charges for the incident that gave rise to the complaint. Tolling is discretionary when the case under investigation by IA is "complex." When the subject officer is named in a civil complaint that arose from the incident that is the basis of the IA investigation, the IA complaint is "stayed." A consistent and clear application of these rules needs to be established by SJPD.</p>	<p>Completed IPA has clarified this issue with the City Attorney's office.</p>	<p>IPA agrees.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<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>	<p>Completed COP/IPA discussed/ agreed to leave decision at the discretion of the IA Commander</p>	<p>IPA agrees.</p>
<p>Recommendation #26: Permit the IA Commander to recommend Sustained findings</p>	<p>When it is likely that an IA investigation will result in a Sustained finding, the complaint is sent to a non-IA Lt. for a review and a finding. Oftentimes, the non-IA Lt. has no experience with the IA process. Too, the non-IA Lt. assigned to the complaint is the subject officer's supervisor. This process is time-consuming, lacks efficiency, and is open to bias. The Commander of IA, a Lt., has the expertise and the requisite objectivity to make a Sustained finding.</p>	<p>Review COP/IPA discussed and reviewed (IA)</p>	<p>After discussion, SJPD declined to implement. IPA disagrees.</p>
<p>Recommendation #27: Reconcile Duty Manual sections C 1308 and C 1404 with Section C 1710.</p>	<p>There are discrepancies between the Courtesy definitions in Duty Manual section 1308 and section 1710. Similarly, there are discrepancies between the definitions of Conduct Unbecoming an Officer in section 1404 and section 1710. These discrepancies should be reconciled.</p>	<p>Review IPA to discuss & follow up with IPA staff (R&D)</p>	<p>Proof of implementation not yet provided to IPA.</p>
<p>Recommendation #28: Equip all officers with state-of-the-art cameras and establish procedures for their use.</p>	<p>See the Op-Ed of Judge Cordell (Ret.) in the San Jose Mercury News, December 20, 2011 entitled "San Jose Police Officers Should Carry Cameras."</p>	<p>Review COP/IPA discussed and reviewed (COP)</p>	<p>IPA will continue to work with SJPD to secure funding for cameras.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD STATUS UPDATE	IPA RESPONSES
<p>Recommendation #29: Review SJPD language certification procedure and memorialize the procedures; until the procedures are in place, immediately require officers who translate to digitally record their interviews and conversations and to preserve the recordings.</p>	<p>Some SJPD officers serve as non-English speaking translators to interview witnesses, victims, and suspects. The SJPD has no language certification procedure, nor does it have a procedure for periodically testing these officers to ensure that their language skills are competent.</p>	<p>In Progress: R&D to discuss re-certification process with the City's OER and the POA. R&D request info from other police departments about their re-certification processes.</p>	<p>Proof of implementation not yet provided by SJPD.</p>
<p>Recommendation #30: Immediately cease citing individuals for sleeping in their cars (for violation of Municipal Code 6.46.040).</p>	<p>A complainant alleged that he was wrongly cited for sleeping in his car. Municipal Code section 6.46.040 permits sleeping in "house cars" and in "automobile trailers." There is no prohibition in the City of San Jose on sleeping in cars.</p>	<p>Completed Roll call training and Admin TV provided 4/2/12 (R&D)</p>	<p>Proof of implementation to be provided by SJPD on 4/2/13.</p>

Chapter Seven: Still Thinking Outside the Box

In 2012, our office continued to think outside the box about how best to solve problems that sometimes hamper the work of Internal Affairs and the IPA office.

Timeliness: Problem Solved?

In our 2011 Year End Report, we discussed the longstanding problem of the failure of IA to complete many of its investigations in a timely fashion. We proposed two solutions. The first was implementing a pilot project that would replace officers assigned to IA with experienced civilian lawyers. The second was allowing the IA Commander to issue Sustained findings, subject to review by the Chief of Police, rather than sending each Sustained finding up the Chain of Command to officers who are not assigned to IA. The Department considered our proposals and chose not to adopt them.

That being said, IA has not ignored the timeliness problem. In 2012, the IA Commander made it clear to his staff and to us, his intention to make the prompt completion of IA investigations a top priority. The result of this effort is impressive and shows promise.

Historically, we have looked at the 300th day from the day on which the complaint was filed as a good benchmark (or point of reference). This 300-day period is critical because it leaves our office just 65 days to audit each complaint and allows some additional time for IA to conduct follow-up investigations and/or analyses at our

request. This 300-day timeframe is also important because if discipline is to be imposed upon an officer, notice of the discipline must be given to the officer within 365 days of the complaint being received. If the notice is given after the expiration of the 365-day period, the officer cannot be disciplined.

We have seen **dramatic improvement in the timeliness of cases closed by IA** and provided to the IPA for audit. **Credit for this improvement goes entirely to Lt. Michael Knox, the IA Commander.** We expect that IA will capitalize on Lt. Knox’s achievement and continue to close cases in a timely manner.

Number of Complaints Closed by IA After 300 days in 2011 and in 2012

2011	<ul style="list-style-type: none"> • 26% of the complaints closed more than 300 days after complaints filed. • 9% of the complaints closed more than 365 after complaints filed. 	
2012	<ul style="list-style-type: none"> • 15% of the complaints closed more than 300 days after complaints filed. • 3% of the complaints closed more than 365 days after complaints filed. 	<ul style="list-style-type: none"> • 11% improvement over 2011 • 6% improvement over 2011

Detentions: Where's the Documentation?

In 2011, we made 30 recommendations to SJPD, three of which addressed the conduct of officers during their detentions of individuals. We proposed that SJPD document the age and race/ethnicity of civilians during pedestrian stops. Currently, officers are required to document this information for vehicle stops only. We saw no reason to distinguish between pedestrian and vehicle stops. We also proposed that for both types of stops, officers document their actions and the specific reasons for the detentions.

These recommendations arose from concerns expressed by members of the public, especially from communities of color, who objected to their treatment when detained by police officers. During our informal conversations and formal interviews with people of color, many described officers who ordered them to sit on curbs during detentions. They perceived an officer's order to curb-sit as demeaning, humiliating, and unnecessary. Concerns about curb-sitting are rarely, if ever, voiced by persons in any other segments of the community.

Throughout 2012, Chief Chris Moore engaged in discussions with our office about these three recommendations. Those conversations resulted in the Chief's issuance of Duty Manual section L 5108 (Documenting Detentions and/or Searches) on January 14, 2013. L 5108 directs SJPD officers to immediately begin documenting "the justification, manner, duration and scope of their detentions and/or searches" during detentions of pedestrians and drivers. It states that, "[t]he primary purpose of documenting the detention and/or search is that it provides a record that can be used if the detention and/or search are the subject of a complaint, concern or question from a member of the public." And even though the technology to capture the detention data was not yet up and running, Chief Moore sought immediate implementation of L 5108 so that officers would become accustomed to documenting the information.

Documentation is the key to evaluate whether officers are policing San José with an even-handed approach or are treating communities differently. The issuance of L 5108 demonstrated that SJPD leadership took sincere interest in the concerns raised by communities most heavily impacted by police activity. Taking a proactive approach by gathering the basic details of stop demographics and officer conduct is a proactive approach that goes a long way to building trust between SJPD and the community.

Notably, the Consortium for Police Leadership in Equity (CPLE) has supported our recommendations. CPLE was contacted by the SJPD "to conduct an assessment of racial equity in the SJPD's treatment of its residents. CPLE was tasked with identifying the role, if any, of individual officers in the production of any observed racial/ethnic disparities and with delivering a report on their findings, as well as suggestions for policy innovations that could address any concerns [they] found." (CPLE Report at pg. 1) In the conclusion of their final report, CPLE named five items that required additional City action, one of which was "investigate curb-sitting."

"The practice of curb-sitting has become controversial in San José, and for some residents has become synonymous with police disrespect of the community. Again, **the Independent Police Auditor's office has already conducted a far more thorough review than could be achieved within the scope of CPLE's project.** However, consistent with the Independent Police Auditor's report, **we encourage the city to conduct**

a thorough review of the practice in light of both officer safety and community perception concerns.”

(Emphasis added.) (“Protecting Equity: The Consortium for Police Leadership in Equity Report on the San José Police Department.”)

On January 24, 2013, before L 5108 could be implemented, Acting Chief Larry Esquivel suspended the section indefinitely. It is our understanding that Chief Esquivel is rewriting L 5108 to narrow its scope, and that he is delaying its implementation until such time that SJPD technology can actually capture the detention activity data. We are disappointed that more than a year after SJPD adopted our recommendations to document police activities during detentions, nothing has happened. The delay in the documentation and collection of this data benefits no one. We eagerly await the re-implementation of L 5108.

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.