



# 2014 IPA Year End Report



Office of the Independent Police Auditor  
City of San José

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# 2014 IPA Year End Report



Issued April 2015

by

Judge LaDoris H. Cordell (Ret.)

Independent Police Auditor

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# Independent Police Auditor & Staff



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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 eighteen 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**

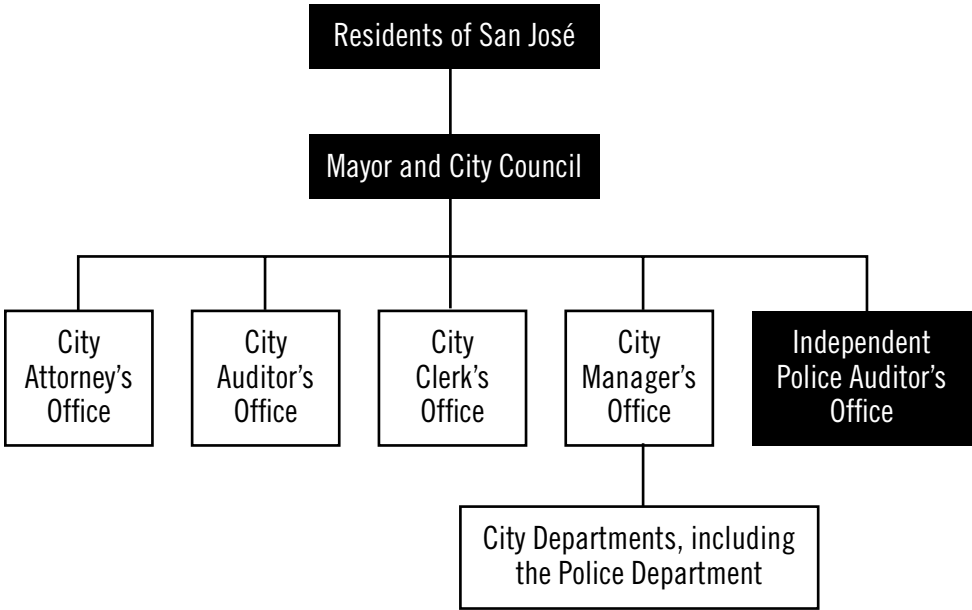
The mission of the Office of the Independent Police Auditor is four-fold: (1) to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations; (2) to conduct outreach to the San José community; (3) to propose thoughtful policy recommendations to the San José Police Department; 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 of 2014 and a Five-Year Review (2010-2014)

In this Year End Report, we bring you a description of the work of the Office of the Independent Police Auditor (IPA) in 2014. We also look back at the last five years of civilian oversight in the City of San José. Below are highlights of some of the topics discussed in this Report.

## Highlights of Independent Civilian Oversight (2014)

- **More Complaints Received at the IPA Office Than at the Internal Affairs Unit**

**(IA):** In 2014, a total of 340 complaints from the public were filed at the IPA office and at the San José Police Department's (SJPD) IA. Of that number, 172 (51%) were submitted to the IPA office. The remaining 168 complaints (49%) were filed with IA. This marks the second consecutive year that complaint filings with the IPA office exceeded those filed with IA, the result of our extensive outreach throughout the City of San José. You can read detailed information about the complaint process in Chapter Two of this Report.

- **Procedure Tops the List of Allegations in 2014:**

One or more of eight allegations of officer misconduct can be the subjects of a conduct complaint. These allegations are Arrest/Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, Neglect of Duty, Procedure, and Search/Seizure. In 2014, members of the public filed complaints containing 817 allegations of misconduct. Of that number, 310 (38%) were Procedure allegations. Force (139) and Courtesy (142) constituted the next highest number of allegations, each accounting for 17% of all allegations. You can read a detailed description

of the complaint and audit processes in Chapter Two of this Report.

- **Detention Data Collection Implemented:**

SJPD Chief Larry Esquivel directed officers, effective January 2, 2014, to begin collecting detention data for all pedestrian and vehicle stops not otherwise documented by arrests or by the issuance of citations. This directive was the result of the IPA office's 2011 recommendation for the collection of detention data. The analysis of one year's worth of the detention data is now underway. We trust that any analysis of this data will be objective and independent—not influenced by stakeholders or interest groups.

- **Effective IPA Outreach Continues:**

The IPA office is only as effective as its outreach to the community. The more that members of the public know that our office is a safe place in which to bring their concerns about San José police officers, the better we are able to provide oversight services. The large number of people that we have reached confirms that our outreach strategies are working. Chapter Six discusses the details of our remarkable outreach efforts in 2014.

- **Unprecedented Consultations with Other Jurisdictions:**

In 2014, the IPA office received requests from a variety of individuals, interest groups, and governmental agencies seeking advice about implementing effective civilian oversight programs. The requests came from police departments in New York City, Pasadena, Santa Rosa, and from the California Highway Patrol. The IPA office also consulted with community groups in Greensboro, North

Carolina, Dallas, Texas, Sonoma County, and Oakland, California.

- **IPA-SJPD Mediation Program Continues:** Initiated in 2011 by the IPA office, the IPA-SJPD mediation program continues to bring complainants and officers together to talk out their differences. This unique and no-cost program is a collaboration of the City of San José, SJPD and the IPA office. Judge James Emerson (Ret.) volunteered as the mediator for all of the mediations in 2014, as he has done for every year since the program's inception. A more detailed description of the IPA-SJPD Mediation Program and the complaints mediated in 2014 are at the end of this chapter.
- **The Teen Leadership Council (TLC) Keeps Transforming Lives:** The TLC is the student advisory board for the IPA office. No other civilian oversight agency in the country has utilized young people in this fashion. The TLC is transforming its young members of today into the leaders of tomorrow. You can read more about the amazing work of the TLC in Chapter Six of this Report.
- **“IPA DAYZ” Calendar Sales Support the TLC:** Judge Cordell created twelve cartoon drawings for an “IPA Dayz” 2015 calendar. Monetary donations for the calendars generated over \$5,000 for the TLC.
- **Sustained Findings Promote Transparency:** In this Report, we present summaries of misconduct allegations that resulted in sustained findings, as well as reader-friendly statistics about those findings. While sustained findings represent just five percent (5%) of all allegations investigated by IA, it is important that the public knows the nature of the misconduct, as well as the types of discipline imposed on the subject officers. Details about

the 2014 sustained findings are in Chapter Four of this Report.

- **IPA Recommendations Are Cutting Edge:** In 2014, the IPA office proposed 18 recommendations to SJPD to improve their practices and policies. Our recommendations focus on issues of concern to the public and to the Department. For example, our recommendation to expand the use of force definition is in response to complaints of excessive force in 2014, and to recent court decisions that have addressed this issue. Our recommendation to prohibit the use of chokeholds is a direct response to the tragic death of Eric Garner in Staten Island, New York. In this Report, we list the recommendations and the rationales to support them. You can read all of the 2014 recommendations in Chapter Five of this Report.

#### **Highlights of Independent Civilian Oversight (2010-2014)**

- **Complaints Received from 2010-2014 Were Steady:** Over the last five years, the total number of complaints was 1,662. Complaint numbers ranged from a low of 281 received in 2010, to a high of 357 received in 2013. For this five-year period, the average number of complaints from the public was 332.
- **Number of Allegations Has Risen:** There were 3,562 allegations of officer misconduct from the public over the last five years. With the exception of a slight dip in 2012 (625 allegations), there has been a steady rise in the number of allegations in complaints from members of the public, culminating with a high of 817 allegations in 2014.

From 2010 to 2014, the type of misconduct most frequently complained of was Procedure. In 2010 and 2011, 32% of the allegations were classified as Procedure. In 2012 and in 2014, Procedure allegations were 38% of all allegations received, with a slight dip in 2013, when Procedure allegations were 30%.

- **No Change in Bias-Based Policing**

**Allegations:** Over the last five years the Department has investigated 192 allegations of Bias-Based Policing, 34 of which were investigated in 2014. IA sustained none of these allegations, deeming all but 19 to be either Unfounded or Exonerated. (The findings for those 19 BBP allegations were either Not Sustained, Exonerated, or No Findings; and a complainant withdrew one allegation.) Indeed, in the history of the SJPD Department, there has never been a sustained finding by the Department for a Bias-Based Policing allegation. In Chapter Four of this Report, we more fully discuss the problems with Department investigations and analyses of Bias-Based Policing allegations. We also provide a detailed review of complaints and allegations received from 2010-2014 in Chapters Two, Three and Four.

- **Outreach Numbers Consistently High:**

There has been a dramatic uptick in the number of San José residents that the IPA office has reached over the last five years. In 2010, with just two staff members available to conduct outreach, the IPA office reached 8,400 people. From 2010 to 2014, due to our innovative and

cost-effective planning, IPA staff reached 59,423, an average of 11,885 people per year. And that number does not include the thousands of individuals we reached with our signage inside public buses, in laundromats located in the city's "hot spots." Also, the *IPA Roadshow* and *Make the Call, San José!*—two programs produced by the IPA Office and CreaTV—were viewed in thousands of households.

- **Sustained Findings Show Alarming Trend:**

Over the last five years, the Department has sustained 162 allegations of misconduct ranging from Procedure to Courtesy to Force. While sustained allegations are a small percentage of all of the allegations investigated by the Department (4% to 5%), for the last two years, it appears that officers with the most years of law enforcement experience are those with most of the sustained findings. This is unsettling, since it is the more experienced officers who should be serving as role models for the new officers. A five-year overview of sustained findings is described in Chapter Four of this Report.

- **Important Recommendations Not Yet Implemented:**

Since 2010, the IPA office has proposed 92 recommendations to the SJPD, most of which have been implemented. However, there still remain those that have yet to be put into practice concerning subjects such as Crisis Intervention Training and Body-Worn Cameras. You can read about the five-year overview of IPA recommendations in Chapter Five of this Report.

## THE IPA-SJPD MEDIATION PROGRAM

In 2014, there were four mediations between complainants and police officers. While either the Internal Affairs Unit (IA) or the Independent Police Auditor (IPA) office can recommend cases for mediations, both must agree upon which cases can be mediated. Factors such as the history of complaints against the subject officers or the type of allegations to be mediated may determine if the cases are appropriate for mediation. Courtesy allegations are considered appropriate for mediations; allegations such as Force, Procedure and Bias-Based Policing are generally deemed inappropriate. Since mediations are voluntary, complainants and officers can choose whether or not to participate. Those complainants who do choose to mediate must agree to withdraw their complaints.

The number of mediations has dropped dramatically since the program was instituted in 2011. In 2012, there were 12 mediations; there were four mediations in 2013 and four in 2014. One reason for the decrease is that fewer complainants and subject officers want to engage in mediation. Some complainants told us that they would not agree to dismiss their complaints, a prerequisite to mediation. Others told us that they were angry about their encounters with the officers and, therefore, wanted them to undergo the disciplinary process. We do not know why subject officers declined to participate since they communicated exclusively with IA. Another factor in the decrease of mediations is that in a few instances, the IPA office and IA did not agree that some complaints were

appropriate for mediation. Still, both the San José Police Department and the IPA office continue to believe in the value of mediation between civilians and police officers. We fully intend to continue this important program.

The Honorable James Emerson, a retired Superior Court judge, volunteered his services as the mediator for all of the mediations in 2014, just as he has done for all of the IPA-SJPD mediations in 2011, 2012 and 2013.

### **Demographics of the 2014 Mediation Participants (from post-mediation surveys):**

- Mediation #1:
  - Complainant: Latino, male, 44 years of age
  - Officer: Latino, male, 37 years of age, and 12 years of service as an officer
- Mediation #2:
  - Complainant: Asian, female, 27 years of age
  - Officer: Caucasian, male, 45 years of age, and 18 years of service as an officer
- Mediation #3:
  - Complainant: Mexican/Italian, male, 24 years of age
  - Officer: Hispanic, male, 26 years of age, and six months of service as an officer
- Mediation #4:
  - Complainant: Indian, male, 38 years of age
  - Officer: Caucasian, male, 42 years of age, and 20 years of service as an officer

### **FACTUAL BACKGROUNDS OF 2014 MEDIATIONS**

- The complainant alleged that the subject officer who stopped him for a traffic violation was verbally aggressive and rude to him.
- The complainant alleged that the subject officer, who stopped her for using her cell phone while driving, did not explain the citation process and called her a liar.
- The complainant was a passenger in a car that was stopped by the subject officer. He alleged that the officer was discourteous and yelled at him when he used his cell phone to record the incident.
- The complainant alleged that the subject officer who responded to his 911 call for assistance was discourteous and failed to arrest a person who broke the complainant's cell phone.

### **COMMENTS BY SUBJECT OFFICERS**

#### **AND COMPLAINANTS ABOUT MEDIATIONS**

#### **(FROM SURVEYS COMPLETED BY MEDIATION PARTICIPANTS)**

#### **Subject Officers' Comments:**

- "I strongly agree that in order to understand each other, there needs to be conversation between both parties. We came to a mutual understanding that we should communicate."
- "Judge Emerson did an excellent job mediating this complaint, especially knowing he volunteered his time."

#### **Complainants' Comments:**

- "Thank you very much for taking the time to come and hear our case. We appreciate it very much."
- "Mediation is the wrong word."
- "Felt like the purpose was for the 'mediator' to better explain and justify the officers' actions. Constantly said how police have to keep the streets safe, and how we shouldn't challenge authority. When we raised the issue of language used by officers, the mediator just said to deal with it."

# Chapter Two: Overview of the IPA Complaint Process from Intake to Audit

## I. Step One: Intake

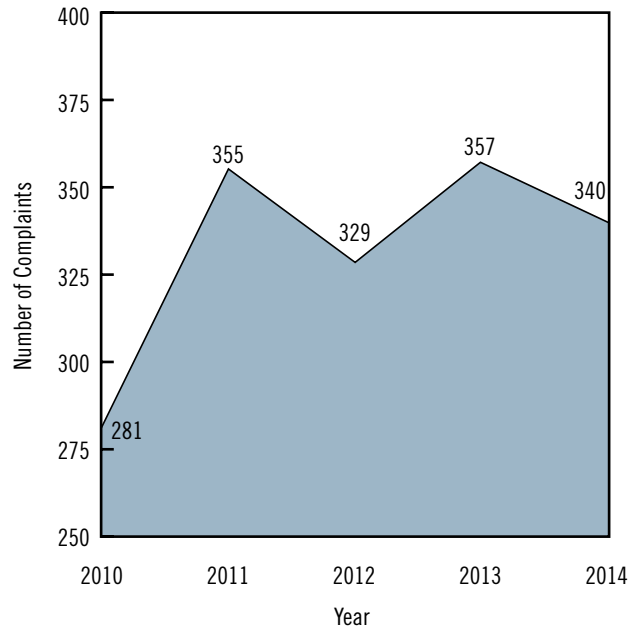
The complaint process begins when a person files a complaint about a San José Police Department (SJPD) officer(s) or an SJPD policy. Complaints can be filed at the IPA office or at the Internal Affairs (IA) Unit of the SJPD. Complaints or concerns may be filed in person, by phone, fax, email or postal mail with either office. Anyone can file a complaint regardless of age, immigration status, or city of residence. Members of the community may file complaints even if they do not have a direct connection to the incidents or the persons involved. Complainants may also remain anonymous.

With the complainant’s consent, IPA staff or IA staff record the complainant’s statement to ensure that the concerns and information provided by the complainant are captured accurately. The complaint is then entered into a shared IA/IPA database. This initial process is called **intake**. In 2014, 340 complaints and concerns were received. This was a five percent (5%) decrease in the number of complaints and concerns received in 2013.

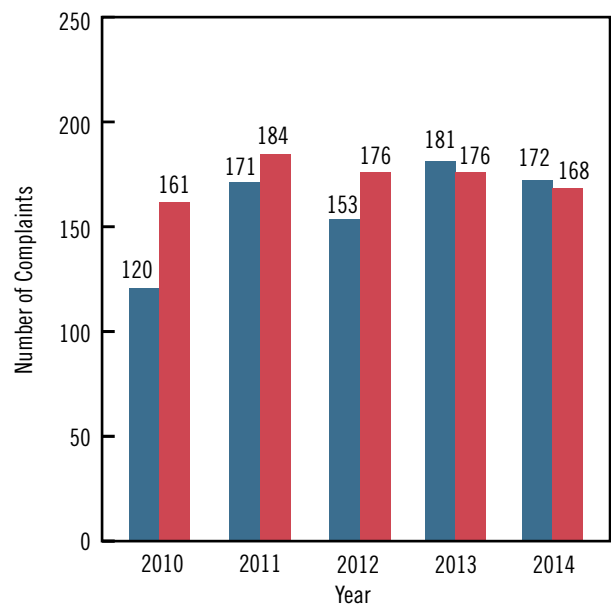
Illustration 2-A depicts the total number of complaints received in the past five years. The factors that influence the number of complaints received each year are difficult to measure. However, we attribute the increase in intakes to our ongoing, persistent, and innovative community outreach. Our focus over these five years has been focused on increasing our presence in the community. More recently, we have added areas SJPD has identified as “hot spots”—or locations where there are a significant number of police encounters with the public. (See list of hot spots in Chapter Six.) In 2014, 51% of complainants brought their complaints and concerns directly to the IPA office, while the

remaining 49% contacted IA. Last year was the first time in the 20-year history of our office that we had more intakes than did the Internal Affairs Unit.

**Illustration 2-A: Complaints Received—  
Five-Year Overview (2010–2014)**



**Illustration 2-B: IPA and IA Intakes—  
Five-Year Overview (2010–2014)**



IPA Intake	43%	48%	47%	51%	51%
IA Intake	57%	53%	53%	49%	49%

## A. Why Each Complaint Matters

- **Holding Officers Accountable**

Every time a complaint is filed, the complaint must be reviewed by the Department, regardless of the alleged severity.

- **Unbiased Review**

IPA staff provides an unbiased review to ensure that the Department's investigations and analyses of the allegations are fair, thorough, and objective.

- **Trends**

The only way the IPA can determine if a certain police practice has become a trend in the community is if members of the public voice their concerns and file complaints.

- **Policy Changes**

When civilians voice concerns about SJPD policies, the IPA has the unique opportunity to make policy recommendations to the Department. Many of our recommendations have had a positive impact on policing in the City.

- **Counseling**

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

- **Mediation**

Many times, complainants say they want to discuss their complaints directly with the officers. Mediation provides a confidential and respectful setting for both the complainant and the officer to discuss the incident candidly in the presence of a mediator. These conversations promote a better understanding between the officers and the community they serve. See a description of the IPA-SJPD Mediation Program in Chapter One of this Report.

## People Involved in the Complaint Process

- **Complainant**—The complainant is the person who files the complaint.
- **Subject Officer**—The subject officer is the officer who engaged in the alleged misconduct.
- **Witness Officer**—The witness officer is an officer who witnessed the alleged misconduct. 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 assigned to the Internal Affairs Unit who receive and investigate the complaints. The investigators analyze the complaints by applying the relevant SJPD Duty Manual sections. IA then sends written reports of their investigations and analyses to the IPA office for audit.
- **IPA Staff**—The IPA staff receive complaints and also audit the Department's investigations and analyses to ensure that they are fair, thorough, and objective.

## B. Demographics of Complainants and Subject Officers

### 1. Complainant Demographics

During the intake process, IA and the IPA office gather demographic data about complainants. In 2014, 69% of complainants chose to identify their ethnicities at intake. Below is a summary of complainant demographics in 2014:

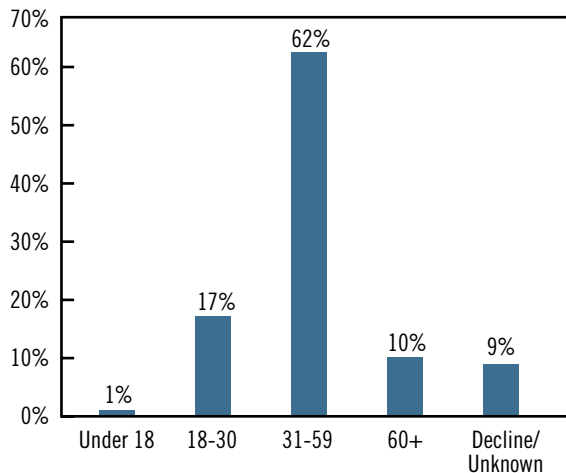
- Thirty percent (30%) of the complainants in 2014 are Hispanic/Latino. Hispanics/Latinos are 33% of the population of San José.
- Nineteen percent (19%) of the complainants in 2014 are Caucasian. Caucasians are 29% of the population of San José.
- Eleven percent (11%) of the complainants in 2014 are African American. African Americans are 3% of the population of San José.
- Six percent (6%) of the complainants in 2014 are Asian American/Pacific Islanders. Asian

American/Pacific Islanders are 32% of the population of San José.

Table 2 in Appendix I provides details about the ethnicities of other complainants and the proportions of the ethnic populations in San José, according to the 2010 U.S. Census.

In 2014, 91% of complainants disclosed their ages at intake. Approximately 62% of complainants ranged between the ages of 31-59, with just 10% over 60 years of age. Only one percent (1%) of complainants who disclosed their age were under the age of 18.

**Illustration 2-C: Age Range of Complainants in 2014**



## 2. Subject Officer Demographics

We obtained from SJPD demographic data about subject officers who were employed during the 2014 calendar year. The data reveal that in 2014 the number of subject officers who identify with a specific ethnicity continues to closely mirror their representation in the Department.<sup>1</sup>

- Caucasian officers are 54% of the Department and were subject officers in 54% of complaints.
- Hispanic/Latino officers are 23% of the Department and were subject officers in 24% of complaints.
- African American officers are 4% of the Department and were subject officers in 4% of complaints.

- Asian American/Pacific Islander officers are 15% of the Department and were subject officers in 15% of complaints.

Illustration 2-D demonstrates male and female officers received complaints comparable to their representation in the Department.

**Illustration 2-D: Gender of Subject Officers in 2014\***

Gender	Subject Officers	%	SJPD	
			Sworn Officers	%
Male	263	92%	902	90%
Female	22	8%	95	10%
<b>Total</b>	<b>285</b>	<b>100%</b>	<b>997</b>	<b>100%</b>

Policy Complaints, and Non-Misconduct Concerns.

## II. Step Two: Classification

Complaints fall into five classifications: Conduct Complaints, Policy Complaints, Non-Misconduct Concerns, Decline to Investigate<sup>2</sup>, and Other.<sup>3</sup> The Department is ultimately responsible for classifying complaints before investigating. IPA staff reviews the Department’s decisions early in the process and can appeal if the classification is not appropriate. Illustration 2-E shows a breakdown of the various complaints received in 2014. This illustration shows that 86% of all complaints received in 2014 were classified as Conduct Complaints.

<sup>2</sup> Nine (9) cases were classified as “Decline to Investigate.” This classification indicates that the facts in the complaint are so fantastical that they are unlikely to be based on reality. These cases are not investigated, but are retained and tracked for statistical purposes.

<sup>3</sup> Eighteen (18) cases were classified as “Other” this year because (a) the complaint did not involve any SJPD officers (eleven cases) and (b) the complaint was duplicative of an existing case (seven cases). The IPA reviews all cases classified as “Other” to ensure this classification is appropriate.

<sup>1</sup>Table 1 in Appendix I



**Illustration 2-E: Complaints/Concerns Received in 2014\***

Matters Received in 2014	IA	IPA	Total	%
Conduct Complaints	151	141	292	86%
Policy Complaints	3	6	9	3%
Non-Misconduct Concerns	4	8	12	4%
Decline to Investigate	3	6	9	3%
Other	7	11	18	5%
<b>Total</b>	<b>168</b>	<b>172</b>	<b>340</b>	<b>100%</b>

\*Excludes Department-Initiated Investigations

**A. Conduct Complaints**

**Conduct Complaints** contain one or more allegations. An allegation is an accusation that an SJPD officer violated Department or City policy, procedure, or the law. The Department policies are listed in the SJPD Duty Manual. Any member of the public may access the Duty Manual on the SJPD website (<http://www.sjpd.org/Records/DutyManual>).

asp) and on the IPA website ([www.sanjoseca.gov/ipa](http://www.sanjoseca.gov/ipa)). There are eight types of allegations that, if proven, could result in officer discipline: Procedure, Search or Seizure, Arrest or Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, and Neglect of Duty.

In 2014, while the total number of complaints received **decreased**, the number of allegations received **increased**. This means that complainants frequently raised multiple issues of concern in their individual interactions with police. Members of the public filed more allegations in 2014 than in any of the last five years.

Illustration 2-F explains each allegation, lists examples of allegations, and gives the number of each type of allegation received in 2014.

### Illustration 2-F: Misconduct Allegations

#### MISCONDUCT ALLEGATIONS RECEIVED IN 2014

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

- 308 allegations (38%)
- **Example:** An officer allegedly refused to call an ambulance after the complainant, who was in a vehicle collision, requested medical attention.

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

- 142 allegations (17%)
- **Example:** An officer allegedly told the complainant to "shut the f\*\*\* up" after being pulled over for a vehicle code violation.

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

- 139 allegations (17%)
- **Example:** A complainant alleged that officers punched him with closed fists and struck him with a baton during his arrest.

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

- 79 allegations (10%)
- **Example:** A complainant alleged that an officer unlawfully stopped him, detained him, and arrested him as he was walking down the street.

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

- 65 allegations (8%)

- **Example:** A complainant who was not on searchable probation alleged that an officer stopped him as he was walking down the street and searched him without his consent or reasonable suspicion that he was involved in a crime.

**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.

- 46 allegations (6%)
- **Example:** A complainant driving with expired registration tags, believed the officer singled out and stopped him because he was African-American.

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

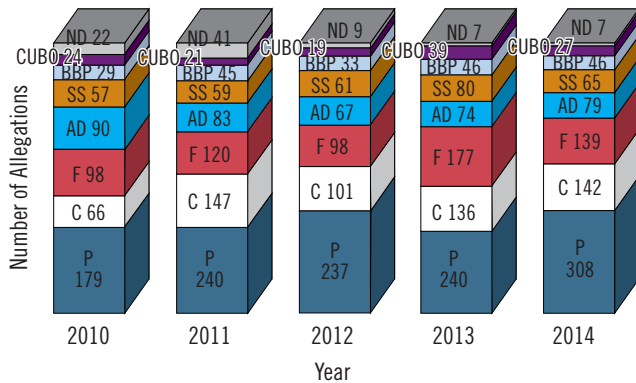
- 7 allegations (1%)
- **Example:** An officer allegedly failed to examine all evidence presented to him when responding to an alleged kidnapping.

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

- 27 allegations (3%)
- **Example:** A complainant alleged that an officer falsely claimed in his report that he found drugs on the complainant's person, and arrested him for possession of a controlled substance.

As Illustration 2-G depicts, Procedure allegations continue to be the most common allegation in conduct complaints over the past five years. For the past two years, Procedure allegations increased by 29%, Force allegations decreased by 21%, and Conduct Unbecoming an Officer allegations decreased by 26%.

**Illustration 2-G: Allegations Received—  
Five-Year Overview (2010-2014)**



**Legend of Allegations:**

**AD:** Arrest or Detention; **BBP:** Bias-Based Policing; **CUBO:** Conduct Unbecoming an Officer; **C:** Courtesy; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure; **SS:** Search or Seizure

**B. Policy Complaints**

**Policy Complaints** are complaints that are not directed against any individual officer, but are complaints about SJPD policies or procedures. Policy Complaints are typically forwarded to SJPD’s Research and Development Unit for review and evaluation to determine if they need to be addressed.

Nine (9) Policy Complaints were received in 2014—a 64% decrease from 2013. A majority of these complaints (56%) came from SJPD’s alleged lack of response to calls for service or SJPD’s refusal to investigate cases.

**C. Non-Misconduct Concerns**

**Non-Misconduct Concerns (NMC)** are complaints that do not rise to the level of a violation of policy, procedure, or law that could result in officer discipline. When IA classifies a complaint as an NMC, it is then forwarded to the IPA office. If the IPA has a concern about the NMC classification, the IPA discusses the matter with IA staff. When the case is classified as an NMC, the subject officer’s supervisor addresses the matter with the officer.

The supervisor confirms to IA that the subject officer has been spoken to. Thereafter, the officer’s name and allegations are removed. In 2014, 12 complaints (4% of all complaints received) were classified as NMCs.

**III. Step Three: Investigation**

After intake and classification, IA investigates all Conduct Complaints. IA investigations include the review of all relevant documentation: police reports, medical records, photos, and the CAD.<sup>4</sup> IA may also conduct follow-up interviews with the complainants, witnesses, and officers to gather more information about the incident. 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 Duty Manual policies and procedures.

The IPA office does not investigate complaints. However, the IPA monitors the IA investigations in order to assess the objectivity and thoroughness of the investigation, and the collection of supporting documentation. The IPA accomplishes this by

<sup>4</sup>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 being relayed by the officers and the reporting parties.

1. reviewing complaints received at IA to ensure that complaints are properly classified and that the allegations reflect all of the complainants' concerns;
2. attending officer interviews or requesting that IA ask subject officers specific questions; and
3. updating complainants about the status of IA investigations.

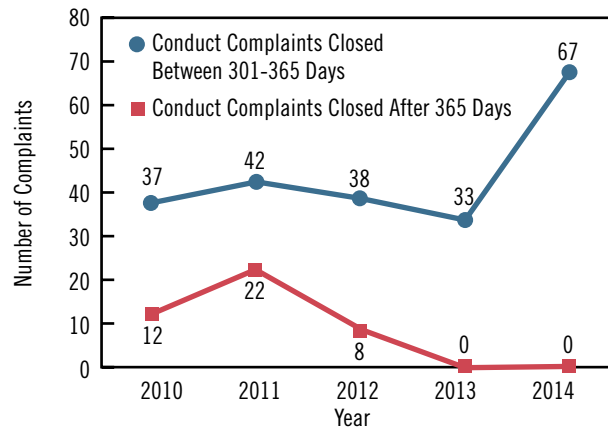
IPA staff has the option to request notification of interviews in any complaints. However, IA must notify the IPA of officer interviews for all complaints received at the IPA office and all complaints with allegations of Force or Conduct Unbecoming an Officer. Only the IPA and the Assistant IPA are authorized to attend officer interviews.

### Timeliness of Closed Investigations

In the 2010 Year End Report, the IPA discussed at length the need for timely completion of the Department's investigations. California state law mandates that all misconduct investigations of law enforcement officers must be completed and notice of any discipline to be imposed on the officer must occur within one year of receipt of the complaint. Therefore, in order for the IPA audit process to be meaningful, the IA investigation must be completed well before this one-year deadline.

In 2010, 49 complaints (21% of the 228 complaints) were closed by the Department after 300 days. The IPA's Year-End Report found this data to be disconcerting. In the following years, this concern was addressed because the Department timely completed most investigations. Illustration 2-H demonstrates that this concern has resurfaced. In 2014, the Department closed 67 complaints (26% of 253 complaints total) after 300 days.

**Illustration 2-H: Timeliness of Conduct Complaint Investigations Closed by the Department—Five-Year Overview (2010-2014)**



Of the complaints the Department closed after 300 days, the IPA audited 61 and closed 17 (28%) of them as “Close with Concerns” or “Disagree.” Of these 17 complaints, 10 (59%) were complaints where the IPA was concerned about the analyses of Force and Bias-Based Policing allegations.

### IV. Step Four: Findings Made By the Department in 2014

In each complaint, the Department must make a finding of whether or not the alleged misconduct occurred. Findings are based on an objective analysis using the “preponderance of the evidence” standard. The standard is met and a Sustained finding is made if the evidence indicates that it is more likely than not that the officer committed a violation of the Duty Manual. The seven possible findings for misconduct allegations are: Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other. Illustration 2-I lists and defines each of the findings and gives the number of each finding in 2014. Officer discipline is imposed if an allegation receives a Sustained finding.<sup>5</sup>

<sup>5</sup> Officers may also receive counseling or training even if the investigation results in a finding of Exonerated or Not Sustained.

## Illustration 2-1: Findings for Misconduct Allegations Closed in 2014

## FINDINGS FOR MISCONDUCT ALLEGATIONS

**Exonerated:** “The act or acts, which provided the basis for the allegation or complaint, occurred, however, the investigation revealed they were justified, lawful, and proper.”<sup>6</sup> 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.
- 421 allegations (51%) were Exonerated in 2014.

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

- **Result:** This finding does not result in officer discipline. However, the officer may be required to undergo counseling or training.
- 77 allegations (9%) were Not Sustained in 2014.

**Sustained:** “The investigation disclosed sufficient evidence to prove clearly the allegation made in the complaint.” This means that the Department determined that the officer engaged in misconduct.

- **Result:** This finding results in officer discipline.
- 42 allegations (5%) were Sustained in 2014.

**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 alleged misconduct never happened.

- **Result:** The officer is not disciplined.
- 198 allegations (24%) were Unfounded in 2014.

**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 provide necessary information for IA, or the officer is no longer employed by SJP.

- **Result:** The officer is not disciplined.
- 44 allegations (5%) were closed with No Finding in 2014.

**Withdrawn:** “The complainant affirmatively indicates the desire to withdraw his/her complaint.” This means the complainant decided not to pursue the complaint.<sup>7</sup>

- **Result:** This finding does not result in officer discipline.
- 34 allegations (4%) were Withdrawn in 2014.

**Other:** Allegations were closed as Other when SJP declined to investigate because of a delay of years from the date of the incident to the date of filing or because the officer who allegedly engaged in the misconduct was employed by another law enforcement agency, and not by SJP.

- **Result:** No officer is investigated.
- 14 allegations (2%) were closed as Other in 2014.

<sup>6</sup>All definitions in quotations in this table are from the 2010 Duty Manual section C 1723.

<sup>7</sup>IPA staff routinely follows up to ensure that the complainants’ decisions to withdraw their complaints are entirely voluntary.

## A. How Allegations Were Closed by the Department in 2014

Illustration 2-J lists the number of allegations closed by SJPD in 2014 and their respective findings.

Illustration 2-J: Dispositions of all Allegations Closed in 2014

Type of Dispositions	Arrest/ Detention	Bias- Based Policing	Courtesy	Conduct Unbecoming an Officer	Force	Neglect of Duty	Procedure	Search/ Seizure	Total	Percent
Sustained	0	0	6	3	1	0	31	1	42	5%
Not Sustained	1	2	53	1	4	0	14	3	77	9%
Exonerated	81	0	17	0	141	1	121	60	421	51%
Unfounded	2	29	35	18	24	1	86	3	198	24%
No Finding	4	1	10	2	5	0	16	6	44	5%
Complaint Withdrawn	2	1	10	2	6	1	8	4	34	4%
Other	0	1	2	0	1	0	10	0	14	2%
<b>Total Allegations</b>	<b>89</b>	<b>34</b>	<b>133</b>	<b>26</b>	<b>182</b>	<b>3</b>	<b>286</b>	<b>77</b>	<b>830</b>	<b>100%</b>

## B. The Sustained Rate

The **Sustained rate** is the percentage of closed Conduct Complaints that contain at least one allegation with a Sustained finding. In 2014, 25 (10%) closed Conduct Complaints had an allegation with a Sustained finding. Although the Sustained rate closely mirrors the Sustained rate from past years, 2014 had the highest number of closed complaints with Sustained allegations in thirteen years. For summaries of sustained allegations closed in 2014, please refer to Chapter Four.

Illustration 2-K: Complaints Closed With Sustained Allegations—Five-Year Overview (2010-2104)

Year of Complaint	Sustained Complaints	Closed Complaints	Sustained Rate
2010	15	228	7%
2011	24	246	10%
2012	10	302	3%
2013	18	202	9%
2014	25	253	10%

## V. Step Five: IPA Audit

After the Department completes its investigation, conducts an analysis, and makes a finding, it forwards the written report to the IPA for audit. The IPA is required to audit all complaints with Force allegations and at least 20% of all other complaints. In 2014, the IPA fulfilled this requirement by auditing all complaints containing Force allegations and 72% of all other complaints. IPA staff review various issues during the IPA audit to determine if the Department's investigations and analyses were fair, thorough, and objective.

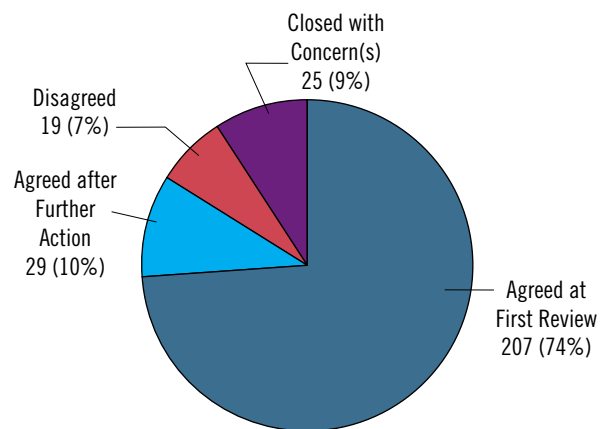
Illustration 2-L: Issues Reviewed During IPA Audit

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

After auditing the complaint, the IPA will make one of the following determinations:

- **Agreed** with the Department’s investigation of the case (208 or 74% of audited cases),
- **Agreed After Further** action, such as receiving from IA a satisfactory response to an IPA inquiry or request for additional clarification or investigation (29 or 10% of audited cases);
- **Closed With Concerns**, which means the IPA did not agree with the Department’s investigation and/or analysis, but the disagreement did not warrant a formal disagreement (25 or 9% of audited cases); or
- **Disagreed**, meaning the IPA determined that the Department’s investigation and/or analysis were not thorough, objective, and fair (19 or 7% of audited cases).

Illustration 2-M: IPA Audit Determinations in 2014



**Illustration 2-N: IPA Audit Determinations in Closed Complaints—Five-Year Overview (2010-2014)**

Audit Determination in Closed Complaints	2010				2011				2012				2013				2014	
	2010	%	2011	%	2012	%	2013	%	2014	%	2010	%	2011	%	2012	%	Audits	%
Agreed at First Review	137	75%	160	63%	257	74%	179	76%	207	74%	137	75%	160	63%	257	74%	207	74%
Agreed after Further Action	26	14%	48	19%	35	10%	32	14%	29	10%	26	14%	48	19%	35	10%	29	10%
Disagreed	20	11%	15	6%	23	7%	13	6%	19	7%	20	11%	15	6%	23	7%	19	7%
Closed with Concern(s)	0	0%	33	13%	30	9%	12	5%	25	9%	0	0%	33	13%	30	9%	25	9%
<b>Total Complaints Audited</b>	<b>183</b>	<b>100%</b>	<b>256</b>	<b>100%</b>	<b>345</b>	<b>100%</b>	<b>236</b>	<b>100%</b>	<b>280</b>	<b>100%</b>	<b>183</b>	<b>100%</b>	<b>256</b>	<b>100%</b>	<b>345</b>	<b>100%</b>	<b>280</b>	<b>100%</b>

The 2014 IPA audits show a significant increase in the number of of “Disagreed” and “Closed with Concern” determinations. In 2013, the IPA closed 25 complaints as “Closed with Concerns” or “Disagreed.” In 2014, the IPA closed 44 cases as “Closed with Concerns” or “Disagreed”— a 76% increase. That being said, the IPA agreed, on first review, with 74% of the Department’s investigations.

## VI. Officer Complaint Rates and Experience Levels

### A. Officer Complaint Rates

Both the Department and the IPA collect the following data about subject officers:

- the number of complaints received by each subject officer;
- the types of allegations attributed to each subject officer in the complaint; and
- the experience level of each subject officer.

In 2014, 285 officers were named in Conduct Complaints — 29% of all SJPD officers. Of these officers, most (205 or 72% of subject officers) received only one complaint. Fifty-eight (58) subject officers received two complaints (20% of subject officers). Eleven (11) subject officers received three (3) complaints and eleven (11) subject officers received four or more complaints.

Illustration 2-P provides a five-year overview of complaints received by individual officers. This data reflect only those complaints in which individual officers are identified by name either by the complainant or through the IA investigation

process. There were 57 Conduct Complaints received in 2014 in which officers could not be identified (“Unknown” officers).

**Illustration 2-P: Complaints Received by Individual Officers — Five-Year Overview (2010-2014)\***

Officers Receiving	2010	2011	2012	2013	2014
1 Complaint	196	201	178	218	205
2 Complaints	37	42	30	53	58
3 Complaints	4	8	5	18	11
4 Complaints	2	4	3	9	8
5 Complaints	1	0	0	0	3
<b>Total Number of Officers Receiving Complaints</b>	<b>240</b>	<b>255</b>	<b>216</b>	<b>298</b>	<b>285</b>

\*Subject officer names are not retained in complaints classified as Non-Misconduct Concern, Policy, or Withdrawn. Illustration 2-P does not include officers named in Department-Initiated Investigations.

### B. Officer Experience Levels

As with any other city employees, police officers have differing employment start dates throughout the calendar year. For this 2014 Year End Report, data reflecting the total number of sworn officers employed by SJPD was captured on January 1, 2014. For each complaint, however the experience level of the subject officers is captured at the time of the complaint incident — any date during the 2014 calendar year. Additionally, throughout the year, officers can 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 terminations.



Despite these variants, a few trends emerged. **In general, officers with more experience received more complaints than officers with less experience.** For example, 52% of all subject officers were officers with at least 11 years of experience. The officers who received the fewest number of complaints were officers with 5-6 years of experience, only 5% of all subject officers. Also,

although officers with 0-1 year of experience comprise just 9% of all sworn SJPD staff, these officers make up 19% of all subject officers. Therefore, sixty-one percent (61%) of all officers with one year or less of experience had at least one complaint filed against them in 2014. Refer to Table 4 in Appendix I.

**Illustration 2-Q: Years of Experience of Subject Officers in Complaints Received in 2014\***

Years of Experience	Total Subject Officers		Total SJPD Sworn Officers		Subject Officers as % of SJPD Officers
	Officers	%	Officers	%	
0-1+	55	19%	90	9%	61%
2-4+	20	7%	50	5%	40%
5-6+	15	5%	40	4%	38%
7-10+	48	17%	134	13%	36%
11-15+	57	20%	171	17%	33%
16+	90	32%	512	51%	18%
	<b>298</b>	<b>100%</b>	<b>997</b>	<b>100%</b>	<b>29% of all SJPD officers were subject officers in 2014</b>

\*Illustration 2-Q does not include officers named in Department-Initiated Investigations.

We examined additional data to determine whether officers with a particular experience level received one type of allegation over another.<sup>8</sup>

- There were 160 allegations in Conduct Complaints received in 2014 against officers with 16 or more years of experience. Of these allegations, 41% (65 ) were Procedure, and 24% (39) were Courtesy.
- There were 104 allegations in Conduct Complaints received in 2014 against officers with 11-15 years of experience. Of these allegations, 31% (32) were Procedure and 19% (20) were Courtesy.

- Force allegations were filed most frequently against officers with zero to 1 year of experience (23% of the 93 total allegations) in complaints received in 2014.
- Over half (52%) of all 186 Procedure allegations were filed against officers with 11 or more years of experience were in complaints received in 2014.

<sup>8</sup> See Table 3 in Appendix I for data showing all types of allegations filed against officers by years of experience.

**Illustration 2-R: Allegations received by Subject Officers in 2014, By Years of Experience\***

Allegations Received	0-1+		2-4+		5-6+		7-10+		11-15+		16+	
	#	%	#	%	#	%	#	%	#	%	#	%
Procedure	38	28%	14	36%	8	21%	29	33%	32	31%	65	41%
Courtesy	21	16%	4	10%	7	18%	14	16%	20	19%	39	24%
Force	21	16%	10	26%	9	23%	17	19%	19	18%	17	11%
Arrest or Detention	17	13%	5	13%	7	18%	16	18%	13	13%	12	8%
Search or Seizure	19	14%	4	10%	3	8%	4	4%	8	8%	11	7%
Bias Based Policing	13	10%	2	5%	2	5%	7	8%	7	7%	6	4%
Neglect of Duty	0	0%	0	0%	0	0%	0	0%	3	3%	1	1%
Conduct Unbecoming an Officer	6	4%	0	0%	3	8%	2	2%	2	2%	9	6%
<b>Total Allegations</b>	<b>135</b>	<b>100%</b>	<b>39</b>	<b>100%</b>	<b>39</b>	<b>100%</b>	<b>89</b>	<b>100%</b>	<b>104</b>	<b>100%</b>	<b>160</b>	<b>100%</b>

\* Data excluded Unknown officers. Illustration 2-R does not include officers named in Department-Initiated Investigations.

# Chapter Three: Use of Force

## I. Examination of Force – An Expanding View

Dramatic incidents in 2014, particularly those in Ferguson, Missouri and Staten Island, New York, have focused national attention and debate on the use of force by law enforcement. However, even prior to 2014 many law enforcement agencies throughout the country were the subject of scrutiny by the U.S. Justice Department over their patterns and practices when using force.

- **Cleveland, Ohio Police Department**  
In 2013, the Justice Department launched an investigation into the force used by the Cleveland Police Department; its 2014 findings determined that there were troubling patterns regarding force:
  - the employment of poor and dangerous tactics that place officers in situations where avoidable force becomes inevitable; and,
  - excessive force against persons who are mentally ill or in crisis, including cases where the officers were called exclusively for a welfare check.Because of these and other patterns, the Justice Department and the City of Cleveland agreed to submit to a court-enforced consent decree including an independent monitor to oversee necessary reforms.
- **Albuquerque, New Mexico Police Department.**  
In 2012, the Justice Department launched an investigation into the tactics of the Albuquerque Police Department. The findings, issued in 2014, found three unconstitutional patterns of excessive force:
  - officers too frequently used deadly force against people who posed a minimal threat and in situations where the conduct of the

officers heightened the danger and contributed to the need to use force;

- officers used less lethal force on people who were passively resisting, non-threatening, observably unable to comply with orders or posed only a minimal threat to officers; and,
- encounters between officers and persons with mental illness and in crises too frequently resulted in a use of force or a higher level of force than necessary.

- **Newark, New Jersey Police Department**  
In 2014, the City of Newark, New Jersey agreed to enter into a court-enforceable, independently monitored agreement of its Police department. Among other findings, the Justice Department determined that the department engaged in a pattern of excessive force.
  - Even though there was substantial underreporting of force by officers, the investigation concluded that more than 20% of officers reported uses of force that appeared unreasonable.
  - Officers improperly detained and arrested individuals who lawfully objected to police actions or were disrespectful toward police, in violation of the First Amendment.
  - Officers engaged in a pattern of “taking immediate offensive action” rather than displaying the “thick skin and patience” needed for the job.
- **Seattle, Washington Police Department**  
After its investigation of the Seattle Police Department, in 2011, the Justice Department (DOJ) issued factual findings including the following:
  - when Seattle officers used force, that force was unconstitutional nearly 20% of the time;

– Seattle officers escalated situations and used unnecessary or excessive force when arresting individuals for minor offenses. This trend was pronounced in encounters with persons with mental illnesses or those under the influence of alcohol or drugs; and,  
– although the DOJ did not make a finding of discriminatory policing, their investigation raised “serious concerns” about practices that impact minority communities. The DOJ observed that, in cases determined to include unnecessary force, over 50% involved minorities. The Department was chastised for failing to collect and analyze data that would address and respond to the perceptions of discriminatory policing.

In 2012, the City of Seattle entered into a formal consent decree with a monitor to ensure court-ordered reforms.

- Portland, Oregon Police Department

In 2012, the Justice Department’s investigation of the Portland Police Department found that the officers engaged in a pattern of excessive force against people with mental illness or perceived to have mental illness. The investigation also found that police use of stun guns was unjustified and excessive at times. In 2014, the City of Portland and the Justice Department formally agreed on a series of reforms intended to improve police interactions with mentally ill people, including the expansion of its mobile crisis unit from a single vehicle to one vehicle per precinct.

Notably, criticism of these agencies did not focus narrowly on officers’ “split-second” decisions to use force; such a focus looks only at seconds before the application of force rather than examining the minutes preceding that application. The DOJ investigations looked more broadly at the events leading up to force applications, including the actions of the officers who provoked the force as well as the proportion of the force used. Departments around the country are now looking at “de-escalation” as a component of police training. And one major agency, the Seattle Police Department, has given “de-escalation” more prominence by including it in its Use of Force Policy. The specific policy outlining de-escalation **does not merely recommend but requires officers to use de-escalation tactics** to reduce the need for force. The Seattle policy also outlines additional factors to be considered in determining the objective reasonableness of force including (1) the time available to an officer to make a decision and (2) officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects. And the force used must be proportional, meaning that officers shall only use objectively reasonable force that is proportional to the threat or urgency of the situation. Officers should continually assess and vary the amount of force used as resistance decreases.

**CITY OF SEATTLE USE OF FORCE DE-ESCALATION POLICY****When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force**

De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, which seek to minimize the likelihood of the need to use force during an incident.

When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.

When time and circumstances reasonably permit, officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- Medical conditions
- Mental impairment
- Developmental disability
- Physical limitation
- Language barrier
- Drug interaction
- Behavioral crisis

An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of threat gives officers time to utilize extra resources, and increases time available to call more officers or specialty units.

The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used. See Appendix J for full text.

Today, the use of deadly force may be subject to this more expansive examination of police tactics. Since the landmark 1989 U.S. Supreme Court ruling in *Graham v. Connor*<sup>9</sup>, the analysis of deadly force has been limited to what officers did at the time of the shooting - but not what they did (or did not do) before force was used. However, in 2013 the California Supreme Court held that an officer's pre-shooting conduct leading up to deadly force may affect whether use of force is ultimately reasonable, and therefore may be considered in the analysis of deadly force.<sup>10</sup> This ruling marks a dramatic shift in the analysis of deadly force because now such analysis can consider the officers' conduct preceding the split-second decision to use deadly force as a factor in assessing whether the use of force was reasonable.

As a result of the *Hayes* decision, in 2014, the Los Angeles Police Department added new use of force guidelines. Whether an officer's use of deadly force is justifiable will no longer focus solely on the imminent threat an officer perceived, but may also include the police tactics and decision-making preceding such use. The Los Angeles Police Department Manual now includes a directive stating, "the reasonableness of an officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force."

In another significant legal development, the U.S. Supreme Court will decide whether the Americans with Disabilities Act requires police officers to accommodate suspects whom they know to be mentally ill, but are armed and violent.<sup>11</sup> The case involves Teresa Sheehan, a resident of a group home in San Francisco for persons dealing with mental illness. San Francisco police officers responded to the group home and attempted to place her on an involuntary 72-hour mental evaluation. Sheehan

<sup>9</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>10</sup> *Hayes v. County of San Diego* (2013) 57 Cal. 4th 622.

<sup>11</sup> *Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211 (9th Cir. 2014), cert. granted.

reacted violently when the officers entered; she grabbed a knife and threatened to kill them. The officers responded with deadly force, shooting her multiple times. Ms. Sheehan survived and filed a lawsuit. The Ninth Circuit Court held that the officers' use of deadly force – **viewed at the moment of the shooting** – was reasonable; Sheehan advanced after threatening to kill the officers, she wielded the knife in a upraised position, and she did not drop the knife after being pepper sprayed. However, the Ninth Circuit also stated there were **sufficient facts in dispute about whether the officers acted unreasonably by forcing their way into her room thereby provoking the confrontation**. Thus, according to the court, the events leading up to the shooting should be considered in the overall analysis of whether the use of deadly force was justified. The U.S. Supreme Court will hear argument on this case in March 2015.

The IPA has recommended that the SJPD adopt a formal de-escalation policy similar to the policy used in Seattle and the deadly force policy in Los Angeles. Training on these policies must be provided to the officers. This recommendation is based not only on the logic inherent in de-escalation and use-of-force principles, but also on force allegations audited by the IPA in 2014. The IPA audited 80 cases with force allegations in 2014; we disagreed with the Department's conclusion in nine of these complaints – this means that the IPA audit concluded that the Department's investigation was not thorough, fair and objective. Below are summaries of those nine complaints:

## II. IPA Disagreements in Force Complaints Closed in 2014

### Case #1:

SJPD officers responded to a 911 call from a hotel. Hotel staff described a man sleeping in a stairwell; they were unable to wake him. The man had a

gun in his waistband. Four officers arrived; they observed the man lying in the stairwell and the gun in the waistband. The officers repeatedly shouted orders at the man who did not respond to their verbal commands. The man finally was roused by the officers' shouting. Complainants alleged that the man complied with orders by putting his hands and arms above his head. Subject officers stated that the man did not comply and began to reach for his gun; the officers responded by shooting him 26 times. The complainants alleged that the force used was excessive and that the officers should have used other means to check on the welfare of the sleeping man. The gun in the man's waistband was a gold-colored plastic replica.

**SJPD's Conclusion:** The use of force was exonerated. The investigation showed that the officers' actions were consistent with accepted tactical purposes and within Department Policy. The officers were justified in using deadly force since they reasonably believed it was necessary to respond to an immediate threat.

**IPA's Disagreement:** The investigation showed that multiple officers entered a stairwell without any tactical plan other than ordering the suspect to surrender his weapon and then meeting whatever resistance he offered with counter-force. The inevitable conclusion was a gun-fight with officers on multiple levels of a stairwell. Given that the perceived "threat" was contained to the stairwell and that the suspect could not be roused by hotel staff and was essentially non-responsive, there was time for the officers to discuss alternative to the use of deadly force. One officer had a clear unobstructed view on a higher floor, but he was the only officer sent up to a higher floor and no officers responded when he suggested using his taser as a force option.

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### Case #2:

Officers were notified of a strong arm robbery. A police recruit in the final phase of his training

program detained a 16-year old male because he resembled one of the robbery suspects. The recruit's Field Training Officer (FTO) watched from the passenger seat of the patrol car as the recruit interacted with the suspect. The interaction became confrontational and physical; eventually the suspect appeared to be gaining an upper hand on the recruit. At this point, the FTO walked over and kicked the suspect in the head knocking him unconscious. The FTO stated that, based on the positioning of both the recruit and the suspect on the ground, the only available target area was the suspect's head. The complainant alleged that the force was excessive.

**SJPD's Conclusion:** The use of force was exonerated. The investigation was limited to an evaluation of the instantaneous decision to kick the suspect. The timing of the intervention by the FTO was not considered.

**IPA's Disagreement:** The investigation did not address why the training officer waited until the suspect gained the upper hand in the struggle before stepping forward and kicking the youth in the head. The issue of whether or not the FTO used excessive force should be tied directly to his decision about when he chose to intervene in the struggle.

### **Case #3:**

Two SJPD officers, working secondary employment as security at a local middle school, responded to a classroom. A 12-year old student had disrupted the class by talking and refusing to leave the classroom. One officer grabbed the youth's arm and forced his arm behind his back, while pushing him against a wall. Both officers then forced handcuffs onto the youth's wrists. The boy's arm was fractured; the injury was caused by an officer who twisted the boy's arm behind his back.

**SJPD's Conclusion:** The youth refused to follow the officers' verbal directions, so it was necessary to use some level of physical force. The youth resisted and tried to pull away, so the officer responded by exerting more force. The officer feared that the student, if allowed to break free, would throw things in the classroom and possibly injure others. The finding was exonerated.

**IPA's Disagreement:** The Department's analysis did not consider the relative sizes of the subject officer (6'7", 240 pounds) and the youth (5'3", 110 pounds). The necessity for applying force should be evaluated along with the specific use of force sufficient to break the arm of a 12-year old who was smaller in stature relative to the size of the officer. The Department's analysis did not consider why the second officer on scene failed to assist the subject officer by simply lifting and carrying the student from the room, rather than one officer using force sufficient to cause a fracture. Lastly, there appeared to be no factual basis supporting the subject officer's assertion that the boy would throw things or injure others. The nature of the classroom disruption caused by the boy was verbal and not physical.

### **Case #4:**

Multiple officers responded to an incident at Roosevelt Park. Officers contacted two suspects who became resistive and combative. Considerable force by two officers was required to remove the male suspect from his car and handcuff him. One officer claimed the male suspect cut him with a box cutter. When the subject officer arrived on the scene, the suspect was handcuffed, but not compliant. The officers had difficulty placing the suspect into the subject officer's patrol car. During the entire encounter, the male suspect was loud, cursing and yelling at the police. After the suspect was secured in the rear seat of the patrol car, the subject officer drove away from the park and his fellow officers. After parking his car, the subject officer and the

suspect were alone. The subject officer stated that he opened the back passenger door to “check on the prisoner.” He leaned into the car and asked the prisoner if he needed anything. The suspect responded with profanity and attempted to kick at the officer. Then the officer grabbed the suspect’s leg, dragged him out of the car onto the ground, and engaged in a short struggle until other officers arrived and used pepper spray to subdue the suspect.

**SJPD’s Conclusion:** The force allegation was exonerated. The subject officer was justified in checking on the suspect because the suspect was kicking and this could cause damage to the patrol car. Further, the suspect had been placed in a prone position before handcuffing and had to be properly secured for transport.

**IPA’s Disagreement:** The Department’s analysis failed to critically examine why the subject officer, acting alone, pulled the suspect out of the car. There was no consideration why the subject officer opened the door and leaned in to check on the suspect when he could easily have communicated with the suspect from within the patrol car. Also, the subject officer was aware that it took several officers, including himself, to secure the suspect in the patrol car the first time. Even if it was reasonable for the officer to remove the suspect from the patrol car, it was unreasonable for him to have done so alone, without any officer assistance. The Department’s analysis failed to consider whether the subject officer’s action needlessly provoked the suspect’s reaction and exposed both to additional force and injury.

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**Case #5:**

The complainant, driving her car, attempted to make a left-hand turn near her residence. Although there was road work at this intersection, she did not think that the construction prevented her from making the turn. The subject officer approached, yelling

at her to move her car. He grabbed the driver’s arm through the car’s open window as her car was moving. The complainant alleged that the officer held onto her arm and twisted it. The subject officer acknowledged that he walked 10-15 feet while the car was moving even through the driver protested, stating that “he was breaking her arm.”

**SJPD’s Conclusion:** The officer’s use of force was reasonable. When the officer walked alongside the moving vehicle, maintaining his grip and repeating the order to stop, he was trying to prevent injury to the driver. The force was reasonable to detain the driver and prevent her from fleeing.

**IPA’s Disagreement:** The Department failed to critically examine several factors governing the use of force, such as the severity of the crime and whether the suspect posed an immediate threat to the safety of the officer or others. The severity of the crime - traversing a traffic cone - appeared minor relative to the risk to officer safety. The subject officer acknowledged that the driver did not pose an immediate safety threat. And he was able to see her license plate when she drove away. Therefore, he would have been able to issue a citation or an arrest warrant.

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**Case #6:**

In the early morning hours, the subject officer encountered four suspects, two of whom were spray painting graffiti on the freeway. After two suspects fled the scene on foot, the subject officer confronted the two others who remained seated in the car that was parked on the side of the freeway. The subject officer handcuffed the driver (19 years, 5’6”, 160 pounds) as he was lying prone on the ground. The subject officer eventually got the passenger (16 years, 5’8”, 150 pounds) to lie prone on the ground. However, before he handcuffed the passenger, the officer kicked his hand to prevent him from reaching into a pocket. Then the officer used his



baton and struck the passenger who then stood up and engaged the officer in a fist fight. While the two were fighting, the driver – still handcuffed – got up and shoved the officer. Eventually the subject officer was able to subdue both suspects, but not before striking the passenger several times with his baton. The passenger suffered two broken arms, chipped teeth, bruises and lacerations.

**SJPD’s Conclusion:** The force used by the subject officer was reasonable. The incident was a tense situation involving several uncooperative suspects. The subject officer broadcasted his need for emergency assistance and was by himself until back-up units arrived to assist.

**IPA’s Disagreement:** The subject officer used his baton to strike the passenger in the face while both suspects were prone on the ground with one suspect’s arms handcuffed behind his back. This baton strike broke four of the passenger’s teeth. The Department failed to critically examine this baton strike and resolved factual inconsistencies in favor of the officer.

#### **Case #7:**

The complainant and his friend, two African American men, were walking home after taking his child to school. The subject officer drove his patrol car next to them; he was on truancy patrol. Once the officer realized the men were both adults, the officer drove away. The complainant arrived at his residence within five minutes. He waked toward his backyard to access his house because the front door was broken. Then he saw the subject officer drive up, exit his car, point his gun at them and order them to the ground. The officer threatened to shoot them if they moved. The officer kept the gun pointed at them until back-up officers arrived; both men were then handcuffed. Officers then verified that the complainant lived at the house. Complainant alleged that the officer’s detention was the result of

bias-based policing and that his pointing the gun at him was an excessive use of force.

**SJPD’s Conclusion:** The subject officer’s actions were not based on racial bias, but instead on his observation of suspicious behavior. The subject officer believed that one of the men was a “look-out” for the other man who was going to burglarize the home. The subject officer’s actions were not based on race or color. The finding on the Bias-Based Policing allegation was unfounded; the finding on Force was exonerated.

**IPA’s Disagreement:** The Department failed to critically examine the allegation of racial bias. The officer’s report contained language that appeared to justify his actions after the fact, by adding descriptions that the two men wore loose-fitting clothing that could conceal deadly weapons. The officer’s description of his actions between the initial encounter and the encounter at the residence lacked credibility. The officer should have waited to see if the complainant entered the home with a key. The officer’s actions were racially motivated. The detention was therefore improper as was the display of the weapon to compel compliance.

**IPA Appeal:** The IPA appealed the Department’s findings to the San José City Manager. After considering input from both the IPA and SJPD, the City Manager determined that the Department’s findings would remain unchanged.

#### **Case #8:**

Two SJPD officers were on bicycle patrol in the mid-morning. They immediately stopped when they saw a large African American man standing on a sidewalk in front of a check cashing store; he was smoking a cigarette. One officer identified himself as an SJPD officer and, according to the police report, “explained to him that he was being detained for discarding a glowing substance from his cigarette

onto the sidewalk.” The subject replied that he didn’t want to talk to the officers and continued to smoke. The same officer (“first officer”) told the subject to put down the cigarette; the subject replied, “No.” The subject then dropped his cigarette on the sidewalk; the second officer told him that littering was illegal. Then the subject began to walk away from the officers, telling them that they could not detain him. The first officer ordered the subject to place his hands behind his back; the subject replied, “No.” When the first officer grabbed the subject’s wrist, the subject pulled away. Although there were now two Santa Clara City Police Officers on scene, the first officer contacted radio and requested back-up. Without waiting for back-up to arrive, the first officer pulled out his baton and ordered the subject to get on the ground. When the subject refused, the first officer struck him twice on the leg with his baton. After the second baton strike, the subject appeared combative and the second officer used his baton to strike the man’s legs. When the subject walked away from the officers and into the check cashing store, he was tased in the back by an officer and collapsed. The second officer deployed his taser again when the subject tried to get up. The subject was tased a third time while he was on the floor. The complainant alleged that the officer’s detention was racial profiling and that the force used was excessive.

**SJPD’s Conclusion:** The finding for the Bias-Based Policing allegation was “Unfounded,” the finding on force was “Exonerated.” The subject officer did not profile the subject on the basis of his race because the officer had the right to detain the subject for dropping cigarette ash. Once the subject refused the officers’ orders to get on the ground, the subject was delaying and obstructing a police investigation, and thus the officers had additional cause to arrest the subject. The officers initially used batons to overcome the subject’s resistance and effect his arrest but additional force was required

because the subject was very big, and there were only four officers on scene.

**IPA’s Disagreement:** The Department’s investigation failed to consider whether the detention was racially motivated. The question was not whether the officer had the right to detain the subject but whether his discretionary decision to do so was motivated by race. The Department simply concluded that there was no evidence to suggest that the officer’s actions were a result of race. The Department did not review all citations issued by the subject officer for dropping cigarette ash to determine whether this was the very first citation that he issued or whether he issued prior citations to individual of various races. Such an examination might show a pattern of racial bias. The Department relied solely on the officers’ statements that race was not a factor in their decision to detain the subject. There was little justification for the first officer’s initial baton strikes because the subject did not advance or threaten the officers, but instead refused to get onto the ground. The Department failed to critically examine the factors governing the use of force, specifically the severity of the crime and whether the subject posed an immediate threat to the safety of the officers or others. The severity of the crime, dropping cigarette ash and failing to get onto the ground, were minor relative to the risk of injury if officers went “hands-on” with batons.

**IPA Appeal:** The IPA appealed the Department’s findings to the San José City Manager. After considering input from both the IPA and SJPD, the City Manager changed the finding for the Bias-Based Policing allegation to “Not Sustained.” The finding on the Force Allegation remained unchanged.

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**Case #9:**

Officers responded to a 911 call that a resident broke a window with a hammer. The resident,

who suffered from schizophrenia, refused to come outside when the officers arrived. Several officers went inside the house and into the small bedroom occupied by the resident. A fight occurred between the officers and the resident when they attempted to arrest him. The resident suffered facial fractures, lacerations and facial swelling. The resident complained that the officers attacked him and hit him seven to ten times in the head and face. The subject officer acknowledged that he tried to hit the resident in the face a couple of times, but was not sure that his punches connected with the subject's face.

**SJPD's Conclusion:** The resident's injuries were inconsistent with seven to ten blows to the face. The resident's facial injuries were consistent with colliding with furniture during the struggle. The force allegation was exonerated.

**IPA's Disagreement:** The Department's analysis was biased in favor of the officer and was not objective. The subject officer acknowledged that he attempted to punch the resident but was unsure whether or not he made contact. The resident stated that the subject officer struck him repeatedly in the head. Applying the preponderance standard, the evidence was that the officer hit the resident in the head several times. Although the Department asserted that the facial injuries were "possibly" caused by colliding with furniture, there were few facts to support this mechanism of injury.

### III. Force Complaints and Force Allegations

#### A. Overview

The remainder of this chapter provides information about misconduct complaints containing Force allegations. The data include Force Complaints received in 2014 as well as Force Complaints closed by the Department and audited by the IPA office in 2014.

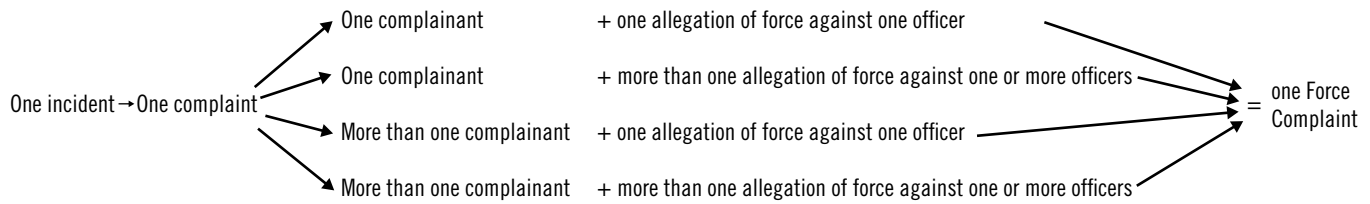
Police work poses both expected and unexpected dangers. On occasion, the use of force by officers is necessary. A police officer who has probable cause to believe that a suspect has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. The use of unnecessary or excessive force is one of the most serious allegations against an officer. The Office of the Independent Police Auditor (IPA) is required by the City's Municipal Code to audit all investigations by the Department of Force allegations filed by members of the public.

Most police encounters, whether consensual or non-consensual, do not involve force. When an officer does use force, the officer must complete a form called a "Force Response Report." An officer is subject to discipline if he/she fails to complete this form. In 2006 and 2007, the SJPD compiled data from these reports into public reports. The data included force incidents in various service areas, the level of force and information about suspects – including age, gender, race and city of residence. According to the 2007 report, "SJPD's self-initiated efforts to compile, analyze and share force-related information has proven to be valuable in identifying training needs and increasing public awareness." Since the public remains keenly interested in the force used by SJPD officers, the Department should resume issuing a report each year.

#### B. Force Complaints

In this report, a "Force Complaint" is a complaint that includes one or more allegations of improper use of force by a San José police officer. Each of the scenarios below is an example of a Force Complaint.

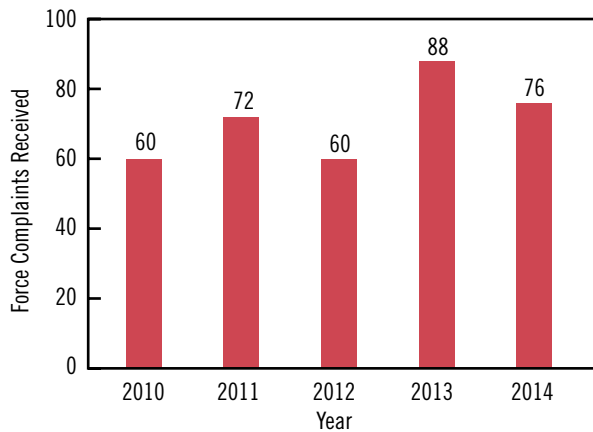
**Illustration 3-A: How Force Complaints are Defined**



The Department’s investigation of a Force Complaint 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 Department’s 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 the Department evaluates include the severity of the crime, the threat presented by the suspect and the resistance offered by the suspect.

Seventy-six (76) Force Complaints were received in 2014.<sup>12</sup> That number is lower than the number of Force Complaints received in 2013 (88) but is slightly higher than the average number of Force Complaints reviewed over the past five years (71). Illustration 3-B shows the number of Force Complaints received in years 2010 through 2014.

**Illustration 3-B: Force Complaints Received – Five-Year Overview (2010 - 2014)**

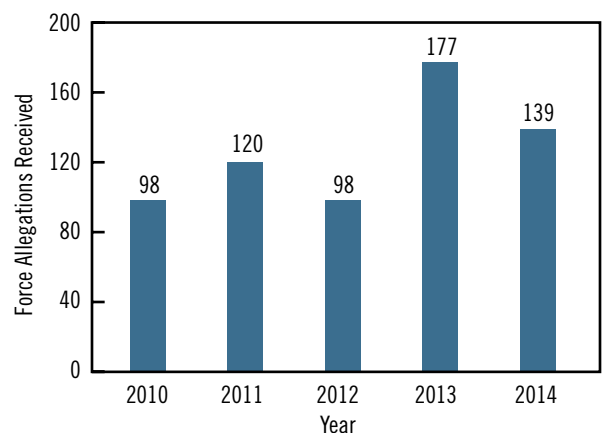


<sup>12</sup> Even if a complaint is received in 2014, it may not necessarily be closed in 2014.

**C. Force Allegations**

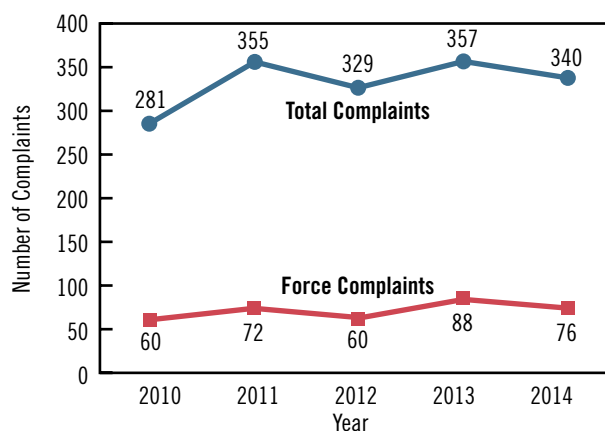
The annual number of Force **allegations** in complaints is always higher than the annual number of Force Complaints because, as shown in Illustration 3-A “How Force Complaints are Defined,” one complaint can have more than one Force allegation. For example, a complainant might allege that one officer shoved him against a fence and then another officer tackled him to the ground; this example reflects one Force Complaint with two Force allegations. The 76 Force Complaints received in 2014 contained 139 force allegations. Fewer Force allegations were received in 2014 than in 2013; the average number of Force allegations reviewed over the past five years is 126. Illustration 3-C shows the number of Force allegations received over the past five years.

**Illustration 3-C: Force Allegations Received – Five-Year Overview (2010 – 2014)**



Twenty-two per cent (22%) of all complaints received in 2014 were Force Complaints containing one or more Force allegations. Illustration 3-D shows the number of Force complaints relative to all complaints received from the public from 2010 to 2014. The percentage of Force Complaints received in 2014 is comparable to the percentage of Force Complaints received over the past five years. See Appendix I for additional detail.

**Illustration 3-D: Force Complaints Received Relative to Total Complaints Received — Five-Year Overview (2010 – 2014)**



Illustrations 3-B, 3-C, and 3-D reflect that, when comparing 2014 data to 2013 data, fewer Force Complaints were filed in 2014, that those Force Complaints contained fewer Force allegations, and that the percentage of Force Complaints relative to all complaints decreased. However, the 2014 data does not appear to be abnormal if one considers the data over the last five years.

## IV. Force Complaints and Force Allegations Closed and Audited in 2014

### A. IPA Audit Determination

The IPA is mandated to audit all complaints with Force allegations. In 2014, the IPA audited 80 Force Complaint investigations. The IPA agreed with the Department in 71% of these cases after a first review. In ten percent (10%) of the Force Complaints, the IPA requested additional documentation, additional interviews or more evidence, and/or re-

analyses of the facts and supporting rationales. In 19% of Force Complaints, the IPA concluded that the Department investigations were not complete or objective (“Disagreed”) or the IPA closed the case despite having some reservations about the Department’s investigation and/or analysis (“Closed with Concerns”).

**Illustration 3-E: IPA Audit Determination of Force Complaints Closed in 2013 and 2014**

IPA Audit Determination	Explanation of IPA Audit of the IA Investigation of Force Complaints	2013 Audits	2014 Audits
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	49 (86%)	57 (71%)
Agreed After Further	The IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	6 (11%)	8 (10%)
Closed with Concerns	IPA questioned the IA investigation and/or IA analysis	1 (2%)	6 (8%)
Disagreed	IPA audit concluded that the IA investigation was not thorough, fair and objective.	1 (2%)	9 (11%)
<b>Total Force Complaints Audited</b>		<b>57 (100%)</b>	<b>80 (100%)</b>

Illustration 3-E reflects that, in 2013, the IPA agreed with the Department’s investigations in nearly 90% of the Force Complaints, after first review. This percentage dropped significantly in 2014. The percentage of Force Complaints in which the IPA disagreed or had concerns about the Department’s investigation and/or analysis went from four percent (4%) in 2013 to 19% in 2014.

### B. SJPD Findings for Force Allegations Closed in 2014

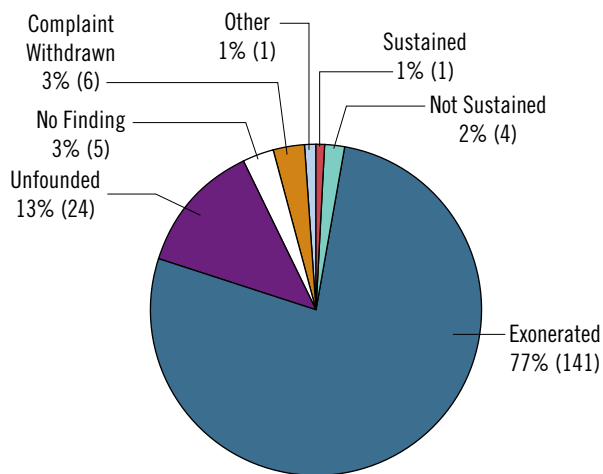
Illustration 3-F provides information about Department findings for each of the 699 Force allegations closed between 2010 through 2014. Over this five-year period, only two Force allegations were sustained – one in 2011 and one in 2014. Each

year, the Department closed the majority of the Force allegations with findings of “Exonerated,” meaning that their investigations determined that the level and the type of force used by the officers were reasonable and justified. The percentage of allegations closed as “exonerated” range from a low of 66% (101 out of 152) in 2010 to a high of 81% (75 out of 93) in 2013. The percentage of Force allegations closed as “Not Sustained” has decreased steadily from 2010 (10%) to 2013 (0%). In 2014, two percent (2%) of Force allegations were closed as “not sustained.”

**Illustration 3-F: SJPD Findings for Force Allegations Closed – Five-Year Overview (2010 – 2014)**

Disposition of Force Allegations	2010		2011		2012		2013		2014	
	#	%	#	%	#	%	#	%	#	%
Sustained	0	0%	1	1%	0	0%	0	0%	1	1%
Not Sustained	15	10%	10	9%	7	4%	0	0%	4	2%
Exonerated	101	66%	76	67%	107	67%	75	81%	141	77%
Unfounded	20	13%	16	14%	23	14%	14	15%	24	13%
No Finding	12	8%	5	4%	12	8%	4	4%	5	3%
Complaint Withdrawn	4	3%	1	1%	3	2%	0	0%	6	3%
Other	0	0%	4	4%	7	4%	0	0%	1	1%
<b>Total</b>	<b>152</b>	<b>100%</b>	<b>113</b>	<b>100%</b>	<b>159</b>	<b>100%</b>	<b>93</b>	<b>100%</b>	<b>182</b>	<b>100%</b>

**Illustration 3-G: IA Findings for Force Allegations Closed in 2014**



## V. Force Complaint Demographics

### A. Ethnicities of Complainants

The IPA attempts to identify the ethnicities of complainants during the initial complaint intakes. We obtained information on ethnicity from 370 individual complainants in 2014. We were not able to capture the ethnicity of all complainants because some declined to disclose this information to us. Illustration 3-H shows the ethnicities of the 86 complainants who filed Force Complaints, as well as the ethnicities of all complainants, and the percentage of those ethnic groups within the San José population.

**Illustration 3-H: Force Complaints Received in 2014 — Complainants by Ethnicities\***

Ethnicity From Complainant Intakes	Force Complainants		Total Complainants		% of San José Population**
	Number	%	Number	%	
African American	8	9%	42	11%	3%
Asian American / Pacific Islander***	0	0%	21	6%	32%
Caucasian	18	21%	70	19%	29%
Hispanic / Latino	34	40%	112	30%	33%
Native American	1	1%	3	1%	1%
Other	1	1%	8	2%	2%
Decline / Unknown	24	28%	114	31%	0%
<b>Complainant Responses to Intakes</b>	<b>86</b>	<b>100%</b>	<b>370</b>	<b>100%</b>	<b>100%</b>

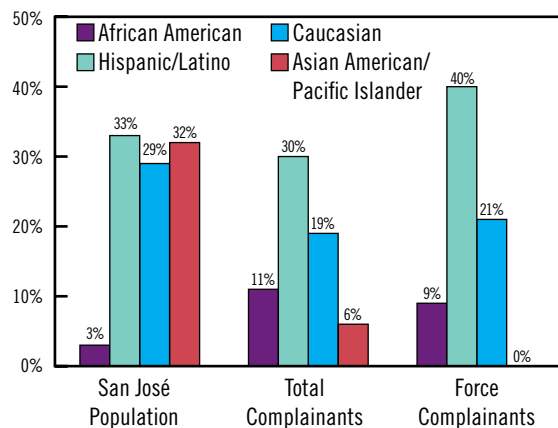
\* Information on ethnicities of complainants is obtained during intake. Not all complainants reside within the City of San José; however all complainants are members of the public.

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

\*\*\*For the purpose of this illustration, Asian/Pacific Islanders includes Filipino and Vietnamese.

Review of the data in Illustration 3-I over the last five years reveals the following trends:

**Illustration 3-I: Force Complaints Received in 2014 — Complainants by Selected Ethnicities**



- The percentage of all Hispanic/Latino complainants has remained steady – from 28% in 2012 to 32% in 2011. This percentage is close to their representation in the City’s population. According to 2010 U.S. Census data, the Hispanic/Latino population in San José is 33%. However the percentage of Hispanic/Latino complainants who alleged force has always been significantly higher than their representation in the City’s population – ranging from 38% in 2013 to 48% in 2012.

- The percentage of all African American complainants has also remained steady – 12% in 2010, 11% in 2013 and 2014, and 9% in 2012 and 2011. Over the past five years, the percentage of African American complainants who alleged force has ranged from a high of 15% in 2013 to a low of 8% in 2011. These percentages are higher than the representation of African American in the City’s population. According to 2010 U.S. Census data, the African American population in San José is 3%.
- The percentage of all Caucasian complainants has ranged between 20% and 24% over the past five years. Over the past five years, the percentage of Caucasian complaints who alleged force has ranged from a high of 21% in 2014 to a low of 15% in 2012. These percentages are lower than the representation of Caucasians in the City’s population. According to 2010 U.S. Census data, the Caucasian population in San José is 29%.
- Asian Americans and Pacific Islanders file few complaints relative to their representation in the City’s population – 32%. No force complaints were filed in 2014 by persons in this group.

## B. Subjects of Force Allegations Closed in 2014

### 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.”

Anyone can file a complaint, regardless of the person’s 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 allegedly using force. For example, it is not uncommon for parents to file complaints about the force police allegedly used upon their adult or minor children. The demographics of the parents (the complainants) may be different from those of the children (the subjects of the force). The IPA reviewed the 80 Force Complaints closed in 2014 to determine the ethnicities, ages and genders of the persons on whom force was allegedly used. This detailed information was gleaned from police reports, citations, and/or medical records. Illustrations 3-J, 3-K, and 3-L show the ethnicities of 93 individuals against whom force was allegedly used, the gender of these persons and their ages.

Illustration 3-J: Ethnicities of Subjects in Force Allegations Closed in 2014

Ethnicities	Number of persons	Percentage of total persons	Percentage of San José population*
African American	13	14%	3%
Asian American/ Pacific Islander	4	4%	32%
Caucasian	21	23%	29%
Hispanic / Latino	35	38%	33%
Native American	1	1%	1%
Other	1	1%	2%
Decline/unknown	18	19%	0%
<b>Total persons</b>	<b>93</b>	<b>100%</b>	<b>100%</b>

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

Illustration 3-K: Gender of Subjects in Force Allegations Closed in 2014

Gender	Number of persons	Percentage of total persons
Male	70	75%
Female	23	25%
<b>Total persons</b>	<b>93</b>	<b>100%</b>

Illustration 3-L: Ages of Subjects in Force Allegations Closed in 2014

Age Range	Number of persons	Percentage of total persons
Under age 20	12	13%
20-29 years	19	20%
30-39 years	21	23%
40-49 years	17	18%
50-59 years	14	15%
60 and over	1	1%
Unknown	9	10%
<b>Total persons</b>	<b>93</b>	<b>89%</b>

## VI. Data Tracked from Force Complaints

The IPA tracks data from Force Complaints received in 2014 and from our audits of the Department’s force investigations completed in 2014 to determine whether any trends or patterns can be detected. The IPA tracks information reported by complainants, as well as information gleaned from the Department’s investigation — 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-M. The total number of types of force alleged is always greater than the total number of Force Complaints 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 focus on multiple applications of force. Our review of the data showed that the 182 Force allegations included 216 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-M: Types of Force Applications in Allegations Closed from 2011 through 2014

Types of force	2011		2012		2013		2014	
	Number of Applications	% of Total Force Applications	Number of Applications	% of Total Force Applications	Number of Applications	% of Total Force Applications	Number of Applications	% of Total Force Applications
Baton	17	10%	15	7%	10	8%	14	6%
Body weapons	26	15%	40	18%	38	29%	66	31%
Canine bite	1	1%	1	0%	1	1%	1	0.5%
Car impact	1	1%	1	0%	0	0%	1	0.5%
Chemical agent	0	0%	2	1%	1	1%	4	2%
Control hold	72	41%	86	39%	53	40%	74	34%
Flashlight	1	1%	0	0%	0	0%	0	0%
Gun	3	2%	3	1%	8*	6%	8**	4%
Lifting up cuffs	0	0%	3	1%	1	1%	2	1%
Takedown	45	25%	60	27%	19	14%	37	17%
Taser	10	6%	10	5%	2	2%	9	4%
Other	1	1%	0	0%	0	0%	0	0%
<b>Total</b>	<b>177</b>	<b>100%</b>	<b>221</b>	<b>100%</b>	<b>133</b>	<b>100%</b>	<b>216</b>	<b>100%</b>

\* In 2013, there were 8 gun applications; 2 involved the use of a less lethal projectile weapon that fired rubber bullets.

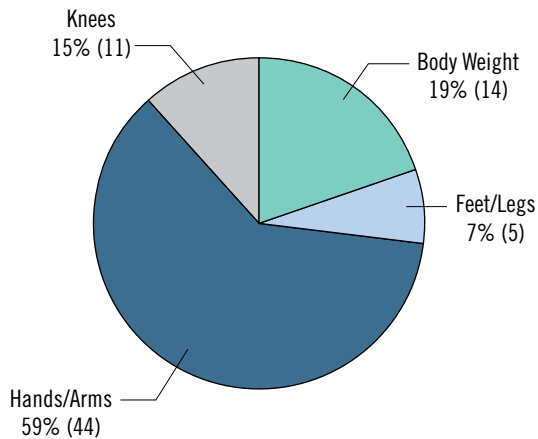
\*\* In 2014, there were 8 gun applications; 5 involved use of a less lethal projectile weapon.

Illustration 3-N shows that “control holds” was the type of force most frequently alleged in Force Complaints in 2014. The next most frequently alleged type of force was “body weapons.” The use of “takedowns” and batons were, respectively, the third and fourth most frequently alleged types of force. This frequency data matches that of 2013.

Reviewing types of force applications over a four-year period shows that the use of control holds, as a percentage of total applications, has been the most frequently alleged type of force. The use of “body weapons” as a percentage of total applications has doubled from 15% of total force applications in 2011 to 31% in 2014.

### 1. Control Holds

**Illustration 3-N: Control Hold Methods in Allegations Closed in 2014 (74 total)**

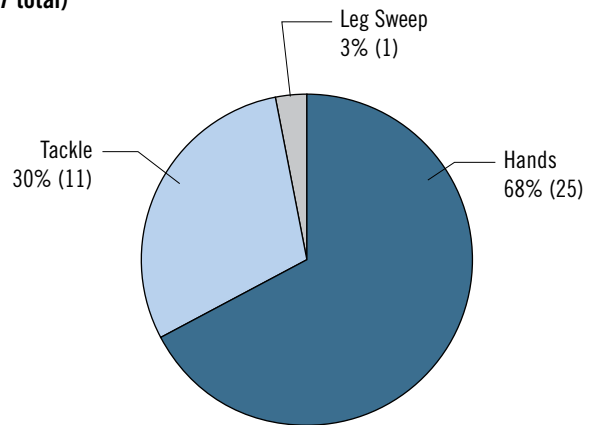


A control hold is defined as the application of force or pressure by the officer to move, push, pull a person, to keep a person in one position, or to restrain a person’s limbs, torso or head. For example, an officer may use a control hold to grab a suspect’s arm and to force the arm behind the suspect’s 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, an officer 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 2014, there were 74 control hold applications that formed the bases of Force allegations. Most of these, 59% (44) involved officers’ uses of hands.

### 2. Takedowns

**Illustration 3-O: Takedown Methods in Allegations Closed in 2014 (37 total)**



A takedown is 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/her movements during handcuffing.

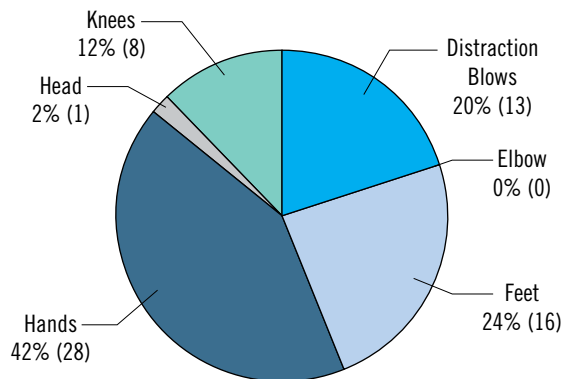
In 2014, there were 37 takedown applications that formed the bases of Force allegations. Most of these, 68% (25) involved officers’ uses of their upper limbs (including hands, forearms, and elbows) to push or pull suspects. Complainants alleged that officers tackled suspects in eleven cases (30%). The 2014 data does not differ substantially from 2013 data.

### 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

In 2013, the IPA began tracking “distraction blows” as a separate category within body weapon applications. The term “distraction blow” generally means a strike, punch or kick delivered by an officer to distract the suspect so the officer can gain compliance. For example, an officer trying to handcuff a suspect who is on the ground with his hands underneath his body, might punch or slap the suspect to distract the suspect’s concentration on keeping his hands under his body. The primary goal of the distraction blow is to gain compliance from the suspect and not to inflict injuries, although injuries are inevitable. Through the audit process, IPA staff reviewed the alleged use of 13 distraction blows by officers in 2014.

**Illustration 3-P: Body Weapon Methods in Allegations Closed in 2014 (66 total)**



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 2014, there were 66 body weapon applications that formed the bases of Force allegations. Most of these, 42% (28) involved officers’ use of hands/fists to punch or hit suspects.

**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. Fifty-three percent (53%) of complainants’ descriptions of force (49 of 93) were fairly consistent with the force described by the officers. However, in 35% of complaints (33), the force alleged by complainants was significantly inconsistent with the force described by the officers. We were unable to make a determination about consistency in 12% (11) of the complaints. It should be noted that some complainants who lodge force complaints are not witnesses or the subjects of the force. In those instances, the complainants filed complaints on behalf of others and relied upon descriptions provided by others. Additionally, in a significant percentage of Force Complaints, the IPA noted that the complainant and/or the subject of the force was likely under the influence of alcohol (28%) and/or drugs (18%) — substances that can impair the ability to accurately perceive and/or recall details.

**Illustration 3-Q: Consistency between Complainants’ and Officers’ Accounts of Officers’ Use of Force in 2014**

	Number of Subjects of Force	% of Total Subjects of Force
Mostly consistent	49	53%
Significantly inconsistent	33	35%
Unable to determine	11	12%
<b>Total Subjects of Force</b>	<b>93</b>	<b>100%</b>

## C. Injuries in Force Allegations Closed in 2014

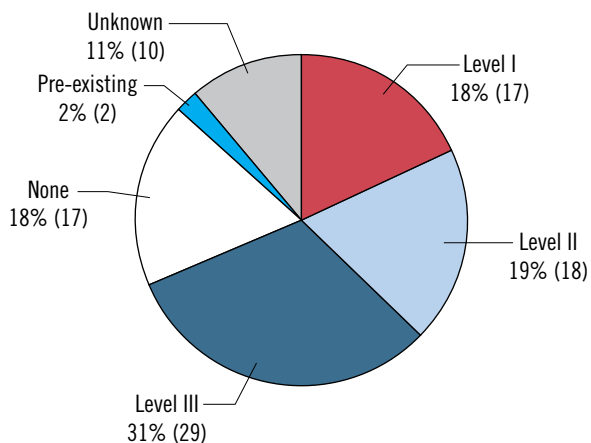
### 1. Levels of Injury in Force Allegations Closed in 2014

Illustration 3-S provides data about the levels of injuries 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-R.

**Illustration 3-R: Levels of Alleged Injuries**

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-S: Levels of Injury in Force Allegations Closed in 2014**



Data from Force Complaints closed in 2014 show that allegations of Level III injuries accounted for 31% (29 of 93) of alleged injuries. In 18% (17 of 93) of complaints that alleged force there were no injuries. The level of injury was unknown for 11% (10 of 93) of complainants alleging force.

### 2. Consistency between Injuries Alleged and Supporting Medical Records in 2014

The IPA tracked whether the injuries described by the complainants were consistent with the injuries reflected in medical reports and records. In 38% (35 of 93) of the complaints, the injuries described by complainants were consistent with the injuries reflected in medical reports/records. In 38% (35) of the complaints, there were no supporting medical records, and thus a determination of consistency could not be made. The lack of supporting medical records does not necessarily negate an injury. Medical records may not be available if the complainant refused to sign a medical release or if the complainant was not the person injured and therefore not authorized to receive another person’s medical records. In 12% of the complaints (11), the injuries described by the complainants were significantly inconsistent with the injuries described in their medical reports/records. In 12% (11) of the complaints, the complainants did not seek medical care for their injuries, or the force allegedly used by the officers did not result in injuries.

**Illustration 3-T: Consistency between Injuries Alleged and Supporting Medical Records in 2014**

	Number of Subjects of Force	% of Total Subjects of Force
Mostly consistent	35	38%
N/A	11	12%
Significantly inconsistent	11	12%
Unknown – complainant was not subject and no records	1	1%
Unknown – no records	35	38%
<b>Total Subjects of Force</b>	<b>93</b>	<b>100%</b>

### 3. Location of Force Applications in Allegations Closed in 2014

Illustration 3-U provides data showing the parts of the body that complainants reported were impacted by the use of force. The IPA tracks this data to determine if any trends exist in Force Complaints. 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. Over the past four years, alleged force applications to the head as a percent have ranged from 23% in 2014 to 20% in 2011, 2013 and 18% in 2012.

**Illustration 3-U: Locations of Force Applications in Allegations Closed in 2014**

Location of Force Applications	#	%
Head	37	23%
Neck	8	5%
Torso	62	39%
Limbs	51	32%
Unknown	3	2%
<b>Total</b>	<b>161</b>	<b>100%</b>

## VII. Officer-Involved Shootings and In-Custody Fatal Incidents

Illustration 3-V: Officer-Involved Shootings – Five-Year Overview (2010-2014)\*

2010 Case	Ethnicity	Mental Illness History	Person Armed?	Police Weapons Used	Prior Criminal Record	CIT** at Scene?	Cause of Injury/Death	Within Policy?
1	Hispanic	No	No	Handgun	Yes	No	Injuries caused by flying glass	Determined accidental
2	Hispanic	No	Vehicle	Handgun	Yes	No	Dog bite injury	Within policy
3	Caucasian	No	Nail Gun & Knife	Handgun	Yes	No	Death/Gunshot	Within policy
4	Hispanic	No	Handgun	Handgun	Yes	No	Injury/Gunshot	Within policy
5	Hispanic	No	Vehicle	Handgun	Yes	No	Injury/Gunshot	Within policy

2011 Case	Ethnicity	Mental Illness History	Person Armed?	Police Weapons Used	Prior Criminal Record	CIT** at Scene?	Cause of Injury/Death	Within Policy?
1	Vietnamese	Yes	Knives	Handgun	Yes	No	Death/Gunshot	Within policy
2	Hispanic	No	Vehicle	Handgun	Yes	No	Injury/Gunshot	No finding
3	Hispanic	No	Handgun	Handgun	Yes	No	Injury/Gunshot	Within policy
4	Af. American	No	Handgun	Handgun	Yes	No	Injury/Vehicle	Within policy
5	Hispanic	Yes	Handgun	Handgun	Yes	Yes	Death/Gunshot	Within policy
6	Eastern Indian	No	Vehicle	Handgun	Yes	Yes	Death/Gunshot	Within policy
7	Hispanic	No	Facsimile Handgun	Handgun	No	Yes	Injury/Gunshot	Within policy
8	Hispanic	No	Handgun	Handgun	Yes	No	Death/Gunshot	Within policy

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	Within policy
2	Caucasian	No	Gun	Gun	Yes	No	Injury/Gunshot	Within policy

2013 Case	Ethnicity	Mental Illness History	Person Armed?	Police Weapons Used	Prior Criminal Record	CIT** at Scene?	Cause of Injury/Death	Within Policy?
1	Caucasian	No	No	Handgun	Yes	No	Death/Gunshot	Within policy
2	Hispanic	No	No	Handgun	Yes	No	Death/Gunshot	Pending
3	Caucasian	No	No	Handgun	Yes	No	Injury/Gunshot	Within policy
4	Hispanic	No	No	Handgun	Yes	No	Injury/Gunshot	Pending
5	Hispanic	No	Handgun	Handgun	Yes	No	Injury/Gunshot	Within policy
6	Hispanic	No	Vehicle	Handgun	Yes	No	Death/Gunshot	Pending

2014 Case	Ethnicity	Mental Illness History	Person Armed?	Police Weapons Used	Prior Criminal Record	CIT** at Scene?	Cause of Injury/Death	Within Policy?
1	Vietnamese	Yes	Knife	Handgun	Yes	No	Death/Gunshot	Pending
2	Hispanic	No	Vehicle	Handgun	Yes	Yes	Injury/Gunshot	Pending
3	Hispanic	No	Vehicle	Handgun	Yes	Yes	Injury/Gunshot	Pending
4	Caucasian	Yes	Drill	Rifle	No	Yes	Death/Gunshot	Pending

\* Data provided by SJPD.

\*\* In 1999, the SJPD implemented 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 2014, there were four officer-involved shootings resulting in injury or death. When officer-involved shootings occur, the IPA has specific mandated responsibilities. This section discusses information about these incidents and the IPA's responsibilities.

### **A. Role of the Department in 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 shootings occur and participating on the Shooting Review Panel that evaluates the SJPD investigations.

Every officer-involved shooting that results in death is subject to a thorough investigation and review process that is depicted in Illustration 3-X. As the illustration indicates, the SJPD Homicide Unit conducts a criminal investigation. 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, the Department 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, the Department 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.<sup>13</sup> 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. As shown in Illustration 3-W, if a member of the public files a complaint about an officer-involved shooting incident, the role of the IPA in reviewing that incident is more extensive because the IPA will audit the Department's investigation of the incident.<sup>14</sup> In 2014, there were several complaints from the public following media accounts of officer-involved shooting incidents.

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<sup>13</sup>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.

<sup>14</sup>The SJPD may initiate an internal investigation of the officer's conduct. However, the IPA is not permitted to review or audit these Department-Initiated Investigations (DII).

### Illustration 3-W: Role of IPA in Officer-Involved Shooting Incidents

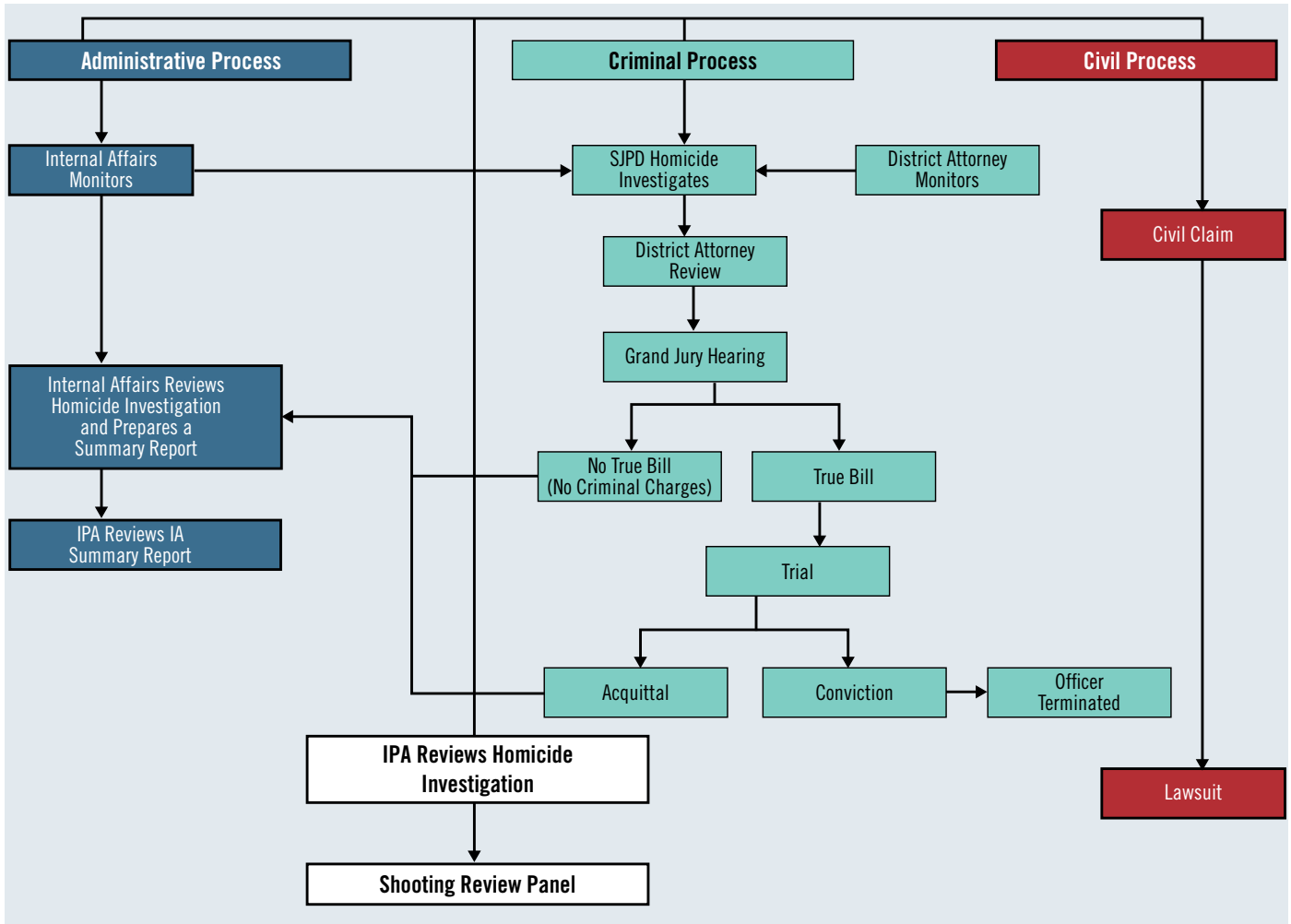
All Officer-Involved Shooting Incidents	Officer-Involved Shooting Incident in which a public complaint is filed
IPA is notified of incident, and can respond to scene and be briefed by IA Commander.	IPA is notified of incident, and can respond to scene and be briefed by IA Commander.
IPA can participate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

The purpose of the shooting review panels is to determine whether, given the circumstances of the incident, any training or equipment needs exist and whether any changes to SJPD policies are warranted. In 2011, the IPA voiced concerns that these review panels were not convened until months or even years after the incidents, thereby defeating their purpose. In 2012, SJPD convened

eight review panels – a significant improvement over the prior two years in which no panels were held. The Department held two panels in 2013 and four panels in 2014. It is essential that these panels be convened shortly after the incidents so that SJPD can quickly implement changes, if any, to policies and procedures.



Illustration 3-X: 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: Sustained Findings

## I. Sustained Findings in 2014

A complaint may contain one or more allegations; as a result, there are always more allegations than there are complaints. In 2014, the Department investigated and closed 295 complaints containing 830 allegations.

The misconduct complaint process recognizes eight different allegations:

- Arrest or Detention (AD)
- Bias-Based Policing (BBP)
- Courtesy (C)
- Conduct Unbecoming an Officer (CUBO)
- Force (F)
- Neglect of Duty (ND)
- Procedure (P)
- Search and/or Seizure (SS)

Of the 830 allegations, the Department closed 42 (5%) with findings of sustained, meaning that the Department's investigations disclosed sufficient evidence to clearly prove that the alleged misconduct occurred. Thirty-two (32) officers were the subjects of the 42 sustained findings.

Thirty-one of the 42 sustained findings in 2014 (74%) were for Procedure violations of the San José Police Department Duty Manual. The Duty Manual contains the rules and procedures that all SJPD officers must follow. The Duty Manual is available to public on the SJPD website and on the IPA website: <http://www.sanjoseca.gov/ipa>. The remaining 11 sustained findings were for misconduct related to Courtesy (6), CUBO (3), Search/Seizure (1), and Force (1). The Department sustained none of the 34 Bias-Based Policing allegations that it investigated.

Illustration 4-A: Allegations Closed by the Department in 2014\*

Type of Dispositions	Dispositions of Allegations								Total	%
	AD	BBP	C	CUBO	F	ND	P	SS		
Sustained	0	0	6	3	1	0	31	1	42	5%
Not Sustained	0	2	53	1	4	0	14	3	77	9%
Exonerated	81	0	17	0	141	1	121	60	421	51%
Unfounded	2	29	35	18	24	1	86	3	198	24%
No Finding	4	1	10	2	5	0	16	6	44	5%
Complaint Withdrawn	2	1	10	2	6	1	8	4	34	4%
Other	0	1	2	0	1	0	10	0	14	2%
<b>Total Allegations</b>	<b>89</b>	<b>34</b>	<b>133</b>	<b>26</b>	<b>182</b>	<b>3</b>	<b>286</b>	<b>77</b>	<b>830</b>	<b>100%</b>

\*Excludes Department-Initiated Investigations

## II. Officer Discipline for Sustained Findings in 2014

Officers who receive sustained findings are subject to discipline by the San José Police Department (SJPD). By law, the names of the officers and the discipline imposed upon them are confidential, and cannot be disclosed to anyone, not even the complainants. What can be revealed are the number

of officers who were disciplined, and the types of discipline imposed in 2014.

No officers were terminated in 2014, even though there were five sustained Conduct Unbecoming an Officer (CUBO) findings. (See Illustration 4-B.) An officer who receives a sustained CUBO finding is deemed to have engaged in conduct (on or off duty)

that reflects adversely on the Department, and/or has engaged in conduct that a reasonable person would find to be unbecoming an officer.

According to SJPDP, twenty officers received training and/or counseling, six received documented oral

counseling, one was given a letter of reprimand, and two officers were suspended---one for 20 hours, and the other for 40 hours. Thirty-two (32) officers received sustained findings; 29 were disciplined in 2014 and three were disciplined in 2015.

**Illustration 4-B: Officer Discipline Imposed by the Department in 2013 and 2014**

Type of Discipline	2013		2014	
	# of Times	% of All Discipline	# of Times	% of All Discipline
Training	1	4%	0	0%
Training& Counseling	14	61%	20	69%
<b>All Training and/or Counseling</b>	<b>15</b>	<b>65%</b>	<b>20</b>	<b>69%</b>
Documented Oral Counseling (DOC)	2	9%	6	21%
Letter or Reprimand (LOR)	2	9%	1	3%
<b>All DOC &amp; LOR</b>	<b>4</b>	<b>17%</b>	<b>7</b>	<b>24%</b>
20-Hour Suspension	0	0%	1	3%
40-Hour Suspension	0	0%	1	3%
120-Hour Suspension	1	4%	0	0%
160-Hour Suspension	1	4%	0	0%
<b>All Suspensions</b>	<b>2</b>	<b>9%</b>	<b>2</b>	<b>7%</b>
Settlement Agreement	2	9%	0	0%
<b>All Settlements</b>	<b>2</b>	<b>9%</b>	<b>0</b>	<b>0%</b>
<b>Total Discipline Imposed</b>	<b>23</b>	<b>100%</b>	<b>29</b>	<b>100%</b>

### III. Experience Levels of Officers with Sustained Findings in 2014

- Of the 32 officers who received sustained findings in 2014, 21 of them had more than 7 years of experience. This means that 66% of the officers who engaged in misconduct were the most experienced (7-16+ years).
- Seven officers with the least law enforcement experience (under five years) were 22% of those who engaged in misconduct in 2014.

- An officer with 5-6+ years of law enforcement experience received the one sustained finding of excessive force.
- Of the 31 sustained Procedure allegations, 18 (58%) went to the most experienced officers (7-16+ years).
- Three CUBO allegations were sustained against officers with 7-16+ years of law enforcement experience.

Illustration 4-C: Years of Experience of Officers with Sustained Findings in 2014

Years of Experience	Total Officers with Sustained Findings	% of Officers with Sustained Findings	Type of Allegations					Total Sustained Allegations	% of Sustained Allegations
			C	CUBO	F	P	SS		
0-1+	5	16%				7		7	17%
2-4+	2	6%				2		2	5%
5-6+	4	13%	1		1	4		6	14%
7-10+	1	3%		1		1		2	5%
11-15+	7	22%	1	1		6		8	19%
16+	13	41%	4	1		11	1	17	40%
	<b>32</b>	<b>100%</b>	<b>6</b>	<b>3</b>	<b>1</b>	<b>31</b>	<b>1</b>	<b>42</b>	<b>100%</b>

**Legend of Allegations:**

**AD:** Arrest or Detention; **C:** Courtesy; **CUBO:** Conduct Unbecoming an Officer; **P:** Procedure; **SS:** Search or Seizure

### IV. Five-Year Overview of Sustained Findings (2010-2014)

Over the last five years, there have been 162 sustained findings. Procedure allegations (111) accounted for 69% of the sustained findings. CUBO (19) and Courtesy (16) allegations were the basis, respectively, for 12% and 10% of the sustained

findings, followed by Search/Seizure (8) and Arrest/Detention (5). There were just two sustained findings for Force allegations—one in 2011 and one in 2014—and one sustained finding for a Neglect of Duty allegation. There were no sustained findings for any of the Bias-Based Policing allegations over the last five years.

Illustration 4-D: Types of Sustained Findings by the Department (2010-2014)\*

Year	Types of Allegations								Total	% of All Findings
	AD	BBP	C	CUBO	F	ND	P	SS		
2010	3	0	2	5	0	0	14	3	27	4%
2011	1	0	5	6	1	1	27	3	44	6%
2012	1	0	0	0	0	0	12	1	14	2%
2013	0	0	3	5	0	0	27	0	35	6%
2014	0	0	6	3	1	0	31	1	42	5%
<b>Total Sustained Findings</b>	<b>5</b>	<b>0</b>	<b>16</b>	<b>19</b>	<b>2</b>	<b>1</b>	<b>111</b>	<b>8</b>	<b>162</b>	

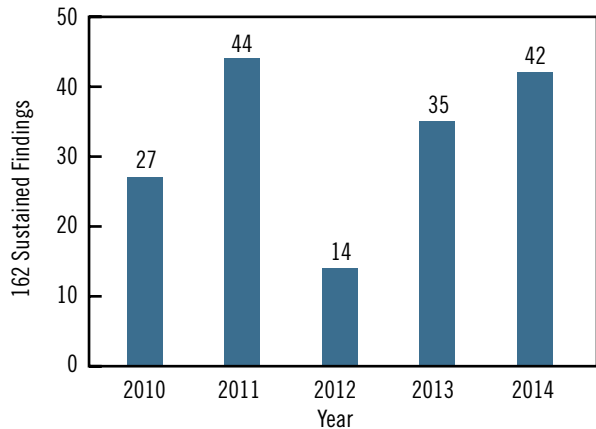
\*Excludes Department-Initiated Investigations

**Legend of Allegations:**

**AD:** Arrest or Detention; **BBP:** Bias-Based Policing; **C:** Courtesy; **CUBO:** Conduct Unbecoming an Officer; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure; **SS:** Search or Seizure

The number of sustained findings reached a low of 14 in 2012. In the following two years, sustained findings jumped dramatically—in 2013 there were 35; in 2014 sustained findings rose to 42.

**Illustration 4-E: Number of All Sustained Findings by the Department (2010-2014)**



In 2013 and 2014, officers with the longest tenure in law enforcement received a majority of the sustained findings, most of which were for procedural misconduct. In 2013, officers with seven to 16+ years of experience accounted for 95% of the sustained findings. Similarly, in 2014, officers with seven to 16+ years of experience received 66% of the sustained findings.

**Illustration 4-F: Years of Experience of Officers with Sustained Findings (2010-2014)**

Years of Experience	2010	2011	2012	2013	2014	Total Number of Officers
0-1+	1	8	2	1	5	17
2-4+	4	6	1	0	2	13
5-6+	0	1	1	0	4	6
7-10+	2	6	3	2	1	14
11-15+	5	6	3	6	7	27
16+	4	3	1	11	13	32
	<b>16</b>	<b>30</b>	<b>11</b>	<b>20</b>	<b>32</b>	<b>109</b>

Over the last five years, discipline was imposed on 121 officers. Discipline has ranged from the relatively minor—training and/or counseling, to the severe—suspension and termination.

**Illustration 4-G: Discipline Imposed on Officers by the Department (2010-2014)\***

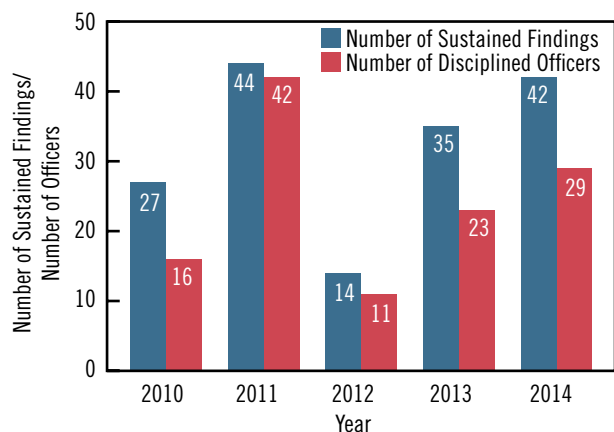
Type of Discipline	2010 # of Times	2011 # of Times	2012 # of Times	2013 # of Times	2014 # of Times	Total # of Times
Training and/or Counseling	5	19	9	15	20	68
Documented Oral Counseling and/or Training	6	10	2	2	6	26
Letter of Reprimand	2	1		2	1	6
10-Hour Suspension		3				3
20-Hour Suspension		2			1	3
40-Hour Suspension		1			1	2
120-Hour Suspension				1		1
160-Hour Suspension				1		1
4-Month Suspension	1					1
7-Month Suspension	2					2
Termination**		6		2		8
<b>Total Number of Officers Disciplined</b>	<b>16</b>	<b>42</b>	<b>11</b>	<b>23</b>	<b>29</b>	<b>121</b>

\*Data provided by SJPD

\*\* Included Transfers, Resignations, Settlement Agreements, and Terminations

In 2010, there were five sustained findings for CUBO allegations; in 2014 there were three. Yet, no officers were terminated in 2010 and 2014. Conversely, in 2011 there were six sustained findings for CUBO allegations and there were six officer terminations, transfers, resignations, or discipline resolved by settlement agreements. On the surface, these statistics raise the question of whether or not the Department is disciplining its officers in a consistent manner. Because the discipline of officers is confidential, it is difficult, if not impossible, to critically examine this issue.

**Illustration 4-H: Number of Sustained Findings and Number of Officers Disciplined (2010-2014)\***



\*The year that the officer was disciplined may differ from the year that the Department sustained the finding.

## V. Summaries of Sustained Findings by the Department in 2014

The IPA office believes that we should be as transparent as lawfully permissible about the civilian oversight process. One way to promote transparency is by providing to the public summaries of the incidents that gave rise to the sustained findings. Because the law prohibits the disclosure of the identities of the complainants and the subject officers, we have deleted from the summaries the names of the involved parties.

The 25 sustained finding summaries stem from just 10% of the conduct complaints (25 of the 253) and only five percent (5%) of the allegations (42 of 830) closed by the Department in 2014. This means that in 2014, the Department deemed 95% of the 830 allegations to be Exonerated, Unfounded, Other, Withdrawn or No Finding.

*Please note: The sustained finding summaries were audited and closed by the IPA office only after the Department closed its investigations issued its findings. However, some of these sustained findings may have been modified (changed or removed) as a result of various appeals hearings or negotiations*

(e.g. Skelley hearings, civil service appeals, arbitration or settlement) between the subject officers and the City of San José. Because our office is not privy to these hearing or negotiations, any subsequent modifications to the sustained findings are not reflected in this Report.

**Case #1:** The complainant called 911 to report that her home had been burglarized. The subject officer who responded gave the complainant the option of filing a report immediately or at a later date. As a result, he did not complete or submit a report documenting the burglary.

**The Rule:** Duty Manual section R 1202 states, in part, that “Department members will complete and submit reports in adherence to the following criteria: FELONY CRIMES: Report all incidents involving an actual or suspected felony violation regardless of whether any enforcement or investigative action is taken or anticipated.”

**Finding: Procedure allegation (failure to complete and submit report) is SUSTAINED.**

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**Case #2:** The complainant was the subject of a traffic stop initiated by the subject officer. During the stop, the subject officer uttered profanity at the complainant. When the complainant asked to speak with the subject officer’s supervisor, the subject officer told the complainant that he was a supervisor. In fact, the subject officer was not a supervisor.

**The Rules:**

- Duty Manual section C 1308 states that “Department members will be courteous and professional to the public. . . . Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or derogatory language [.]”

- Duty Manual section C 1401 states, in part, that “An officer’s conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer[.]”

**Findings:**

- **Courtesy allegation (use of profanity) is SUSTAINED.**
  - **CUBO allegation (misrepresenting oneself as a supervisor) is SUSTAINED.**
- 

**Case #3:** The subject officer carried his Department-issued handgun, unholstered, inside the waistband of his jeans. The gun became unsecured and slipped down the inside of his jeans. When he attempted to grab the gun, he accidentally pulled the trigger and shot himself in the thigh.

**The Rules:**

- Duty Manual section S 1138 provides, “Handguns will be worn in holsters on or off duty, except when working plain clothes and when such an exception has been approved by the Chief of Police.”
- Duty Manual section S 1142 provides, in part, “Accidental discharges of firearms indicate carelessness in handling loaded weapons that could result in injury to the officer or other persons. An officer’s failure to exercise necessary precautions while handling a firearm will result in disciplinary action against the officer.”

**Findings:**

- **Procedure allegation (failure to holster weapon) is SUSTAINED.**
  - **Procedure allegation (unauthorized handling of weapon) is SUSTAINED.**
- 

**Case #4:** The subject officer used a mandible pressure point grip on the complainant’s face for pain compliance to get the handcuffed and resistant complainant into the patrol car. Thereafter, the subject officer opened the back door and pulled the



complainant from the back of his patrol vehicle by his leg when the complainant kicked at him. After a struggle that involved several officers, the complainant was rolled onto his stomach, pepper sprayed and returned to the patrol car. The subject officer did not complete a Force Response Report because he believed that the form was going to be completed by another officer at the scene.

**The Rule:** Duty Manual section R 1577 states, in part, “It is the responsibility of the primary reporting officer or the supervisor of the district where the force response occurred if the primary reporting officer is not available, to ensure this form is completed for every suspect that has force used upon them.”

**Finding: Procedure allegation (failure to complete Force Response Report) is SUSTAINED.**

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**Case #5:** The subject officer responded to a family disturbance. The female claimed that her ex-husband pushed her; the ex-husband denied putting his hands on her. Their children, present during the altercation, said that there was no physical contact between the parents. The subject officer noted the incident in the CAD but did not otherwise document the incident.

**The Rules:**

- Duty Manual section L 7307 provides, in part, “In arrest or non-arrest domestic violence cases, officers will report all facts surrounding the incident, the statements of the participants or reporting party and witnesses and the action taken by the officer.”
- Domestic Violence Protocol for Santa Clara County: “5. Pursuant to Penal Code section 13700 et seq., an officer responding to an incident of domestic violence shall prepare a Domestic Violence Incident Report irrespective of the wishes of the victim or the presence or absence of the suspect.”

**Finding: Procedure allegation (failure to submit Domestic Violence Report) is SUSTAINED.**

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**Case #6:** The subject officer and another officer used reportable force on the combative complainant in an effort to subdue him when he resisted. The subject officer claimed that he filed a Force Response Report at the end of his shift. He said that he hand wrote it and did not save it to the computer. However, IA was unable to locate the form after checking with Versadex and manually checking for the report.

**The Rule:** Duty Manual section L 2605 provides, in part, “In all cases of a reportable use of force, the supervisor will ensure that the officer using force will complete a “Use of Force Detail Page” if needed, for each suspect in every incident when reportable force is used.”

**Finding: Procedure allegation (failure to submit Force Response Report) is SUSTAINED.**

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**Case #7:** The subject officer was the last to respond to the scene where two male officers were struggling with a female complainant. Instead of waiting for the two officers to place the complainant in handcuffs, the subject officer punched the complainant in the face with his right forearm. The subject officer also admitted that he probably said to the complainant, “Shut the f\*\*\* up” or “What the f\*\*\* is your problem?”

**The Rules:**

- Duty Manual section L 2602 states, “Objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force.”

- Duty Manual section C 1308 states, in part, “Department members will be courteous and professional to the public. Department members will be tactful in the performance of their duties, control their tempers and exercise the utmost patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use course, profane or derogatory language.”

**Findings:**

- **The Force allegation is SUSTAINED.**
- **The Courtesy allegation (use of profanity) is SUSTAINED.**

**Case #8:** The subject officer who was working secondary employment, was assigned to pedestrian traffic control at a major venue when he stopped the complainant for stepping into the street to take a photograph. The subject officer issued a citation to the complainant. The subject officer failed to log on to the CAD for his uniformed traffic control assignment. He also failed to attend the court date for the hearing on the citation that he subsequently issued to the complainant because he had a dental appointment.

**The Rules:**

- Duty Manual section A 2924 states, in part, “Reserve officers are subject to all laws, policies, procedures, rules and regulations affecting officers of the San José Police Department.”
- Duty Manual section C 1547 states, in part, “Officers working a uniformed secondary employment assignment, or a non-uniformed secondary employment security assignment in the City of San José, shall contact Communications and ‘log on’ to CAD.”
- Duty Manual section L 7616 states, in part, that excuses relating to why an officer witness cannot appear at a hearing are, “ Officer –witness medically unfit (not ambulatory)

because of illness or injury; Officer-witness absent because of EMERGENCY LEAVE (military, funeral); Officer-witness scheduled for out-of-town training and rescheduling is not practical. Attendance at CPT does not qualify as a valid excuse; Officer-witness absent because of pre-planned leave and appearance would impose a severe hardship. A return-to-duty date must be noted on the court notice.”

**Findings:**

- **Procedure allegation (failure to log on the CAD) is SUSTAINED.**
- **Procedure allegation (failure to appear in court) is SUSTAINED.**

**Case #9:** The complainant drove her car around a cone pattern that was established to keep cars from driving on the freshly paved asphalt. The subject officer ordered her to stop. When the complainant would not stop, the officer reached into her car, grabbed the complainant’s arm, and ordered her, again, to stop the car. The complainant complied and complained of pain from this contact. The subject officer did not attach a Force Response Report to his General Offense report.

**The Rules:**

- Duty Manual section R 1574 states that a Force Response Report Form “will be completed by an officer using any reportable force as defined in DM section L 2644.”
- Duty Manual section L 2644 defines Reportable Force as “an incident in which officers, either on or off duty, exercise their police powers and use deadly force or any force option including physical force.” The only exception to Reportable Force is “the use of a firm grip control which does *not* result in injury, the appearance of injury or complaint of pain...” (Emphasis added.)

**Finding: Procedure allegation (failure to submit Force Response Report) is SUSTAINED.**

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**Case #10:** The complainant believed her car was improperly towed from her apartment complex because she had a parking permit visibly displayed. She requested a civil standby from SJPD at the tow yard. The subject officer responded but seemed uninterested and agitated. The complainant told the officer, “I’m telling the truth, I’m being honest.” The complainant alleged that the officer replied, “Yeah, just like the pedophile I arrested last night.” The subject officer acknowledged that he used an analogy that he frequently uses with members of the public who insist they are telling the truth: “Everyone from sinners to saints, everybody from children to child molesters, everybody from murderers to victims. Everybody tells me that so I cannot go just on your statement.”

**The Rule:** Duty Manual section C 1308 states, in part, “Department members will be courteous and professional to the public. Department members will be tactful in the performance of their duties, control their tempers and exercise the utmost patience and discretion even in the face of extreme provocation.”

**Finding: Courtesy allegation (discourteous comments) is SUSTAINED.**

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**Case #11:** The complainant, a security guard, alleged that he asked the responding officer for his name and badge number. After the complainant made several repeated requests, the officer verbally provided it - by yelling it from 25 feet away. The Department’s investigation revealed that the officer did not remember being asked for name and badge number but did acknowledge that if he was asked, he would have yelled it to the security guard.

**The Rule:** Duty Manual section C 1409 states that “consistent with officer safety and protection of the public, department members, while acting in an official capacity, will supply their name, rank and position, and similar identifying information in a professional manner to any person who may inquire. Officers will identify themselves, when requested, by using an Incident Card (Form 200-45a) or Department approved business card.”

**Finding: Procedure allegation (failure to supply name and badge number) is SUSTAINED.**

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**Case #12:** The complainant alleged that an officer lacked authority to seize his firearm during his DUI arrest because there was no violation pertaining to the firearm or the method of transport. The Department’s investigation revealed that the officer, relatively new to patrol, contacted his supervisor for direction. The supervisor misinterpreted the pertinent Penal Code section (Penal Code 25400(a) (1)) governing the legal transportation of firearms; the supervisor directed the officer to seize the firearm.

**The Rule:** Duty Manual section L 5209 states that an officer may seize from a vehicle any item which is observed in plain view and the officer has reasonable cause to believe that the item is contraband, a weapon or anything used in committing a crime. Penal Code section 25400a(1) governs firearms concealed in vehicle and Penal Code section 25610 outlines how one can legally transport weapons in vehicles.

**Finding: Search/seizure allegation (improper seizure of firearm ordered) is SUSTAINED.**

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**Case #13:** The complainants alleged that an officer threatened to kick their son’s face after the son was arrested at their house. The

Department's investigation showed that the subject officer acknowledged that he used the analogy "it's like getting kicked in the face." The Department determined that, given the circumstances of the event, the subject officer's "analogy" was not effective or appropriate.

**The Rule:** Duty Manual section C 1308 states, in part, that "Department members will be courteous and professional to the public, will be tactful in the performance of their duties, and exercise the utmost patience and discretion."

**Finding: Courtesy allegation (inappropriate comments) is SUSTAINED.**

---

**Case #14:** The complainant alleged that officers unlawfully accessed his criminal history and subsequently provided that information to other persons. The Department's investigation determined that two subject officers violated Duty Manual section C 2003 and also determined that such conduct was unbecoming an officer.

**The Rules:**

- Duty Manual section C 2003 states, in part, "to obtain access to, receive and use and disseminate CORI [State and Local Summary Criminal History Information], a person or agency must show a need to know and a right to know the information being sought."
- Duty Manual section C 1404 states, in part, "An officer's conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer."

**Findings:**

- **Procedure allegation (improper access to Department records) is SUSTAINED for both officers.**

- **CUBO allegation (improper access to Department records) is SUSTAINED both officers.**
- 

**Case #15:** The complainants alleged, among other things, that multiple officers used unnecessary force in obtaining blood samples during the booking process. The Department's investigation determined that four subject officers conducted blood draws on two combative suspects at AIB (Accident Investigation Bureau).

**The Rule:** Duty Manual section L 6708 outlines the protocol for taking nonconsensual blood samples. "All physically resistive or combative felony suspects requiring blood samples will be transported to the Pre-Processing Center. This will be the only authorized location where blood samples will be drawn under forcible conditions. The only exception will be at a medical facility where the arrestee is physically restrained."

**Finding: Procedure allegation (conducting forced blood draw at unauthorized location) is SUSTAINED for four officers.**

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**Case #16:** The complainants alleged that multiple officers used unreasonable force during the arrest of a suspect. The Department's investigation determined that several officers used reasonable force while taking him into custody, but two subject officers failed to complete necessary reports documenting their use of force.

**The Rule:** Duty Manual section L 2643 outlines how an officer must document use of force; this section requires that an officer must document force on a General Offense Report (or supplemental) and a Force Response Report (FRS-001).

**Finding: Procedure allegation (failure to document force) is SUSTAINED for two officers.**

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**Case #17:** The complainant alleged, among other things, that she requested a business card from an SJPD officer. The subject officer did not dispute that the civilian requested his business card and that he failed to provide any document containing his name or badge number.

**The Rule:** Duty Manual section C 1409 states that “consistent with officer safety and protection of the public, department members, while acting in an official capacity, will supply their name, rank and position, and similar identifying information in a professional manner to any person who may inquire. Officers will identify themselves, when requested, by using an Incident Card (Form 200-45a) or Department approved business card.”

**Finding: Procedure allegation (failure to supply name and badge number) is SUSTAINED.**

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**Case #18:** The complainant’s adult son became involved in a fight with three officers when he violently resisted after being handcuffed on a stairwell landing area. The officers used substantial force to subdue the suspect. One of the officers, a recruit, completed a Force Response Report. The other two officers did not submit Force Response Reports.

**The Rules:**

- Duty Manual section R 1574 states that a Force Response Report Form “will be completed by an officer using any reportable force as defined in DM Section L 2644.”
- Duty Manual section L 2644 defines Reportable Force as “an incident in which officers, either on or off duty, exercise their police powers and use deadly force or any force option including physical force.” The only exception to Reportable Force is “the use of a firm grip control which does *not* result in injury, the

appearance of injury or complaint of pain...”  
(Emphasis added.)

**Finding: Procedure allegation (failure to submit Force Response Report) is SUSTAINED for both officers.**

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**Case #19:** The subject officer, while on duty in a marked vehicle, collided with the car of the complainant. There were no injuries and minor damage to the civilian’s car. Both left the scene without exchanging information or obtaining a police report. Later, the complainant discovered damage to his front bumper and that his license plate was missing. The subject officer did not report the accident to a supervisor because he did not believe that he was required to do so because he thought there was no damage to either vehicle and no injuries.

**The Rules:**

- Duty Manual section L 7001 applies to “Department members who are involved in an accident with a City vehicle or involved in an on-duty accident with any other vehicle.”
- Duty Manual section L 7002 states, “In any event, members involved in a vehicle accident will not investigate their own accident, but will cooperate in supplying driver’s license and vehicle information to the investigating officer.”

**Finding: Procedure allegation (investigating officer’s own accident) is SUSTAINED.**

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**Case #20:** Five days after the subject officer investigated a traffic accident, he submitted his report. He delayed because he wanted to ensure that he completed the investigation so that no additional follow up would be needed and to identify and document his concerns about the conflicting statements of the subjects involved in the accident.

**The Rule:** Duty Manual section L 1808 requires officers assigned to patrol, “[u]pon arrival at the police facility, complete and submit all reports and process all evidence or other property prior to leaving the police facility to attend to non-police business.”

**Finding: Procedure allegation (failure to timely submit report) is SUSTAINED.**

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**Case #21:** The subject officer spoke with a VTA female bus driver who had stopped her bus near the SAP Arena because her bus had been damaged in a hit and run accident. When she was on her console phone talking to dispatch, the subject officer ordered her to move the bus several times. The subject officer then banged on the bus driver’s window with the palm of his hand and shouted for her to move the bus. Then he entered the bus and ordered the driver to hand him the phone. He then dropped the phone on the floor of the bus and exited. He then shouted at her that she would lose her license if she did not move the bus.

**The Rule:** Duty Manual section C 1308 states, in part, “Department members will be courteous and professional to the public. Department members will be tactful in the performance of their duties, control their tempers and exercise the utmost patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use course, profane or derogatory language.”

**Finding: Courtesy allegation (dropping phone and improper comments) is SUSTAINED.**

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**Case #22:** The subject officer, in plain clothes and off-duty, confronted the complainant, a motorist in the Police Administration Building parking lot after she honked her horn at the driver of a car who took her parking space. The complainant video recorded

their exchange in which the subject officer said to the complainant, “What the hell are you doing?” and “You are making a fool out of yourself” and “Keep filming all you want.”

**The Rule:** Duty Manual section C 1308 states, in part, “Department members will be courteous and professional to the public.”

**Finding: Courtesy allegation (tone of voice and rudeness) is SUSTAINED.**

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**Case #23:** The subject officer used force when trying to subdue a mentally ill unarmed suspect who resisted arrest and who was combative. The subject officer failed to describe the specifics of his use of force in his Incident Report. He also failed to submit a Force Response Report.

**The Rules:**

- Duty Manual section L 2643 states, in part, “When force is used by an officer in the course and scope of his or her duties as a peace officer, the officer will document the details of such use in a general offense crime report. . . Details will include . . . type of force used (verbal and physical tools, techniques and/or tactics used)[.]”
- Duty Manual section R 1574 states, in part, “This form [Force Response Report] will be completed by an officer using any reportable force. . . It shall be the responsibility of the primary reporting officer . . . to ensure this form is completed for every suspect that has force used upon them.”

**Findings:**

- **Procedure allegation (failure to document force) is SUSTAINED.**
  - **Procedure allegation (failure to submit Force Response Report) is SUSTAINED.**
- 

**Case #24:** The subject officer, while off-duty, came to the scene of a car accident after being called by a

close friend who was involved in the accident. The subject officer spoke with the investigating officer at the scene.

**The Rule:** Duty Manual section C 1450 states, in part, “Department members shall not engage in enforcement, investigative or administrative functions that create conflicts of interest or the appearance of conflicts of interest, either on or off-duty.”

**Finding: Procedure allegation (conflict of interest) is SUSTAINED.**

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**Case #25:** Several officers were involved in subduing a fleeing and combative suspect and used reportable force. Two of the officers did not submit Force Response Reports.

**The Rule:** Duty Manual section R 1574 states, in part, “This form [Force Response Report] will be completed by an officer using any reportable force. . . It shall be the responsibility of the primary reporting officer . . . to ensure this form is completed for every suspect that has force used upon them.”

**Finding: Procedure allegation (failure to submit Force Response Report) is SUSTAINED for two officers.**

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## VI. Tackling Bias-Based Policing

### **SJPD Duty Manual Section C 1306: Revised 02-15-11**

Bias-Based Policing occurs when a police officer engages 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.

Bias-Based Policing can occur not only at the initiation of a contact, but any time during the course of an encounter between an officer and a member of the public.

Officers will not engage in biased and/or discriminatory-based policing as this undermines the relationship between the police and the public, and is contradictory to the Department's mission and values.

We can all agree that policing based upon a person's race and ethnicity, or any on any of the other constitutionally protected classes, is wrong, both legally and morally. The San José Police Department's (SJPD) prohibition on bias-based policing in section C 1306 of the Duty Manual sends that message to its officers and to the public.

There are eight possible officer misconduct allegations: Arrest/Detention, Bias-Based Policing, Conduct Unbecoming an Officer, Courtesy, Force, Neglect of Duty, Procedure, and Search/Seizure. All of these allegations, with the exception of Bias-based policing, arise from objective and observable officer conduct. For example, a Procedure allegation might be the failure of an officer to file a Force Response Report; or a Force allegation might involve the officer's deployment of a Taser. These allegations can be investigated by interviewing officers and witnesses, by searching for documents, and by reviewing medical and Taser deployment records.

On the other hand, the investigation of an allegation of Bias-Based Policing can be far more difficult. On rare occasion, an independent witness might confirm that an officer used language that is uniformly understood to be racist or sexist. But far more frequently, when an allegation of Bias-Based Policing is made, the allegation is based on the complainant's perception of the officer's conduct. In a recent 2014 CBS News poll,<sup>15</sup> 88% of African Americans perceive that police officers stop people of certain racial or ethnic groups because officers believe that these groups are more likely than others to commit crimes. By definition, perceptions are subjective, and therefore not amenable to the objective investigative process.

"Implicit bias" is a factor further complicating the investigation of Bias-Based Policing allegations. All of us, police and civilians alike, are subject to "implicit bias" or unconscious bias—biases of which we are not even aware. Sometimes "implicit bias" leads us to misconstrue or misinterpret others' behaviors. Implicit bias may lead an officer to construe an act committed by a clean-cut Caucasian teenager quite differently than how that officer construes the identical act committed by an African American teen with dreadlocks or by an adolescent tattooed Latino.

A recent study conducted by two scholars, Marianne Bertrand and Sendhil Mullainathan, with the National Bureau of Economic Research, a private, nonprofit, nonpartisan research organization, demonstrated the

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<sup>15</sup> <http://www.cbsnews.com/news/michael-brown-and-eric-garner-the-police-use-of-force-and-race/>

<sup>16</sup> <http://www.nber.org/papers/w9873>; also see "Training Police Departments to Be Less Biased," <https://hbr.org/2015/03/training-police-departments-to-be-less-biased> and other selected articles on police and bias at <http://www.fairimpartialpolicing.com/bias/>



pernicious impact of implicit bias.<sup>16</sup> For their study, they sent out fictitious resumes in response to help-wanted ads. Each resume was given a name that either sounded stereotypically African American or one that sounded Caucasian. The resumes, in all other respects, were identical. The study found that a resume with a name like Emily or Greg received 50 % more callbacks from employers than the same resume with a name like Lakisha or Jamal. And recently, FBI Director James Comey, speaking of his concern about implicit bias in policing, aptly quoted a lyric from the Broadway musical *Avenue Q*: “Maybe it is a fact we should all face: Everyone makes judgments based on race.”

Great harm can result from implicit bias; the more authority and power one has over others, the more dangerous implicit bias becomes. When police officers’ perceptions are clouded by implicit bias, the results can be devastating. Implicit bias may lead them to perceive danger where there is none, resulting, on occasion, in uses of deadly force. For this reason, it is essential to identify ways to make implicit biases explicit, and to make unconscious prejudice conscious.

The starting point is an examination of how SJPD investigates Bias-Based Policing allegations. Currently, the Department utilizes a two-step investigation: (1) ask the subject officers if race was a factor in their interactions with the complainants; and (2) ask the complainants for proof that the officers’ actions were motivated by race. Not surprisingly, subject officers invariably answer “No,” while complainants invariably have no proof, other than their perceptions and feelings that race or ethnicity was the reason for the police actions. Faced with these results, it is a *fait accompli*, that the allegation of Bias-Based Policing will be dismissed as unfounded.

Between 2010 and 2014, the SJPD investigated 192 allegations of Bias-Based Policing and sustained not one. The Department deemed the great majority of these allegations (82%) to be unfounded, which means that their investigations conclusively proved that there was no bias-based policing. In fact, in the history of the Department, it has never sustained an allegation of Bias-Based Policing. And, the SJPD is not alone. In 2013, the Los Angeles Police Department investigated 204 Bias-Based Policing allegations without sustaining any.

#### Illustration 4-I: All Allegations Received—Five-Year Overview (2010-2014)

<b>Allegations Received</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
Procedure	179	240	237	240	308	<b>1204</b>
Courtesy	66	147	101	136	142	<b>592</b>
Force	98	120	98	177	139	<b>632</b>
Arrest or Detention	90	83	67	74	79	<b>393</b>
Search or Seizure	57	59	61	80	65	<b>322</b>
<b>Bias-Based Policing</b>	<b>29</b>	<b>45</b>	<b>33</b>	<b>46</b>	<b>46</b>	<b>199</b>
Conduct Unbecoming an Officer	24	21	19	39	27	<b>130</b>
Neglect of Duty	22	41	9	7	7	<b>86</b>
<b>Total Allegations Received</b>	<b>565</b>	<b>756</b>	<b>625</b>	<b>799</b>	<b>813</b>	<b>3558</b>

**Illustration 4-J: Unfounded Findings—Five-Year Overview (2010-2014)**

Allegations Closed	2010	2011	2012	2013	2014	Total	Total Allegations Closed	Unfounded as % of Total Allegations Closed
P	18	53	98	65	86	320	1278	25%
C	14	20	50	34	35	153	562	27%
F	20	16	23	14	24	97	699	14%
AD	1	6	2	1	2	12	423	3%
SS	1	5	3	11	3	23	341	7%
BBP	20	31	39	38	29	157	192	82%
CUBO	1	16	6	13	18	54	123	44%
ND	5	6	8	2	1	22	70	31%
<b>Total</b>	<b>80</b>	<b>153</b>	<b>229</b>	<b>178</b>	<b>198</b>	<b>838</b>	<b>3688</b>	

**Legend of Allegations:**

**AD:** Arrest or Detention; **BBP:** Bias-Based Policing; **C:** Courtesy; **CUBO:** Conduct Unbecoming an Officer; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure; **SS:** Search or Seizure

So what is to be done? How should Bias-Based Policing allegations be investigated? And, as importantly, how do we root out implicit bias in policing?

The Department should change the manner in which it investigates Bias-Based Policing allegations where the officer’s conduct does not, on its face, demonstrate bias:

- **Search for specific patterns in the officer’s conduct:**

- Does the subject officer frequently detain people of color in pedestrian and vehicle stops without issuing citations or making arrests?
- Has the subject officer received courtesy complaints from people of color? If so, what was the alleged discourteous conduct?
- Have there been any sustained allegations against the subject officer? If so, did any involve misconduct with people of color?

- **Track complaints of bias-based policing against the officer:**

- How many Bias-Based Policing allegations were filed against the subject officer?
- What was the nature of each of the complaints?
- Are there any similarities among the incidents — same locations, same conduct?

- **Observe patterns in the conduct of the officer:**

- Does the subject officer primarily patrol in communities of color?
- Does the subject officer patrol with the same team of officers? If so, have any of those officers received allegations of Bias-Based Policing and/or Courtesy?)

Of course, these investigative approaches are of limited value when the subject officers have little law enforcement experience and minimal policing history. However, when the more experienced officers understand that their track records may be scrutinized in the investigation of Bias-Based Policing allegations, it is reasonable to believe that they will pass that understanding on to the newer officers. This “trickle down” of information will almost certainly create awareness of implicit bias throughout the Department, which is likely to result in fewer instances of bias-based policing.

With respect to rooting out implicit bias in policing, there are a variety of approaches that the Department should consider:

- **Implement mandatory trainings for all officers, from Command Staff to recruits, about implicit bias in policing.** The emphasis must be on making unconscious bias, conscious. The leading authority on this subject is Stanford University Professor Jennifer Eberhardt who studies bias and policing. The Department should consult her about how to implement Department-wide trainings.
- **Implement Community Policing.** Research shows that the more positive contact that officers have with the people that they serve, the greater the community’s trust in the Department, and the more willing the community is to assist officers in combating crime. As importantly, it is has been shown that community policing dismantles long-standing negative stereotypes held by both officers and members of the public, especially those who reside in communities of color. When officers and members of the community interact and get to know one another, stereotypes inevitably fade.
- **Utilize body-worn cameras and adopt a best practices protocol that is posted online.** Body-worn cameras will protect officers, hold them and the public accountable, promote transparency, and build trust with the community. The more transparency and trust that exists between the community and our officers, the fewer complaints of Bias-Based Policing there will be.
- **Continue to make the recruitment of racially and ethnically diverse officers a priority.** Diversity in policing increases productivity, promotes trust between communities of color and officers, and encourages young people of color to seriously consider law enforcement as a vocation.
- **Ensure that the culture of the Department always reflects the standard set forth in Duty Manual section C 1306---**that bias-based policing “undermines the relationship between the police and the public, and is contradictory to the Department’s mission and values.”

# Chapter Five: IPA Recommendations to SJPD

## I. 2014 IPA Recommendations

This year the IPA office proposed 18 recommendations to the San José Police Department (SJPD) covering a variety of subjects. Misconduct complaints from the public were the source of the majority of our recommendations.

Our first recommendation calls for a change in how the Department defines excessive force. Specifically, we believe that the current definition is too narrow because there is no consideration of whether or not the subject officers either provoked the use of force or responded with force that was far greater than the threat posed by the suspects. The Force Chapter in this Report discusses specific force complaints closed in 2014 where the Department's determination that the force was proper was limited solely to the actual use of the force. We recommend that the definition be expanded.

### **(Recommendation #1)**

The desire for more transparency in policing led our office to consider the procedures governing the investigation of Department-Initiated complaints (DIIs). The Department investigates DIIs, just as it investigates conduct complaints from the public. However, unlike conduct complaints, there is no independent oversight of DIIs, or of the Department's determinations of whether or not the officers engaged in misconduct. While Department investigations of alleged officer misconduct based on complaints from the public are confidential, the independent oversight provided by our office assures the public that the police are not policing themselves. The same cannot be said of DII investigations. There is no independent civilian oversight of DIIs. It is our recommendation that the DII process include independent oversight.

### **(Recommendation #2)**

Current events were the impetus for one of our recommendations. The officer-involved death of Michael Garner in Staten Island, New York prompted us to find out if the SJPD had a chokehold policy. While the Department has a carotid restraint policy, it has no policy about the use of chokeholds. As a result, we have recommended that the Department adopt a rule prohibiting their use. **(Recommendation #6).**

You can read all of the IPA's 2014 recommendations further in this chapter.

## II. Five-Year Overview of IPA Recommendations (2010-2014)

Over the last five years (2010-2014), the Office of the Independent Police Auditor (IPA) has proposed 92 recommendations to the San José Police Department (SJPD). You can read those recommendations in each of our Year End Reports for those years, all of which are online at the IPA website ([www.sanjoseca.gov/ipa](http://www.sanjoseca.gov/ipa)). The great majority of our recommendations have been adopted and implemented by the Department. However, we have concerns about those recommendations that have not yet been implemented.

- **2011 IPA Year End Report:** We recommended that SJPD establish a formal process to certify officers who serve as bilingual translators. Now that a substantial increase in the compensation of language certified police officers is under consideration, it is critical that a formal certification process be instituted by the City to ensure that all officer/translators are competent. It is also critical that there be periodic re-certification testing to ensure that the language skills of the officer/translators are maintained. **(Recommendation #29)**

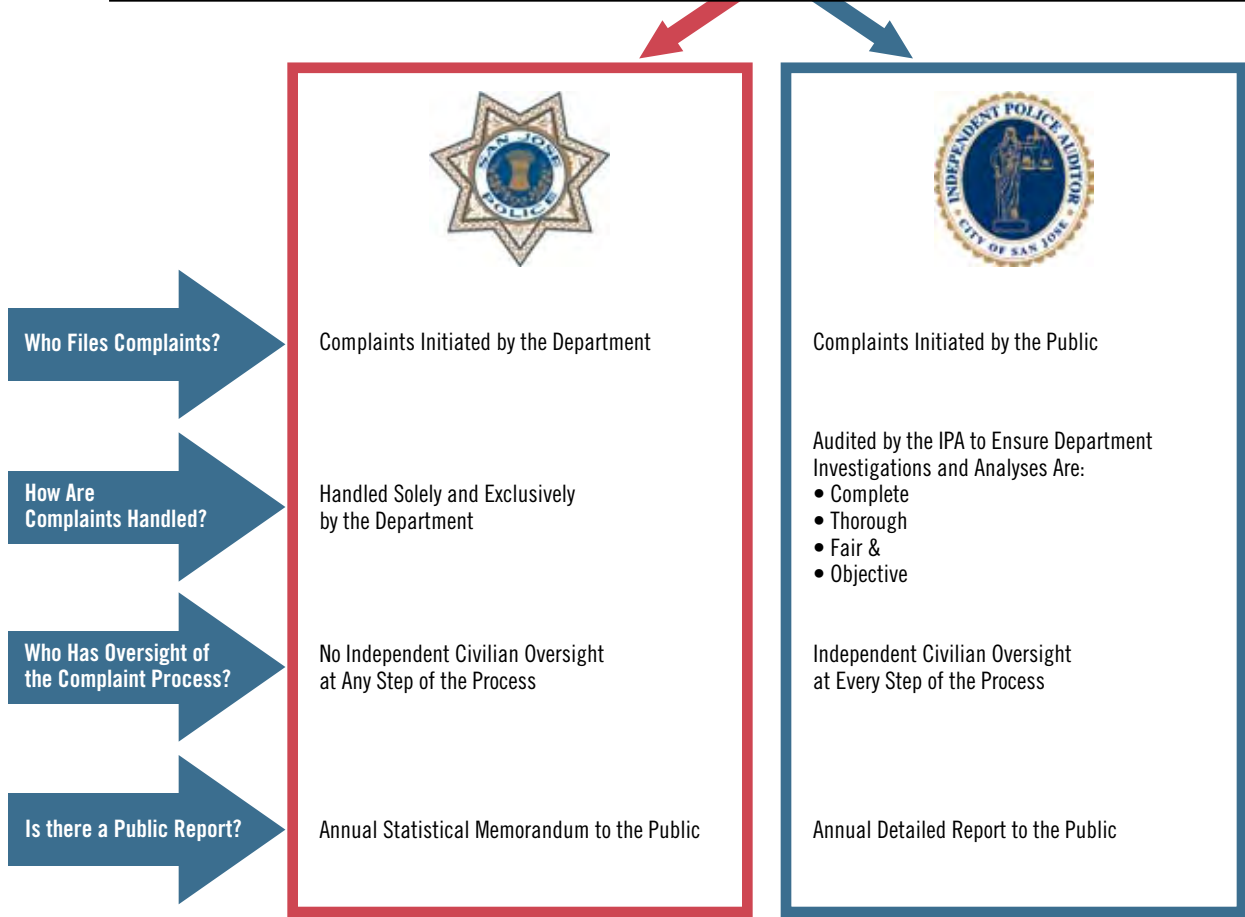
We recommended that SJPD equip all officers with state-of-the-art body-worn cameras and that the Department develop a protocol for the use of the cameras. In 2014, SJPD instituted a pilot program to test the cameras, which is temporarily suspended. To date, SJPD officers do not utilize body-worn cameras. In the aftermath of recent officer-involved shootings throughout the country (i.e., New York, Missouri, New Mexico, Pennsylvania, California), numerous police departments throughout the country now have body-worn cameras that assist in combating crime, protecting officers and holding them and the public accountable. There should be no further delay in equipping SJPD officers with body-worn cameras, and there should be the creation of a publicly available protocol for the operation of the cameras. **(Recommendation #28)**

- **2012 IPA Year End Report:** We recommended that all Tasers utilized by SJPD officers be recalibrated annually. In an incident where an officer deployed his Taser on a suspect who subsequently died, the Taser had not been recalibrated for several years. As a result, investigators were unable to confirm the Taser's deployment. It is imperative that the Department annually recalibrate all of its Department-issued Tasers or discontinue their use entirely. **(Recommendation #8)**
- **2013 IPA Year End Report:** Since 2009, there have been four fatal shootings of mentally ill individuals by SJPD officers. The most recent shooting occurred in 2014 where an officer, trained in crisis intervention, fired the one and only fatal shot. Appropriately, our first three recommendations addressed Crisis Intervention Training (CIT). It is imperative that the content of the CIT program be objectively evaluated by an independent expert, and if necessary, revised. We also continue to urge that a competent CIT

Civilian Coordinator be hired to supervise the training program. That position has been vacant for more than three years. Because of the low staffing in the Department, it is not possible for all officers to take CIT. However, when staffing levels rise, we believe it is of utmost importance that all officers, including Command Staff, receive this training. The Department and the City must make CIT a top priority. The liability of the City and the safety of officers and the mentally ill in our community are at stake.

**(Recommendations #1, 2, 3)**

**INVESTIGATIONS OF ALLEGED POLICE MISCONDUCT IN SAN JOSE:  
TWO SEPARATE WORLDS**



There is no independent oversight of Department Initiated Investigations (DIIs), even though these investigations address allegations of officer misconduct. Since transparency is critical to the integrity of the Department and to building trust with the community, there should be independent civilian oversight of all DIIs. Without oversight, the police are left to police themselves. The Office of the City Attorney could provide this oversight because that office can ensure that the audits of DIIs are objective, while maintaining confidentiality. Independent civilian oversight of DIIs is not prohibited by the Peace Officers’ Bill of Rights. And just as the IPA office provides annual reports about complaints that it audits, the entity that oversees DIIs should be required to provide detailed annual reports to the Mayor, City Council, and the public.

The public has a right to know as much as is legally permissible about police misconduct complaints and investigations. While the statistics for sustained findings are included in SJPD’s DII Report, the Report does not describe the misconduct that gave rise to the sustained findings. The IPA office includes descriptions of the misconduct that gave rise to sustained findings in its Year End Reports. The Department should, likewise, include descriptions of the misconduct that resulted in sustained findings from DII investigations. Such disclosures are permissible under the law, and they promote transparency.

# 2014 IPA Recommendations To SJPD

## IPA RECOMMENDATIONS

### Recommendation #1:

Expand the Department's definition of use of force (deadly force and non-deadly force) to include the circumstances leading up to the use of force (e.g., who provoked the force?), and proportionality (was the force used proportional to the force encountered?).

## RATIONALE

The Department's definition of the proper use of force is narrow, focusing solely upon the actual force used by an officer. Our Force chapter in this Report describes complaints in which officers used force resulting in injuries to suspects where officers either provoked the use of force or responded with force that was far greater than the threat posed by the suspects. In each case, the Department examined only whether the particular use of force by the officer was proper. The small stature of a suspect, the provocation of an acknowledged combative suspect, or the minor nature of the criminal activity of the suspect was not considered by the Department in its analyses of whether the force used was proper. Increasingly, courts are ruling that provocation and proportionality are factors that should be considered in determining if officers used excessive force.

In 2013, the California Supreme Court in *Hayes v. County of San Diego* (57 Cal. 4th 622) held that "tactical conduct and decisions preceding the use of deadly force are relevant considerations in determining whether the use of deadly force gives rise to negligence liability."

At least one major law enforcement agency (Seattle Police Department) has a policy that requires its officers to use de-escalation tactics to reduce the need for force.

## IPA RECOMMENDATIONS

## RATIONALE

### Recommendation #2:

Require independent civilian oversight of all Department-Initiated Investigations (DII), and require written reports describing the DII investigations be annually submitted to the Mayor, City Council and posted online for the public.

There is no independent oversight of DIIs, even though these investigations address allegations of officer misconduct. Since transparency is critical to the integrity of the Department and to building trust with the community, there should be independent civilian oversight of all DIIs. Without oversight, the police are left to police themselves. The Office of the City Attorney could provide this oversight because that office can ensure that the audits of DIIs are objective, while maintaining confidentiality. Independent civilian oversight of DIIs is not prohibited by the Peace Officers' Bill of Rights. And just as the IPA office provides annual reports about complaints that it audits, the entity that oversees DIIs should be required to provide detailed annual reports to the Mayor, City Council, and the public.

### Recommendation #3:

Include in the annual Department-Initiated Investigation (DII) Report descriptions of the misconduct that gave rise to each of the sustained findings.

The public has a right to know as much as is legally permissible about police misconduct complaints and investigations. While the statistics for sustained findings are included in SJPD's DII Report, the Report does not describe the misconduct that gave rise to the sustained findings. The IPA office includes descriptions of the misconduct that gave rise to sustained findings in its Year End Reports. The Department should, likewise, include descriptions of the misconduct that resulted in sustained findings from DII investigations. Such disclosures are permissible under the law, and they promote transparency.

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### Recommendation #4:

Provide "stairwell encounters" training to patrol officers.

In two recent incidents, unarmed suspects suffered serious injuries when they encountered police officers in stairwells. In one instance, the suspect, handcuffed behind his back, struggled with three officers in a stairwell and suffered a broken nose, dislocated elbow, broken cheek bone, and broken eye socket. In another instance, the suspect who was passed out in a stairwell was shot multiple times by officers. The City of San José agreed to pay \$4.95 million to settle a lawsuit filed by that suspect.

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## IPA RECOMMENDATIONS

**Recommendation #5:**

Establish both a Duty Manual rule and an Internal Affairs rule that state what the representatives of subject officers at IA interviews can and cannot say to subject officers in preparation for the interviews.

## RATIONALE

It is permissible for subject officers to be represented by officers at IA interviews. It is common practice for these representatives to confer with the subject officers in preparation for these interviews. Oftentimes these private conferences occur at the IA office shortly before the interviews begin.

Where there are multiple subject officers associated with one complaint, the same representative usually accompanies each of those officers to their respective IA interviews. After the first interview, the representative is aware of the focus of the IA investigation and knows the questions that will likely be asked of the other subject officers associated with the complaint. There is no rule that concerns what can and cannot be disclosed to the subject officers by their representatives. The Duty Manual should expressly prohibit representatives of subject officers from revealing information about anything that transpired at the IA interviews to anyone, including subject officers associated with one complaint.

**Recommendation #6:**

Require SJPD to adopt a “no choke hold” rule.

Choke holds should not be a force option and should be expressly prohibited in the SJPD Duty Manual. Currently, choke holds are not referenced in the Duty Manual.

**Recommendation #7:**

Track car keys for patrol cars that are not in service and for “retired” patrol cars; preserve car key records and shift sheets for out of service and retired patrol cars for two years so that each car’s location can be tracked at all times; and maintain logs for checking in and out of all retired and out of service patrol cars.

The complainant alleged that he saw an officer driving a patrol car with excessive speed. The Department’s investigation showed that the car identified by the complainant was a “retired” car. Since the Department does not maintain records of who has access to its “retired” cars, the Department was unable to identify who was driving the vehicle. The Department does not track “retired” patrol cars and patrol cars that are not in service.

**Recommendation #8:**

Automatically activate GPS on patrol cars instead of relying upon officers to log in to turn on the GPS.

Same Rationale as for Recommendation #8, above.

## IPA RECOMMENDATIONS

## RATIONALE

### **Recommendation #9:**

Revise Duty Manual section L 5403 so that it expressly applies to all towed/impounded vehicles, and not just the recovery of stolen vehicles.

In 2011, our office recommend that Duty Manual section L 5403 be revised by including the language “whenever possible” to clarify when officers must contact vehicle owners to avoid tows. The Department adopted our recommendation and issued a Training Bulletin in 2013 with that language. A complainant subsequently alleged that his car had been towed for an expired registration, and that no attempt had been made to contact him to move his car. The Department’s response was that the revised Duty Manual section L 5403 was limited to the recovery of “stolen” vehicles. It was our intent that the revised Duty Manual section L 5403 apply to all vehicles subject to tow or impound.

### **Recommendation #10:**

Create an inventory form for use with the CHP 180 form for towed/impounded vehicles.

Duty Manual section L 5403 requires that officers prepare an inventory of all items contained in vehicles that they have ordered towed/impounded. However, there is no space on the CHP 180 form to list inventoried items.

### **Recommendation #11:**

Require officers who encounter suspects who complain of breathing difficulties to immediately call for medical personnel.

In recent police encounters in other jurisdictions (e.g., New York City and Los Angeles), suspects who were subdued by police officers and complained of breathing difficulties, died. The officers involved ignored the suspects’ complaints of physical distress. Because officers are not medically trained, they should immediately call for medical assistance in these situations. In the Los Angeles incident, the officer told the dying suspect, “You can breath just fine.” <http://www.latimes.com/local/crime/la-me-lapd-cutody-death-20140823-story.html>  
SJPB should be proactive and not wait for a similar tragedy to occur here.

### **Recommendation #12:**

Revise Duty Manual section R 1574 that states that a Force Response Report Form “will be completed by an officer using any reportable force as defined in DM Section L 2644” to exempt officers involved in shootings, since the Homicide Unit makes recorded interviews of these officers.

An officer fired his weapon at a moving car after the driver had rammed another car, refused to stop, and nearly hit the officer. The officer did not complete a Force Response Report because officers involved in shootings are no longer required to complete these forms. The Duty Manual should reflect this change.

### **Recommendation #13:**

Provide ongoing training for reserve officers to ensure that they are knowledgeable about current Department policies and procedures.

The Duty Manual applies to reserve officers, even if they are working secondary employment. As such, reserve officers must be up to date on all Department policies and procedures. Our office has audited complaints about reserve officers.

IPA RECOMMENDATIONS	RATIONALE
<p><b>Recommendation #14:</b> Include Sustained Findings Trainings in standard training programs for all sworn staff.</p>	<p>In 2013 and 2014, the IPA presented trainings to recruits and Field Training Officers (FTOs) about sustained findings. The purpose of the trainings is to prevent officers from engaging in the misconduct that results in sustained findings. Feedback from the officers was positive.</p>
<p><b>Recommendation #15:</b> Require officers who investigate traffic collisions to make reasonable efforts to contact percipient witnesses and to document those efforts.</p>	<p>An officer who investigated a traffic collision made no effort to contact two eyewitnesses, both of whom gave their contact information to the complainant before they left the scene.</p>
<p><b>Recommendation #16:</b> Require officers who photograph suspects to include full body photos where reasonable suspicion is based, in part, on the suspects' wearing baggy clothing.</p>	<p>The officer reported that he was concerned that the suspect might be armed because he was wearing baggy clothing. However, the officer's photos of the suspect depicted only the suspect's head, neck and bare back. There were no photographs documenting the officer's assertion that the suspect wore baggy clothes.</p>
<p><b>Recommendation #17:</b> Provide training for officers assigned to the lobby about accepting restraining orders.</p>	<p>Officers assigned to the police lobby refused to accept service of a restraining order that had been issued by the Superior Court to the complainant, even though the court order directed him to present it to the police department.</p>
<p><b>Recommendation #18:</b> Clarify that Duty Manual section S 1608 refers to private residences only, and not to personal property, such as automobiles.</p>	<p>An officer allowed a ride-along to enter the complainant's car to try to start it. Duty Manual section S 1608 states that the ride-along "will not enter a person's private property unless the officer has informed the owner . . . [and] the consent shall be documented." The subject officer did not document the ride-along's entry into the vehicle. The City Attorney has concluded that the intent of the policy is to restrict ride-along participants from entering only private residences.</p>

# III. Status of 2013 IPA Recommendations

IPA RECOMMENDATIONS	RATIONALE	SJPD RESPONSES	IPA CONTINUING CONCERNS
<p><b>Recommendation #1:</b> Require ALL sworn Department members to undergo CIT a minimum of 20 hours every other year.</p>	<p>CIT is now voluntary for SJPD officers; CIT training is not mandatory. CIT has been proven critical to safe and lawful police interactions with the mentally ill. Best practices support mandatory CIT for police officers.</p>	<p><b>Completed</b> Approximately 300 CIT trained officers. CIT training mandatory for all new recruits, currently three times a year. CIT classes for all officers are offered yearly. In addition, all CSOs have received CIT training. (Ongoing)</p>	<p>CIT is still not mandatory for all sworn staff.</p>
<p><b>Recommendation #2:</b> Relocate the CIT office off-site so that Department members seeking CIT support can do so without being observed by other officers.</p>	<p>Currently, SJPD houses the CIT office in the Police Administration Building so that officers seeking CIT assistance can be easily observed by other officers. Officers are understandably reluctant to seek such assistance if they cannot do so in a confidential manner.</p>	<p><b>Completed</b> Crisis Management Unit has an additional office at the Police Substation. (September 2014)</p>	<p>SJPD officers are still unable to seek CIT assistance at the Police Administration Building in a confidential manner. Presumably the same concern now exists at the Substation.</p>
<p><b>Recommendation #3:</b> Place the CIT Civilian Coordinator and the Department's CIT officer in separate and private offices.</p>	<p>Currently, SJPD houses the CIT officer and Civilian Coordinator together in a small office; such configuration does not provide a private setting to ensure confidentiality when Department members seek assistance from these individuals.</p>	<p><b>Completed</b> Same as #2. Additionally, Department still in the process of hiring a CIT Civilian Coordinator. (September 2014/Ongoing)</p>	<p>There is still no CIT Civilian Coordinator. The SJPD has been "in the process of hiring a CIT Civilian Coordinator" since 2011.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD RESPONSES	IPA CONTINUING CONCERNS
<p><b>Recommendation #4:</b> Update the SJPD website so that it is consistent with the current Department Bulletin that states that noise complaints can no longer be filed anonymously.</p>	<p>The complainant followed the directive on the SJPD website which stated that noise complaints could be filed anonymously. He was subsequently told that noise complaints could not be filed in this manner. Information on the website should accurately reflect SJPD policy.</p>	<p><b>Completed</b> Website updated with memo language. Both website and Memo 2011-037 state that the reporting party can remain anonymous for noise complaints. (February 8, 2015)</p>	<p>Implementation verified.</p>
<p><b>Recommendation #5:</b> Issue a policy on the enforcement of noise complaints. Currently there is no written policy on noise enforcement. Provide this information on the SJPD website.</p>	<p>See rationale for Recommendation #4, above.</p>	<p><b>Completed</b> Memo 2011-037 details the Department's response policy for noise complaints. Also, DM L6807 details enforcement policy for noise complaints which is located on the website updated. Same as #4. (February 8, 2015)</p>	<p>Implementation verified.</p>
<p><b>Recommendation #6:</b> Revise the FTO handbook to include better instruction and guidance about how recruits should interact with people of color.</p>	<p>Currently the FTO handbook's only reference to this subject is in the "Recruit Problems and Possible Solutions" section at p. 85: "G. Recruit seems apprehensive when approaching people and/or minority people. 1. Explain to the recruit numerous ways (Muni, Vehicle and Penal Code violations) of making contacts with people. 2. Explain to the recruit that as long as they have a legitimate reason for the stop it will not matter if they are a minority person or not. 3. If there is a particular</p>	<p><b>Completed</b> FTO Manual revised to reflect current standards and recruit training. In addition, police recruits receive instruction on Community Relations (21 hrs) and Cultural Diversity (24 hrs) in the academy. The Cultural Diversity training includes a four hour mandated course on racial profiling. (February 14, 2015)</p>	<p>The Department's FTO Manual revision is woefully inadequate and continues to treat this important issue in a superficial manner. The revision is as follows: "A. Recruit is apprehensive around people and/or minorities. 1. Have recruit interact with the community on a non-enforcement basis; 2. Have the recruit learn about the cultures in the jurisdiction; 3. Explain strategies for effective communication such as verbal communication and active listening; 4. Review</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD RESPONSES	IPA CONTINUING CONCERNS
	<p>culture that the recruit may shy away from, have them do some research on that culture. If possible, let them talk to an officer of that culture.”</p> <p>This instruction provides woefully insufficient guidance to officers who work in our ethnically diverse city. If a recruit is uncomfortable with a particular culture, is it sufficient to simply “let them talk to an officer of that culture?” We think not. The issue of cultural sensitivity and the proper and lawful manner in which to approach civilians of various cultures is critical to building trust between SJPD and the communities it serves, and too important to be treated in a superficial manner.</p>		<p>the 4th Amendment and ways of making contact (consent, reasonable suspicion, probable cause, muni code, vehicle code, penal code, and health &amp; safety code violations),</p> <p>5. Explain to the recruit that developing rapport with individuals (when the situation safely dictates) should be a prerequisite before making investigative inquiries i.e. ‘Are you on probation or Parole?’”</p>
<p><b>Recommendation #7:</b> Revise the FTO handbook to include guidance about when it is appropriate to ask the question, “are you on probation or parole,” especially when interacting with people of color.</p>	<p>The Duty Manual is silent on this issue. Complaints about this “probation or parole” question are frequently raised by people of color who perceive it, in many instances, as a form of racial profiling.</p>	<p><b>Completed</b> Same as #6. (February 14, 2015)</p>	<p>Same response as #6.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD RESPONSES	IPA CONTINUING CONCERNS
<p><b>Recommendation #8:</b> Revise the “Ride-Along” policy in the Duty Manual (Sections S 1601-S 1604, S 1608) to add a provision limiting the number of ride-alongs any one officer can give to any one particular person.</p>	<p>A male officer gave ten ride-alongs to the same female at late-night hours. Policies must reflect that ride-alongs are educational – not social – opportunities.</p>	<p><b>In Process</b> DM S1604 revised to limit citizens to three ride-alongs per shift. Section already limits officer-initiated ride-alongs to six per shift. (March 2015)</p>	<p>IPA will continue to monitor.</p>
<p><b>Recommendation #9:</b> Revise RATTf operating procedures to include specific guidelines for the inventory of “chop shop” items to ensure the chain of custody.</p>	<p>Evidentiary items seized from an alleged “chop shop” were given over to a tow company for storage where the items were comingled. It was difficult to later determine what items should have been returned to the owner.</p>	<p><b>In Process</b> Training Bulletin on collection, documenting, and reporting of evidence, specifically when documenting items on a CHP180. Task Force policies are not under the purview of the SJPD. (March 2015)</p>	<p>The Training Bulletin does not address Recommendation #9.</p>
<p><b>Recommendation #10:</b> Provide a Department facility for the storage of seized “chop shop” items.</p>	<p>“Chop shop” items were given over to a tow company for storage because SJPD lacked capacity to tow and store the evidence.</p>	<p><b>Completed</b> Same as #9. Department has always had evidence warehouse to store evidentiary items. (2014)</p>	<p>Same response as #9.</p>
<p><b>Recommendation #11:</b> Use the revised “Application for 72-Hour Detention” form.</p>	<p>An officer utilized a form that was no longer in use. The revised form is the only proper form to be used for 72-hour detention applications.</p>	<p><b>Completed</b> State of California Health and Human Services Agency, Department of Mental Health frequently changes forms. SJPD has the current form available. (October 2014)</p>	<p>Implementation verified.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD RESPONSES	IPA CONTINUING CONCERNS
<p><b>Recommendation #12:</b> Establish civil stand-by procedures for inclusion in the Duty Manual.</p>	<p>In 2008, a City Council agenda included a directive to “create a checklist for individuals considering requesting Civil Stand-By’s that would include what Civil Stand-By’s entail; what SJPD can and cannot do during Civil Stand-By’s.” There is currently no provision in the Duty Manual concerning civil stand-by’s. The Denver Police Department has such a provision. Having a specific protocol will provide essential guidance to the officers and help assess their conduct if a complaint is filed.</p>	<p><b>In Process</b> Training Bulletin on officer’s role in civil standbys, specifically when a restraining order exists and/ or when a crime occurs in their presence. (March 2015)</p>	<p>The Training Bulletin language is insufficient. IPA urges that the language be more specific about the role of officers. The civil stand-by rule should be in the Duty Manual so that officers and the public will know the civil stand-by procedures.</p>



IPA RECOMMENDATIONS	RATIONALE	SJPD RESPONSES	IPA CONTINUING CONCERNS
<p><b>Recommendation #13:</b> Establish a policy for the enforcement of domestic violence restraining orders that is consistent with the BOI Standard Operating Procedure and the SJPD Family Violence Unit’s mission.</p>	<p>The complainant had a restraining order that was repeatedly violated by her spouse who threatened to kill her. Out of four such reported incidents, only two were assigned investigators by the Family Violence Unit. The remaining two were closed due to lack of investigative resources. The BOI SOP states that if there are not sufficient unit resources for follow up, then the case is to be entered into the Clearance Block. However, according to the mission statement of the Family Violence Unit, it is “committed first and foremost to the safety of the victims of family violence. This is accomplished primarily by the aggressive enforcement of appropriate criminal statutes.” There is a conflict in these two approaches when applied to domestic violence restraining orders.</p>	<p><b>Completed</b> The Family Violence Unit’s current guidelines are to review and assign all restraining order cases and submit them for filing when the elements of the crime are met. In addition, when filing a domestic violence case, all reported restraining order cases (filed on and not filed on) are forwarded to the District Attorney for case background purposes. Also, the Unit Commander has improved case processing which aligns with the Unit’s mission. (November 2014)</p>	<p>IPA will continue to monitor.</p>

IPA RECOMMENDATIONS	RATIONALE	SJPD RESPONSES	IPA CONTINUING CONCERNS
<p><b>Recommendation #14:</b> Establish a protocol for securing and reviewing videotape that might capture images of thefts or suspects. Recommend that officers use and document efforts to obtain and review videotape. Include review of available videotape as a criterion along with the other criteria currently used to triage, assign or close cases.</p>	<p>The complainant's home was burglarized and her car stolen. A nearby gas station employee informed her that he had a video of the suspect driving her car. She contact SJPD and requested that an officer obtain and watch the tape. Officers did not retrieve the video and never viewed it.</p>	<p><b>In Process</b> Training Bulletin on DM L4201-L4204, preliminary investigation and follow up on cases. Patrol officers and CSOs can assist in collection of possible evidence. (March 2015)</p>	<p>IPA recommends that the Training Bulletin language be moved into the Duty Manual as soon as possible.</p>
<p><b>Recommendation #15:</b> Require that officers who provide false information at IA interviews or to Department criminal investigators, be terminated from the Department.</p>	<p>A subject officer provided false information in his incident report and in an interview with the Department's criminal investigators. In another case, a subject officer lied at his IA interview, in addition to committing other Duty Manual violations. In each instance, the discipline resulted in a suspension, and not in termination.</p> <p>The practice in many police departments around the country is to terminate officers who provide false information to investigators and/or lie at their IA interviews. Such officers lack integrity and lack credibility if they are ever called to testify in court.</p> <p>Further, if these officers are not terminated, the message to others in the Department</p>	<p><b>Completed</b> If proven that an officer is dishonest to IA or the Department's criminal investigator, the Department will recommend dismissal. (February 13, 2015)</p>	<p>IPA will continue to monitor.</p>

**IPA RECOMMENDATIONS**

**RATIONALE**

**SJPD RESPONSES**

**IPA CONTINUING CONCERNS**

is that if you lie to IA, or provide false information in your incident report, or lie to criminal investigators, your job is safe. Such a message compromises the integrity of the Department, and does little to build trust between the Department and the community it serves.

# Chapter Six: Community Outreach



## I. Background

Each year, the IPA office receives numerous invitations to provide presentations to the community and to participate in local events. In addition, IPA staff solicit public outreach opportunities to ensure that a diverse cross-section of the community learns of our services. We base our decisions concerning whether or not to accept an invitation or to solicit an opportunity on the following factors:

- Location of event (Is it in San José or the immediate surrounding area? Are the participants likely to live, work, attend school or visit San José? Is it a “hot spot” area where

SJPD officers frequently interact with the public?<sup>17</sup>

- Audience size (Does the event have ten or more attendees?)
- Target groups (Are participants likely to be people of color, immigrants, youth and/or young adults?)
- Staff availability (What is the current IPA staff workload? Will there be sufficient staffing levels at our office?)
- Length of event (If it is a presentation, will we have 30 minutes or more to present?)
- Council District (Have we had a presence in each district this year?)

Illustration 6-A: Top 10 Hot Spot Locations in 2012

Location	# of Events	Most Common “Call Description”
Hot spot 1 – S. King Rd/Story Rd	417 events	selective enforcement (98 of 417)
Hot spot 2 – N.1st St/E.Santa Clara St	308 events	disturbance (73 of 308)
Hot spot 3 – Blossom Hill Rd/Snell Av	301 events	vehicle stop (58 of 301)
Hot spot 4 – 777 Story Rd	286 events	theft (119 of 286)
Hot spot 5 – Monterey Rd/Senter Rd	262 events	pedestrian stop (68 of 262)
Hot spot 6 – 2151 Monterey Road	252 events	citizen flagdown (51 of 252)
Hot spot 7 – N.2nd Street/E.Santa Clara St	244 events	vehicle stop (58 of 244)
Hot spot 8 – Monterey Rd /Tully Rd	242 events	vehicle stop (55 of 242)
Hot spot 9 – Almaden Ex/Blossom Hill Rd	238 events	vehicle stop (61 of 238)
Hot spot 10 – S. King Rd/ Tully Rd	231 events	selective enforcement (92 of 231)

Note: SJPD responses to event type “vehicle accident, property damage” were deleted from the above categories.

<sup>17</sup> “Hot spot” locations used by the IPA were identified based on information obtained from (1) the SJPD Research and Development Unit in 2012 regarding areas from which the largest number of requests for SJPD services originated and/or the areas at which SJPD officers initiated the largest number of stops (pedestrian or vehicle), and (2) the Mayor’s Gang Prevention Task Force, a coalition of local residents, government leaders, school officials, community and faith-based organizations, and local law enforcement.



IPA outreach is multi-faceted. In addition to conducting presentations, participating in community events, and initiating individual meet-and-greets we utilize targeted advertising. IPA signage was installed on the interior of several public buses in 2013. The



signs, two feet long and almost a foot tall, read, “Concerns about a San José Police Officer? Call

408.794.6226,” and were printed in English, Spanish and Vietnamese. We distributed smaller, multi-language version of the bus signage in 2014 to local businesses, agencies and organizations. Finally, we created a postcard-sized version of the signage for distribution throughout the City.

## II. General Outreach Overview

IPA outreach activities increased by 40% in 2014. We participated in 223 outreach activities and reached 12,400 members of the public. The total number of members of the public who received IPA outreach services in 2014 was consistent with past years.

Illustration 6-B: IPA Outreach Activities—Five-Year Overview (2010 – 2014)

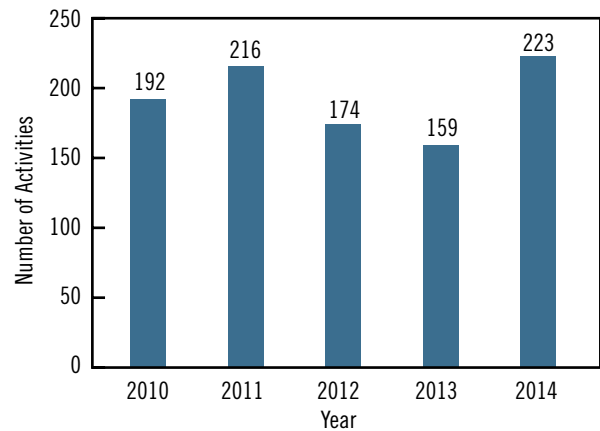
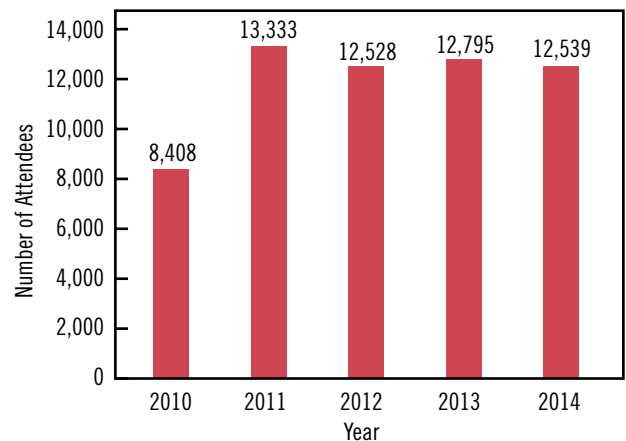


Illustration 6-C: Attendees at IPA Outreach Activities—Five-Year Overview (2010-2014)



IPA outreach activities include participation in community events, presentations to the public, and media appearances or interviews. You can view all of our 2014 outreach activities and media contacts in Appendix F and H.

Illustration 6-D: Attendees at IPA Outreach Activities in 2014

Types of Activities	Events	% of Total Events	Attendees	% of Total Attendees
IPA Presentations	71	32%	3,253	26%
Community Events/Meetings	101	45%	8,877	72%
Meet & Greets	51	23%	229	2%
<b>Community Outreach Totals</b>	<b>223</b>	<b>100%</b>	<b>12,359</b>	<b>100%</b>

## **A. Presentations by the IPA and Staff in 2014**

Presentations by the IPA and staff are the most effective means to accurately and thoroughly convey the purpose and functions of the IPA office. Presentations often include question and answer periods with audience members. We gave 70 presentations in 2014, up by 24% from 2013. The total number of individuals we reached with these presentations rose by 92%, from 1,679 in 2013 to 3,232 in 2014.

We request attendees at IPA presentations to complete evaluation forms so that we can gauge the effectiveness of IPA presentations.<sup>18</sup> In 2014, evaluations were completed by approximately 1,406 attendees.<sup>19</sup> The overwhelming majority of the responders (95%) 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. 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?
  - 95% replied yes
- Did today's presentation increase your knowledge about the complaint process?
  - 97% replied yes
- Overall, how would you rate the presentation? (Excellent, Good, Average or Poor)
  - Excellent – 66%
  - Good – 29%
  - Average – 3%
  - Poor – 0%
  - No response – 2%

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<sup>18</sup>The evaluation form is in Appendix G of this Report.

<sup>19</sup>It is not always feasible to distribute our evaluation forms. If the presentation involves a large audience, we are unlikely to distribute evaluation forms.

## **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 engage with attendees on a one-to-one basis or are introduced to large groups of attendees. We also attend monthly meetings with community and neighborhood groups. The number of community events and meetings we attended in 2014 was 102, a slight decline from the 106 in 2013. The number of individuals reached, however, increased by 35%, from 6,605 in 2013 to 8,898 in 2014.

## **C. Meet and Greets**

In 2014, IPA outreach included the “meet and greet.” Staff walked through specific hot spot neighborhoods and spoke, one-on-one, with residents to whom we distributed IPA outreach materials. The meet and greets took place at laundromats, community centers, libraries, stores and restaurants. As a part of these contacts, we displayed IPA posters and distributed postcards throughout Districts 3, 5, 7 and 8. In District 10's Hoffman/Via Monte neighborhood, staff reached over 100 residences by going door-to-door. While IPA staffing resources are too limited to blanket the City, our approach effectively conveys important information about our office to those who frequently interact with SJPD officers.

## **D. Meetings with City Officials and Participation in City Events**

While meetings with city officials and participation in City events are not, technically, community outreach, we believe that IPA communication with our government officials is very important. Throughout 2014, the IPA met regularly with the Mayor, City Council members, City Council appointees, and San José Police Department (SJPD) Command staff. IPA staff occasionally attended City meetings, including Agenda Review meetings

and meetings of the Public Safety Finance Strategic Support Committee.

### **E. IPA Trainings for SJPD Officers About Sustained Findings**

In 2014, Judge Cordell presented officer trainings that focused upon sustained findings to all Field Training Officers (FTOs) and for one class of recruits. The goal of the training was to inform the officers about those various procedures in the Duty Manual that are most frequently violated to prevent the officers they train from engaging in the same conduct. To this end, Judge Cordell led three 60-minute sessions for the FTOs, in addition to a training session at the Academy. The IPA office initiated this training in 2013.

Sixty-five (65) officers participated in the 2014 sustained findings training. The IPA provided handouts listing Duty Manual provisions that were most frequently violated. The officers' comments in the post-training surveys were mainly very positive:

- *“Most important part was seeing the most common violations and knowing how to prevent it.”*
- *“I think that the entire presentation was important.”*
- *“I will keep the handouts in my Guides binder to assist me later. I appreciated her taking the time to give real example and what happened.”*
- *“Attention to procedures and proper documentation will keep an officer out of trouble.”*
- *“The most important part was how to document all cases.”*
- *“The use of actual San José cases of allegations against officers and the violations against the Duty Manual.”*
- *“Good way to avoid common mistakes.”*
- *“It is important to know the Duty Manual.”*
- *“Hearing previous cases where officers got in trouble and learning from their mistakes.”*
- *“How many bad habits we are trained are okay*

*by our FTO's but in reality are against policy.”*

- *“See what mistakes officers had made to receive sustained complaints.”*
- *“Idiosyncrasies of Duty Manual that will get us in trouble.”*
- *“Realization that procedural complaints are the most common.”*
- *“How knowing procedures can make your job easier.”*
- *“Just learning about all the types of cases that come to IA.”*
- *“There are a lot of things we can get in trouble for.”*
- *“Knowing the fine things and how easy it is to have a complaint against you.”*
- *“How to stay out of trouble.”*
- *“Judge Cordell was very informative, and engaging examples of complaints were helpful.”*
- *“It's good to learn from others' mistakes. This should be an annual class.”*
- *“Great presentation as it was all educational.”*
- *“Document everything.”*
- *“There were many Duty Manual sections / policies that I did not know. The presentation was very educational / useful.”*

A 2014 recommendation, suggested by one of the officers in his survey, is that SJPD mandate annual sustained finding trainings for FTOs and recruits.

### **III. Outreach to Targeted Populations in 2014**

The IPA has a strong commitment to reaching diverse groups of individuals who may benefit from the services of the IPA office. People of color and youth have been the subject of focused IPA outreach efforts for several years. To ensure that we are reaching these populations, we target some of our outreach activities in these communities. We also target those who provide assistance and services to these populations.

**A. Outreach to People of Color and Immigrants—Five-Year Overview (2010-2014)**

In 2014, we participated in 141 events involving people of color, immigrants, and agencies that serve those populations. This outreach constituted 63% of IPA outreach activities that included ongoing resource tabling at the Mexican Consulate, presentations to adult English as a Second Language learners, and door-to-door meet and greets in neighborhoods. Twenty-two (22) of our IPA outreach activities in 2014 were conducted in Spanish or Vietnamese, with translation services provided by IPA staff or volunteers.

**Illustration 6-E: Outreach to People of Color and Immigrants—Five-Year Overview (2010-2014)**

Year	Outreach Activities	% of Total	Attendees	% of Total
2010	100 (out of 192)	52%	5,006 (out of 8,408)	60%
2011	97 (out of 216)	45%	5,504 (out of 13,333)	41%
2012	91 (out of 174)	52%	5,923 (out of 12,528)	47%
2013	97 (out of 159)	61%	5,413 (out of 12,795)	42%
2014	141 (out of 223)	63%	7,124 (out of 12,539)	57%

**B. Outreach to Youth — Five-Year Overview (2010-2014)**

Our youth outreach encourages young people to consider positive ways to interact with law enforcement officers and teaches them about their legal rights and responsibilities. In 2014, we participated in 83 events reaching 4,087 teenagers, young adults and the staff who serve them. Youth outreach activities comprised 37% of the IPA’s outreach activities in 2014.

**Illustration 6-F: Outreach to Youth—Five-Year Overview (2010-2014)**

Year	Outreach Activities	% of Total	Attendees	% of Total
2010	54 (out of 192)	28%	1,869 (out of 8,408)	22%
2011	65 (out of 216)	30%	2,230 (out of 13,333)	17%
2012	53 (out of 174)	30%	2,207 (out of 12,528)	18%
2013	62 (out of 159)	39%	1,935 (out of 12,795)	15%
2014	83 (out of 223)	37%	4,087 (out of 12,539)	33%

We distributed 2,923 copies of the 4th edition of *A Student’s Guide to Police Practices* (Guide) to youth, parents, teachers and service providers in 2014. Created by the IPA office in 2003, the Guide is designed to address common concerns expressed by youth about the police; it has been a critical tool in IPA youth outreach. In District 8, we distributed Guides to 500 students at Quimby Middle School. We gave Guides to 170 students at Ace Charter Middle School in District 5. Our presentations to young people were made possible, in part, through the generous assistance of community agencies such Catholic Charities, Fresh Lifelines for Youth, the Mexican American Community Services Agency (MACSA), and Work2Future.

The distribution of the Guide to youth and their parents throughout San José remains an IPA priority. The Guide is also available on-line at [www.sanjoseca.gov/ipa](http://www.sanjoseca.gov/ipa), under “Publications.”

In 2014, the IPA office continued to build future leaders with our IPA-Teen Leadership Council (TLC). Established by our office in April 2011, the TLC is a diverse group of 15 San José residents, ages 15 to 18, who live or attend school in the City of San José. Several TLC Alumni (former TLC members who now work and/or attend college) remain connected to the group. The TLC members provide advice to the IPA on the most effective ways to conduct outreach to youth in San José, inform the IPA about police-related issues that are on the minds of youth in San José, and develop their leadership skills. They interact with city officials, community leaders and police officers, and they participate in IPA community outreach events. In 2014, TLC members assisted the IPA staff with 58 outreach activities, including 29 meet and greets during which they practiced speaking with members of the public about IPA services.

The TLC meets once a month with the IPA and staff to work on projects, discuss issues or to participate



in workshops. Guest speakers attend the meetings to share their personal stories and their paths to leadership. In 2014 TLC guest speakers included SJPD Chief Larry Esquivel, Councilmember Ash Kalra and Ms. Gina Castaneda, an award-winning probation officer from Santa Cruz County. IPA staff provided TLC workshops about study skills, the college application process, and college survival skills. They attended a task force meeting at San José State University about hate crimes. The TLC watched the film “Prom Night in Mississippi,” followed by a discussion about leadership and racial prejudice.

With generous funding from the Castellano Family Foundation, the Comerica Foundation, and several individual donors, we convened our third TLC Annual Retreat in August 2014 at the San José Airport Garden Hotel. In addition to team building exercises, the teens received training from the IPA staff about police practices, and about their rights and responsibilities when interacting with the police. They engaged in role-playing designed to develop their outreach skills and they spoke with TLC alumni about leadership and college.

TLC alumni assisted staff with IPA outreach at a Crime & Gang Prevention Summit and a National Night Out event at the Mayfair Community Center. Some alumni attended the annual TLC retreat to meet new TLC members and to offer advice about the college application process. New TLC members assisted with IPA outreach and assisted with IPA material distribution in City hot spots, helped staff IPA resource tables, and/or attended IPA presentations.

A young adult intern, Jeanette Ramos, provided support for the TLC program assisting with TLC meetings and retreat logistics. Ms. Ramos also presented workshops for the teens on such topics as study skills and money management. Ms. Ramos’ internship was funded with a generous donation from the Castellano Family Foundation.

## IV. Media

Throughout 2014, the work of the IPA office was the subject of print, radio, television and online news stories. The IPA and her staff were interviewed, quoted, or mentioned in the media approximately 103 times in 2014. A list of the 2014 IPA media contacts and interviews is in Appendix H. What follows are highlights of some of those newspapers articles:

- January 24, 2014 – A *San José Mercury News* article entitled, “Plan would tap private video.”
- April 19, 2014 – A *San José Mercury News* article entitled, “Auditor urges firing of 2 cops.”
- April 24, 2014 – A *San José Mercury News* article entitled, “Proposal: Lie and you’re fired.”
- August 24, 2014 – A *San José Mercury News* article entitled, “When white officers dominate the police.”
- December 6, 2014 – A *San José Mercury News* article entitled, “S.J., cops union debating use of body cameras.”

To read these articles, please see Appendix K.

Starting in 2013, our office collaborated with the SJPD and CreaTV to produce, *Make the Call, San José!*, a 30-minute program that encourages the public to give tips to solve homicides in our City. The program was the brainchild of Judge Cordell who produced it, with the financial support of the SJPD, and the participation of Chief Larry Esquivel, and the SJPD Homicide Unit. The program profiles unsolved homicides in San José by providing information about the crimes, the victims, and their family members. In 2014, the second episode was aired on CreaTV in which two cold cases were featured. *Make the Call, San José!* is aired on CreaTV’s Channel 30. It is also available for viewing on YouTube ([www.youtube.com](http://www.youtube.com), search for *Make the Call, San José!*) and on the IPA website ([www.sanjoseca.gov/ipa](http://www.sanjoseca.gov/ipa), under “Related Links”).

## V. IPA Publications

Each year the IPA office distributes informational materials at resource fairs, presentations, and community events. They are available online at [www.sanjoseca.gov/ipa](http://www.sanjoseca.gov/ipa). IPA publications include the following:

- *A Student's Guide to Police Practices* (Guide), IPA Year End Reports to City Council,
- brochures describing IPA functions and the complaint process, and
- information card (wallet-sized) providing IPA contact information and a brief description of IPA services.

We distributed approximately 7,050 wristbands with the IPA phone number. The IPA staff distributed our “Frequently Asked Questions about the IPA Office” (FAQ) handout in English, Spanish and Vietnamese at our outreach events. You can find the FAQ in this Report and on our website at [www.sanjoseca.gov/ipa](http://www.sanjoseca.gov/ipa).

## VI. IPA Website and Facebook Page

Available on the IPA website [www.sanjoseca.gov/ipa](http://www.sanjoseca.gov/ipa) are IPA outreach materials such as the 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. The IPA office has a Facebook page listed as, “Office of the Independent Police Auditor, San José.”

## VII. Independent Police Auditor Advisory Council

The Independent Police Auditor Advisory Council (IPAAC)<sup>20</sup> was established in 1999. The group has

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<sup>20</sup> In 2013, the Independent Police Auditor Advisory Committee changed its name to Independent Police Auditor Advisory Council.

two functions: (1) promote community awareness of the services offered by the IPA office, and (2) advise 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. Members of the IPAAC engaged in approximately 180 hours of volunteer work for the IPA office in 2014. In addition to attending quarterly meetings, members assisted the IPA with community outreach and provided support to the TLC.

- Yesenia Ramirez assisted IPA staff with a resource table at the annual Alviso Day on the Bay.
- Norma Callender staffed the National Night Out resource table for the IPA at the Hayes Mansion.
- Joshua Barrouse chaperoned the third annual TLC retreat.
- Otis Watson engaged in fundraising for our teen leaders.
- Linda Young Colar mentored a TLC Alumna.
- Numerous IPAAC members assisted with the “IPA Dayz” calendar fundraiser.

A roster of the 2014 IPAAC members is in Appendix L.

## VIII. Outreach by City Council District

Starting in 2000, the City Council asked the IPA to provide outreach information by City Council district. Even though it is impossible for us to identify the City Council district of each person who attended an IPA event, in this Report, we provide a breakdown of outreach event locations by district. As in prior years, the majority of IPA outreach in 2014 was in District 3 – the district that includes City Hall and the downtown area. District 3 is a popular location for city-wide events and draws attendees from other City Council districts.

**Illustration 3-G: Percentage of IPA Outreach by City Council District —Five-Year Overview (2010-2014)**

<b>Council District</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
District 1	1%	2%	1%	1%	1%
District 2	5%	2%	3%	4%	2%
District 3	52%	44%	41%	36%	42%
District 4	5%	14%	11%	11%	7%
District 5	7%	8%	10%	10%	8%
District 6	7%	8%	5%	8%	3%
District 7	11%	10%	13%	12%	15%
District 8	4%	4%	5%	7%	12%
District 9	2%	3%	2%	2%	1%
District 10	1%	2%	3%	3%	3%
N/A	5%	3%	6%	6%	6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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

Each year, some of our community outreach is directed to residents of particular neighborhoods by participating in events and meetings in 2014 such as,

- National Night Out events in Districts 2, 3, 5, 7, 8 and 10,
  - Community resource fairs in Districts 4, 7, 8 and 9,
  - Senior walks in Districts 6 and 8, and
- Door-to-door meet and greets in Districts 3, 5, 7, 8 and 10.

For a complete list of IPA outreach events and activities in 2014, please see Appendix F.

## IPA Community Outreach 2014 – Year In Photos



*Judge Cordell getting ready to walk with community at Winter Walk*



*IPA Staff Erin O'Neill and Vivian Do at a community outreach event*



*TLC members distribute IPA materials*



*Judge Cordell welcoming the community to National Night Out*



*Judge Cordell interviewing Hardy Walkins (Uncle of Justin Walkins) on Make the Call, San José! on CreaTV*



*Judge Cordell speaking at Carry the Vision*



*Minh Steve Doan interviewing Judge Cordell for Vietnam Liberty News 1500 AM Radio*



*Judge Cordell and the Sonoma County Law Enforcement Accountability Subcommittee*



*TLC Intern Jeanette Ramos facilitating a personal budgeting workshop for the TLC members*



*Judge Cordell hosted a visit from the Young Vets.*



*TLC members attended the San Francisco FBI Citizen's Academy Alumni Association.*



*IPA Senior Analyst Diane Doolan-Diaz and the TLC hosted a meeting with San José Police Chief Larry Esquivel.*



*IPA Staff Vivian Do and Diane Doolan-Diaz attended the Mid Autumn Festival at San José History Park.*



*2014 IPAAC Members*



***Can you guess this legal/police term?***

*Illustration from IPA Dayz Calendar*

*Judge Cordell created a legal cartoon calendar to help raise over \$5,000 for the IPA Teen Leadership Council (TLC).*



*TLC Intern Jeanette Ramos (second row, far left) and the TLC members at their annual retreat*

# 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 Department of the SJPDP investigates those complaints thoroughly and fairly, and (3) recommends improvements to SJPDP'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 SJPDP 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, SJPDP 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 SJPDP.

## **What can I do if I think an SJPDP 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 SJPDP 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 SJPDP. The rules are in the SJPDP 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 SJPDP 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 SJPDP leadership about ways to improve the SJPDP.

Also, the IPA looks for trends in Conduct Complaints. When we identify patterns, we make recommendations to the SJPDP 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, the Department 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 the Department's investigations and findings. The IPA and her staff review the investigations by the Department 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 the Department 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 the Department 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 Department 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 the Department 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 Department investigation and/or the Department 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 the Department 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 Department 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 Department investigation

**Non-Misconduct Concern** (classification): a concern expressed by a member of the public about an officer's conduct that the Department 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 Department 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 the Department 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 Department investigation concluded that the acts never happened.

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

# Appendix A

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

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### **SAN JOSE MUNICIPAL CODE CHAPTER 8.04**

#### **OFFICE OF THE INDEPENDENT POLICE AUDITOR**

##### **8.04.010 Duties and responsibilities.**

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

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

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

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

(Ords. 25213, 25274, 25922.)

#### **8.04.020 Independence of the police auditor.**

A. The police auditor shall, at all times, be totally independent and requests for further investigations, recommendations and reports shall reflect the views of the police auditor alone.

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

(Ord. 25213.)

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## **SAN JOSÉ CITY CHARTER §809**

### **OFFICE OF THE INDEPENDENT POLICE AUDITOR**

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

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

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

(a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

(b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.

(c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

*Added at election November 5, 1996*

**§ 809.1. Independent Police Auditor; Power Of Appointment**

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

*Added at election November 5, 1996*

# Appendix B

## California Penal Code §832.5 and §832.7

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

(a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of section 832.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with section 6250) of Division 7 of Title 1 of the Government Code) and section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.



(2) “Unfounded” means that the investigation clearly established that the allegation is not true.

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

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## California Penal Code §832.7

### § 832.7. Confidentiality of peace officer records: Exceptions

(a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney’s office, or the Attorney General’s office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer’s agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer’s employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer’s personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer’s personnel file pursuant to section 1043 of the Evidence Code.

# Appendix C

## IPA Statement of Values

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### *Office of the Independent Police Auditor*

#### STATEMENT OF VALUES

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

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

*Adopted July, 2010 – IPA and Staff*

# Appendix D

## IPA No-Gift Policy

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### *Office of the Independent Police Auditor*

#### **NO-GIFT POLICY**

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

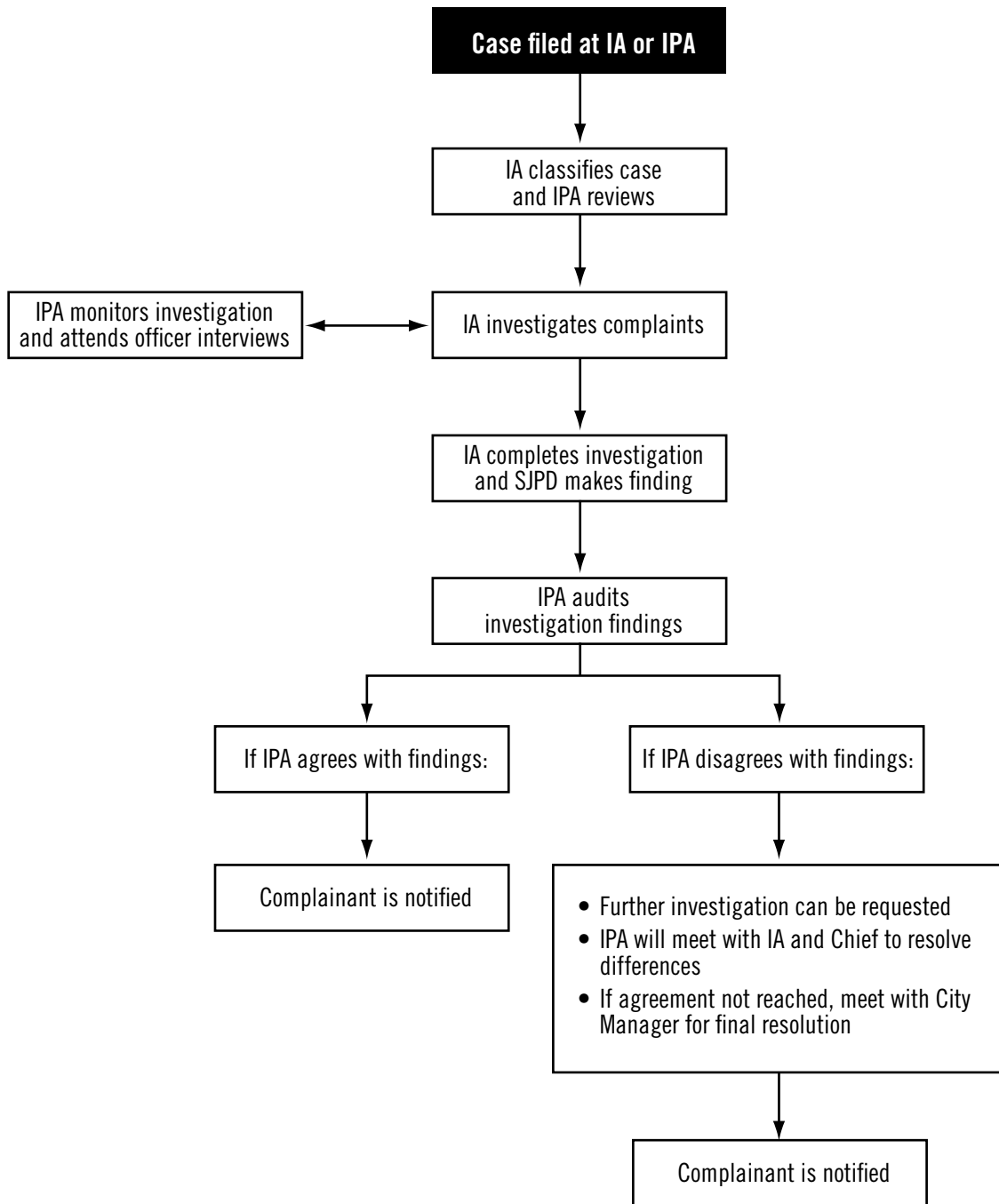
The acceptance of gifts or gratuities of any kind by the staff of the Office could be perceived or interpreted as an attempt by the donors to influence the actions of the staff. **Therefore, no gifts of any value may be accepted by members of the staff of the Office of the Independent Police Auditor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

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

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

*Adopted July, 2010 – IPA and Staff*

# Appendix E: The Complaint Process Flow Chart



# Appendix F:

## IPA 2014 Community Outreach Activities

Date	Name	Type	District	Location
1/8/2014	Mayor's Gang Prevention Task Force	Presentation	4	East Side Union High School District Office
1/9/2014	IPA Advisory Council Meeting	Meeting/Event	3	IPA Office
1/16/2014	Valley Transit Authority	Meeting/Event	3	City Hall Rotunda
1/16/2014	Grace Community Center	Presentation	3	Grace Community Center
1/17/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
1/26/2014	Project Cornerstone	Meeting/Event	3	Discovery Meadows
1/27/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
1/29/2014	Downtown College Prep	Presentation	3	via Mexican American Community Service Agency
2/3/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
2/3/2014	Gang Intervention & Community Resources Panel	Presentation	n/a	Santa Clara University
2/8/2014	Crime & Gang Prevention Summit	Meeting/Event	5	Mt. Pleasant High School
2/13/2014	Memorial Service for Homicide Victim	Meeting/Event	4	New Harvest Christian Fellowship Church
2/13/2014	Catholic Charities Seniors	Presentation	5	Eastside Neighborhood Center
2/15/2014	E.M.B.O.D.I. Youth	Presentation	7	African American Heritage House History Park
2/18/2014	Black History Month Luncheon	Meeting/Event	n/a	Lockheed Martin
2/21/2014	Teen Leadership Council	Meeting/Event	3	San Jose State University
2/26/2014	San Jose Job Corp	Presentation	7	San Jose Job Corps and Charter School
2/26/2014	Black History Month Celebration	Presentation	3	Santa Clara County Juvenile Hall
2/27/2014	African American Read In	Meeting/Event	3	Horace Mann Elementary
2/28/2014	Westfield Oakridge Winter Walk	Meeting/Event	10	Oakridge Mall
3/3/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
3/5/2014	Adult E.S.L. Students	Presentation	8	Overfelt Adult Education Center
3/6/2014	Plaza de San Jose Shopping Center	Meet & Greet	5	Story & King Roads
3/10/2014	At-Risk Boys Group	Presentation	6	Del Mar High School
3/12/2014	Mayor's Gang Prevention Task Force	Meeting/Event	4	East Side Union High School District Office
3/13/2014	ACE Charter High School	Presentation	5	Mexican American Community Service Agency
3/14/2014	Latina Coalition STEM Event	Meeting/Event	3	Flames Eatery
3/14/2014	SJPD Citizens Academy	Presentation	3	San Jose Police Department Training Center
3/21/2014	Project Cornerstone Breakfast	Meeting/Event	n/a	Santa Clara Convention Center
3/21/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
3/22/2014	Star Vista Annual Youth Conference	Meeting/Event	n/a	College of San Mateo
3/22/2014	Star Vista Rise Above Empowerment Conference	Meeting/Event	n/a	College of San Mateo
3/25/2014	Matsumoto Elementary School	Meeting/Event	8	Evergreen School District
3/26/2014	San Jose High School	Meeting/Event	3	San Jose High School
3/28/2014	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
3/28/2014	Green Cadre Program	Presentation	7	Work2Future
3/29/2014	United Neighborhoods of Santa Clara County	Meeting/Event	n/a	Campbell Community Center
4/2/2014	Adult E.S.L. Students	Presentation	3	Independence Adult Center
4/3/2014	Middle School Students, Group 1	Presentation	5	Ace Charter Middle School
4/3/2014	Middle School Students, Group 2	Presentation	5	Ace Charter Middle School
4/3/2014	Middle School Students, Group 3	Presentation	5	Ace Charter Middle School
4/5/2014	Santa Clara Law Achievement Celebration	Meeting/Event	3	San Jose Fairmont
4/6/2014	Voting Rights Freedom Seder	Meeting/Event	3	African American Community Service Agency
4/7/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
4/9/2014	Mayor's Gang Prevention Task Force	Meeting/Event	10	Victory Outreach

<b>Date</b>	<b>Name</b>	<b>Type</b>	<b>District</b>	<b>Location/Notes</b>
4/10/2014	IPA Advisory Council Meeting	Meeting/Event	3	IPA Office
4/10/2014	Middle School Students, Group 4	Presentation	5	Ace Charter Middle School Classl
4/10/2014	Middle School Students, Group 5	Presentation	5	Ace Charter Middle School
4/10/2014	Middle School Students, Group 6	Presentation	5	Ace Charter Middle School
4/11/2014	West Valley Senior Walk	Meeting/Event	6	Valley Fair Shopping Center
4/11/2014	San Jose Downtown Association	Meeting/Event	3	Corinthian Event Center
4/17/2014	Juvenile Drug Opportunity Community Court	Meeting/Event	7	Center for Training & Careers
4/18/2014	7th Annual Youth Commission Citywide Conference	Meeting/Event	3	City Hall Rotunda
4/18/2014	Teen Leadership Council	Meeting/Event	3	SJPD Training Center
4/25/2014	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
4/26/2014	NAACP Freedom & Friendship Gala	Meeting/Event	3	Hyatt Place
4/27/2014	National Coalition of 100 Black Women	Meeting/Event	2	Hayes Mansion
4/30/2014	Adult E.S.L. Students	Presentation	8	Overfelt Adult Education Center
4/30/2014	Adult E.S.L. Students	Presentation	7	Andrew Hill Adult Educattion
5/2/2014	At-Risk Youth Group	Presentation	5	Ace Charter School
5/5/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
5/5/2014	Adult E.S.L. Students	Presentation	3	Independence Adult Education Center
5/15/2014	Juvenile Community Opportunity Court	Meeting/Event	7	Center for Training & Careers
5/16/2014	Teen Leadership Council Open House	Meeting/Event	3	IPA Office
5/16/2014	Golden Grandmothers Luncheon	Meeting/Event	3	San Jose Airport Garden Hotel
5/17/2014	Senior Health Fair & Walk	Meeting/Event	8	Eastridge Mall
5/27/2014	Quimby Middle School, Group 1	Presentation	8	Quimby Middle School
5/27/2014	Quimby Middle School, Group 2	Presentation	8	Quimby Middle School
5/27/2014	Quimby Middle School, Group 3	Presentation	8	Quimby Middle School
5/27/2014	Quimby Middle School, Group 4	Presentation	8	Quimby Middle School
5/27/2014	Quimby Middle School, Group 5	Presentation	8	Quimby Middle School
5/28/2014	Quimby Middle School , Group 6	Presentation	8	Quimby Middle School
5/28/2014	Quimby Middle School, Group 7	Presentation	8	Quimby Middle School
5/28/2014	Quimby Middle School, Group 8	Presentation	8	Quimby Middle School
5/28/2014	Quimby Middle School, Group 9	Presentation	8	Quimby Middle School
5/28/2014	Quimby Middle School, Group 10	Presentation	8	Quimby Middle School
5/29/2014	SCC Human Relations Award Ceremony	Meeting/Event	3	County Board of Supervisors Chambers
5/29/2014	Quimby Middle School, Group 11	Presentation	8	Quimby Middle School
5/29/2014	Quimby Middle School, Group 12	Presentation	8	Quimby Middle School
5/29/2014	Quimby Middle School, Group 13	Presentation	8	Quimby Middle School
5/29/2014	Quimby Middle School, Group 14	Presentation	8	Quimby Middle School
5/29/2014	Quimby Middle School, Group 15	Presentation	8	Quimby Middle School
5/30/2014	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
5/30/2014	Late Night Basketball	Presentation	5	MACSA
6/2/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
6/11/2014	Rosa Speed Wash	Meet & Greet	7	2873 Senter Rd.
6/11/2014	TM Laundry	Meet & Greet	7	4272 Senter Rd.
6/11/2014	Senter Laundromat	Meet & Greet	7	2266 Senter Rd.
6/11/2014	Mayor's Gang Prevention Task Force	Meeting/Event	5	Mt. Pleasant High School
6/12/2014	Capital Launderland	Meet & Greet	7	3122 Senter Rd.
6/12/2014	Family Wash & Pure Water	Meet & Greet	7	4272 Senter Rd.
6/12/2014	Family Wash & Pure Water, Inc.	Meet & Greet	3	1643 McKee Rd.
6/12/2014	Brad Huggett	Meet & Greet	3	489 S.10th St.
6/13/2014	Convenient Wash	Meet & Greet	3	330 E. Santa Clara St.
6/13/2014	Senter Coin-Op Laundromat	Meet & Greet	7	2310 Senter Rd.

Date	Name	Type	District	Location/Notes
6/13/2014	Thirteenth St./Empire Laundry	Meet & Greet	3	497 N. 13th.
6/16/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
6/19/2014	Juvenile Community Opportunity Court	Meeting/Event	7	Center for Training & Careers
6/20/2014	Happy Laundry	Meet & Greet	3	500 McLaughlin
6/20/2014	Launderland	Meet & Greet	3	525 McLaughlin
6/20/2014	New World Laundry & Water	Meet & Greet	7	963 McLaughlin
6/20/2014	Wash Club LLC	Meet & Greet	7	1080 McLaughlin
6/27/2014	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
6/30/2014	Sonoma County Community Members	Meeting/Event	3	IPA Office
7/1/2014	Young Veterans Group	Presentation	3	IPA Office
7/2/2014	Santa Maria Urban Ministries	Meeting/Event	3	I Java Café
7/6/2014	Tech Trek Program	Meeting/Event	n/a	Stanford University
7/10/2014	Senator Beall's Summer Interns	Presentation	n/a	Senator Beall's Campbell Office
7/18/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
7/23/2014	Good Choices Program	Presentation	7	Alma Youth Center
7/24/2014	IPA Advisory Council Meeting	Meeting/Event	3	IPA Office
7/24/2014	Good Choices Program	Presentation	1	Starbird Youth Center
7/25/2014	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
8/1/2014	Teen Leadership Council Retreat	Meeting/Event	3	San Jose Airport Garden Hotel
8/4/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
8/5/2014	National Night Out	Meeting/Event	5	Mayfair Community Center
8/5/2014	National Night Out	Meeting/Event	3	El Rancho Verde
8/5/2014	National Night Out	Meeting/Event	10	Almaden Hills United Methodist Church
8/5/2014	National Night Out	Meeting/Event	7	Seven Trees Community Center
8/5/2014	National Night Out	Meeting/Event	8	Boys & Girls Club of America
8/5/2014	National Night Out	Meeting/Event	2	Hayes Mansion
8/8/2014	Roosevelt Community Center	Meet & Greet	3	901 E. Santa Clara St.
8/8/2014	Bill Wilson Drop-in Center	Meet & Greet	3	693 S. 2nd St.
8/13/2014	Mayor's Gang Prevention Task Force	Meeting/Event	8	Most Holy Trinity School
8/14/2014	SCC Department of Alcohol & Drug Service	Meeting/Event	3	1075 E. Santa Clara St
8/15/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
8/22/2014	Diamond Laundry & Cleaners	Meet & Greet	3	398 W. San Carlos St.
8/22/2014	Kiem Service Laundromat	Meet & Greet	3	349 E. Empire
8/22/2014	William Launderland	Meet & Greet	3	518 S. 10th St.
8/22/2014	Wash Time	Meet & Greet	7	1130 Lucretia Avenue
8/22/2014	Lee Laundromat	Meet & Greet	7	1654 Burdette Drive
8/22/2014	Tully Wash & Dry	Meet & Greet	8	1709 Tully Road
8/22/2014	Taqueria La Mordida	Meet & Greet	8	1709 Tully Road
8/24/2014	9th Annual Cambrian Festival	Meeting/Event	9	Camden Community Center
8/27/2014	Stop Police Abuse Rally	Meeting/Event	3	City Hall
9/6/2014	Vietnamese Resources Fair	Meeting/Event	7	Yerba Buena High School
9/7/2014	Mid-Autumn Festival	Meeting/Event	7	History Park
9/10/2014	Mayor's Gang Prevention Task Force	Meeting/Event	4	East Side Union High School District
9/11/2014	Faith Leaders Appreciation Breakfast	Meeting/Event	8	Sikh Gurdwara Temple
9/11/2014	Peace Picnic	Meeting/Event	3	James McEntee Plaza
9/11/2014	Equal Employment Opportunity Commission	Presentation	2	Hayes Mansion
9/12/2014	NAACP Mayoral Candidate Forum	Meeting/Event	7	Yerba Buena High School
9/13/2014	Greene Scholars Program	Presentation	4	Cypress Semiconductor
9/17/2014	National Alliance for the Mentally III	Meeting/Event	3	IPA Office
9/19/2014	Recovery Café San Jose Event	Meeting/Event	3	Summit Center

<b>Date</b>	<b>Name</b>	<b>Type</b>	<b>District</b>	<b>Location/Notes</b>
9/19/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
9/19/2014	All Student Assembly	Presentation	6	Downtown College Preparatory School
9/20/2014	Grub Shack	Meet & Greet	3	93 E. Santa Clara Street
9/20/2014	Starbucks	Meet & Greet	3	101 E. Santa Clara Street
9/20/2014	Taqueria San Jose	Meet & Greet	3	235 E. Santa Clara Street
9/20/2014	Salon Beauty Supply	Meet & Greet	3	E. Santa Clara Street
9/20/2014	Hookah Shop	Meet & Greet	3	428 E. Santa Clara Street
9/20/2014	Urban Rock	Meet & Greet	3	424 E. Santa Clara Street
9/20/2014	3-G Streetwear Boutique	Meet & Greet	3	432 E. Santa Clara Street
9/20/2014	KB Beauty Salon	Meet & Greet	3	E. Santa Clara Street
9/20/2014	Tofoo Com Chay	Meet & Greet	3	388 E. Santa Clara Street
9/20/2014	The Barbers Inc. Barbershop	Meet & Greet	3	332 E. Santa Clara Street
9/20/2014	Western Dental Center	Meet & Greet	3	48 E Santa Clara St
9/20/2014	AK's Mini Mart	Meet & Greet	3	17 E Santa Clara St
9/20/2014	California Check Cashing	Meet & Greet	3	19 S 2nd st
9/20/2014	DeAnza Coffee	Meet & Greet	3	Fountain Alley
9/20/2014	Pawn Shop	Meet & Greet	3	14 S 1st St
9/20/2014	Ross Dress for Less	Meet & Greet	3	27 S 1st St
9/20/2014	Hammer & Lewis	Meet & Greet	3	19 S 1st
9/20/2014	Pizza #1	Meet & Greet	3	33 S 1st St
9/20/2014	Lido's Night Club	Meet & Greet	3	30 S 1st St
9/20/2014	Lincoln Law Center	Meet & Greet	3	1 N 1st St
9/22/2014	Mental Health Response Program	Meeting/Event	n/a	Senator Beall's Campbell Office
9/22/2014	Fresh Lifelines for Youth Group	Presentation	7	Andrew Hill High School
9/23/2014	Fresh Lifelines for Youth Group	Presentation	5	Hank Lopez Community Center
9/24/2014	Fresh Lifelines for Youth Group	Presentation	6	Edge School
9/25/2014	Principal Gloria Marchant	Meeting/Event	3	San Jose High School
9/25/2014	Civil Grand Jury	Presentation	3	111 W. St. John Street
9/25/2014	Latino Student Union & Central Caribbean Club	Presentation	3	San Jose High School
9/26/2014	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
9/27/2014	Public Safety Resource Fair	Meeting/Event	4	Educational Park Library
9/29/2014	Adult E.S.L. Students	Presentation	8	Overfelt Adult Education Center
10/2/2014	Fresh Lifelines for Youth Group	Presentation	6	Del Mar High School
10/6/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
10/6/2014	People Acting in Community Together	Meeting/Event	3	IPA Office
10/8/2014	Intern Outreach	Meet & Greet	3	10th & Julian
10/8/2014	Mayor's Gang Prevention Task Force	Meeting/Event	3	Center for Employment & Training
10/8/2014	Open Forum on Diversity	Meeting/Event	3	San Jose State University Campus
10/8/2014	Adult E.S.L. Students	Presentation	3	Independence Adult Education
10/9/2014	Green Cadre Program	Presentation	7	Work 2 Future
10/9/2014	6th & 7th Grade Students	Presentation	5	ACE Charter Creative Arts Academy
10/10/2014	Downtown Association Annual Meeting	Meeting/Event	3	San Jose First United Methodist Church
10/10/2014	College Day	Meeting/Event	3	San Jose High School
10/10/2014	Fresh Lifelines for Youth Group	Presentation	7	Snell Community School
10/11/2014	Day In The Park	Meeting/Event	8	Lake Cunningham Regional Park
10/12/2014	Day On The Bay	Meeting/Event	n/a	Alviso Marina
10/16/2014	San Jose Conservation Corps Charter School	Presentation	7	Senter Road Campus
10/17/2014	Juvenile Community Opportunity Court	Meeting/Event	7	Center for Training & Careers
10/17/2014	San Jose Conservation Corps Charter School	Presentation	4	Berger Drive Campus
10/19/2014	Teen Leadership Council	Meeting/Event	3	IPA Office



<b>Date</b>	<b>Name</b>	<b>Type</b>	<b>District</b>	<b>Location/Notes</b>
10/20/2014	Carry The Vision Conference	Meeting/Event	n/a	Jewish Community Center
10/21/2014	California Check Cashing	Meet & Greet	3	19 S. 2nd Street
10/22/2014	Wolfpack Enclave	Meet & Greet	3	17 N. 2nd Street
10/23/2014	Angelou's Taqueria	Meet & Greet	3	21 N 2nd Street
10/24/2014	Cheap Squad	Meet & Greet	3	25 N. 2nd Street
10/25/2014	SCC Public Defenders Office Paralegal	Meeting/Event	3	Roy's Coffee Station
10/26/2014	Green Cadre Program	Presentation	7	Work 2 Future
10/27/2014	Almaden Hills United Methodist Church Area	Meet & Greet	10	Hoffman Court & Almaden Road
10/28/2014	Almaden Hills United Methodist Church Area	Meet & Greet	10	Hoffman Court & Almaden Road
10/30/2014	Almaden Hills United Methodist Church Area	Meeting/Event	10	Almaden Hills United Methodist Church
11/5/2014	Santa Clara County Department of Education	Meeting/Event	n/a	Santa Clara High School
11/5/2014	Post Senior Program Students	Presentation	2	East Side Union High School District Vocational Training
11/5/2014	Latino Parents Group	Presentation	5	ACE Charter Creative Arts Academy
11/6/2014	Educators' Day Event	Meeting/Event	3	111 N. Market St.
11/12/2014	Mayor's Gang Prevention Task Force	Meeting/Event	3	Center for Employment Training
11/12/2014	Youth Advisory Committee	Presentation	3	Congressman Honda's Office
11/13/2014	Positive Alternative Recreation Teambuilding Impact Squad	Presentation	2	Oak Grove High
11/19/2014	Fresh Lifelines for Youth Group	Presentation	5	Mt. Pleasant High School
11/20/2014	IPA Advisory Council	Meeting/Event	3	IPA Office
11/21/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
11/24/2014	Palo Alto Rotary Club	Presentation	n/a	Palo Alto Elks Lodge
12/1/2014	Mexican Consulate Outreach	Meeting/Event	4	Mexican Consulate
12/2/2014	SCC Public Defenders	Presentation	3	Public Defenders Office
12/2/2014	Adult E.S.L. Students	Presentation	8	Overfelt Adult Education Center
12/10/2014	Mayor's Gang Prevention Task Force	Meeting/Event	5	San Jose Job Corp
12/12/2014	Teen Leadership Council	Meeting/Event	3	IPA Office
12/12/2014	Apollo High School	Presentation	8	Overfelt High School Campus
12/18/2014	Recycling Program Services	Presentation	3	San Jose Conservation Corp

# Appendix G

## IPA Presentation Evaluation

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**OFFICE OF THE INDEPENDENT POLICE AUDITOR**  
City of San Jose

**Presentation Evaluation**

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Name of Presenter(s): \_\_\_\_\_

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

Yes

No

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

Yes

No

3. Were the presenters knowledgeable about the subject matter?

Yes

No

4. Were the materials provided helpful?

Yes

No

5. Overall, how would you rate the presentation?

Excellent

Good

Average

Poor

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

# Appendix H:

## IPA 2014 Media Contacts, Articles, and Interviews

Date	Name	Notes	Contact
1/8/2014	Metro Silicon Valley	Video Visions re: "Make the call, San Jose!"	Gary Singh
1/22/2014	KGO News Radio	Re: BART police shooting	Jenna Lane
1/22/2014	San Jose Mercury News	Re: BART police shooting	Natalie Allen
1/24/2014	San Jose Mercury News	Plan would tap private video	Mike Rosenberg
1/28/2014	San Jose Mercury News	In tough times, Chief Esquivel aims to leave SJPD on steady footing	Robert Salonga
2/6/2014	KQED Radio	Re: Alleged sexual assault by SJPD officer	Ted Goldberg
2/6/2014	CBS 5 News	Re: Alleged sexual assault by SJPD officer	Betty Yu
3/12/2014	NBC Bay Area News	San Jose Police Officer Charged with Rape of Hotel Maid	Lisa Fernandez, Marianne Favro & Kris Sanchez
3/12/2014	San Jose Mercury News	DNA links cop to woman	Robert Salonga & Tracey Kaplan
3/12/2014	Univision 14	Re: Alleged sexual assault by SJPD officer	Silverio Armanza
3/12/2014	Telemundo 48	Re: Alleged sexual assault by SJPD officer	Jaime Peluffo
3/13/2014	San Jose Mercury News	On-duty S.J cop accused of rape	Robert Salonga, Mark Gomez, & Mark Emmons
4/17/2014	KCBS News Radio	SJPD Auditor Report Recommends Firing Some Officers	Len Ramirez
4/18/2014	San Jose Mercury News	Auditor urges firing of 2 cops re: police integrity	Mike Rosenberg
4/18/2014	San Jose Mercury News	Lies threaten integrity of San Jose police	Richard Konda
4/19/2014	San Jose Mercury News	Cop complaints against fellow officers decline	Mike Rosenberg
4/22/2014	San Jose Mercury News	Editorial: Words with friends (re: police integrity)	LaDoris Cordell
4/22/2014	San Jose Mercury News	Re: Councilmember Liccardo's Proposal about IPA Recommendation	Robert Salonga
4/23/2014	Univision 14	Re: 2013 IPA Year End Report	Max Cabrera
4/24/2014	Telemundo 48	Interview re: SJPD policy of towing recovered stolen vehicles	Jaime Peluffo
4/24/2014	San Jose Mercury News	Teens wanted for San Jose police auditor's council	Sal Pizarro
4/25/2014	San Jose Mercury News	Proposal: Lie and you're fired	Robert Salonga
4/25/2014	San Jose Mercury News	The problem with a zero-tolerance policy in SJPD	Scott Herhold
4/25/2014	NBC Bay Area News	State Law Hides Investigations of Police Misconduct from Public Scrutiny	Stephen Stock, Kevin Nious, Jeremy Carroll & Scott Pham
4/27/2014	San Jose Mercury News	San Jose asking for trouble with 'Cops' show	Raj Jayadev
4/29/2014	San Jose Mercury News	Human Rights Champions (re: Judge Cordell received James P. McEntee Sr. Lifetime achievement award)	Sal Pizarro
4/30/2014	NBC Bay Area News	Calls for Police Transparency at San Jose City Council Meeting	Stephen Stock, Jeremy Carroll, Kevin Niousnd
6/1/2014	Metro Silicon Valley	Re: Nathaniel Howard & allegations of excessive police force	Jennifer Wadsworth
7/9/2014	San Jose Mercury News	Policing the CHP: Beating shows officers need independent oversight	LaDoris Cordell
7/9/2014	San Jose Mercury News	San Jose: Officer arrested after large pot stash discovered in his storage	Robert Salonga
7/24/2014	San Jose Mercury News	SJSU graduation speaker files excessive-force complaint, seeks more police accountability	Robert Salonga
7/28/2014	El Observador	Teen Leadership Council attend La Raza Roundtable	Diane Doolan-Diaz
7/28/2014	San Jose Mercury News	When white officers dominate the police	Thomas Peele, Robert Salonga & Daniel J. Willis

<b>Date</b>	<b>Name</b>	<b>Notes</b>	<b>Contact</b>
8/8/2014	KQED Radio	Demographics of the police	Ted Goldberg
8/16/2014	Slate Magazine	We Actually Know Exactly How To Stop Police From Using Excessive Force. Why Don't We Do It?	Ladoris H. Cordell
8/23/2014	San Jose Mercury News	Ranks of Bay Area police departments largely white	Robert Salonga & Daniel J. Willis
8/23/2014	San Jose Mercury News	Unwanted (re: militarization of municipal police)	Robert Salonga
8/26/2014	San Jose Mercury News	San Jose: Man alleges cops tried to seize his phone for recording officer-involved shooting scene	Robert Salonga
8/29/2014	Milpitas Post	San Jose: Man alleges cops tried to seize his phone for recording officer-involved shooting scene	Robert Salonga
8/29/2014	San Jose Mercury News	San Jose police jettison hulking armored transport	Robert Salonga
9/4/2014	San Jose Mercury News	Man alleges intimidation by officers	Robert Salonga
9/5/2014	San Jose Mercury News	Need a lawyer as police auditor? Nah.	Scott Herhold
9/5/2014	San Jose Mercury News	Watchdog of police won't fit one mold	Scott Herhold
9/6/2014	San Jose Mercury News	Reader's letters: IPA disagrees with columnist's viewpoint	Judge LaDoris H. Cordell (Ret.)
9/7/2014	San Jose Mercury News	Shooting by SJPD officer: Police tried to seize my phone, says man who recorded scene	Robert Salonga & Daniel J. Willis
9/24/2014	NBC Bay Area News	IPA LaDoris Cordell Draws Legal Cartoons, Sells Calendars for Teen Council	Lisa Fernandez
9/25/2014	KPIX Channel 5	Re: SJPD Officers & Secondary Employment	Len Ramirez
9/29/2014	KCBS News Radio	Re: SJPD Officers & Secondary Employment	Mike Colgan
10/6/2014	NBC Bay Area News	IPA LaDoris Cordell Draws Legal Cartoons, Sells Calendars for Teen Council	Garvin Thomas
10/7/2014	San Francisco Gate	Loyalty questions raised when police moonlight as private guards	Evan Sernoffsky
10/7/2014	CBS 5 News	San Jose Police Officer Investigated After Moonlighting For 49ers	Len Ramirez
10/9/2014	NBC Bay Area News	Re: SJPD & 49ers Tickets, Duty Manual & Gift Policy	Robert Handa
10/23/2014	KQED News	San Jose City Council Rejects Funding For Private Security Patrols	Phoebe Barghouty
10/24/2014	NBCSports.com	Free tickets to 49ers games create problems for San Jose police	Mike Florio
10/25/2014	KPIX Channel 5	Bay Area Judge Explains Your Rights If Police Want To Search Your Cellphone	Sharon Chin
10/27/2014	San Jose Mercury News	Ray McDonald case: SJPD internal emails suggest loose reins on cops moonlighting	Robert Salonga & Mark Emmons
11/9/2014	KCBS News Radio	Re: SJPD & 49ers Tickets	Matt Bigler
11/12/2014	KLIV Radio	Re: SJPD & 49ers Tickets	Matthew Burris
11/12/2014	KGO Radio	Re: SJPD & 49ers Tickets	Jennifer Hodges
11/13/2014	ABC 7 San Francisco	Re: SJPD & 49ers Tickets	Ron Lopez
11/13/2014	SFGate.com	San Jose police chief got free 49ers tickets	Henry Lee
11/13/2014	Wall Street Journey	Re: SJPD & 49ers Tickets	Zusha Elinson
11/13/2014	CBS 5 News	San Jose Police Chief Under Fire For Accepting Gifts from San Francisco 49ers	Henry Lee
11/14/2014	Sacramento Bee	Internal Affairs: SJPD brass got free tickets to Niner preseason games	Mercury News
11/14/2014	SFGate.com	Top San Jose cops got freebie 49er tickets	Henry Lee
11/15/2014	CBS 5 News	Re: Grand Juries	Wilson Walker
11/15/2014	San Jose Mercury News	Around Town: Auditor Turned Artist	Sal Pizarro
11/15/2014	San Jose Mercury News	Internal Affairs: SJPD brass got free tickets to Niner preseason games	The Mercury News
11/16/2014	The Almanac Online	Body-worn cameras help, hurt law enforcement in Menlo Park	Sandy Brundage
11/24/2014	San Jose Mercury News	S.J., cops union debating use of body cameras	Robert Salonga
11/25/2014	KGO AM Radio	Re: On-officer cameras and grand juries	Jennifer Hodges

<b>Date</b>	<b>Name</b>	<b>Notes</b>	<b>Contact</b>
11/30/2014	Univision	Re: On-officers cameras	Jaime Peluffo
12/2/2014	San Jose Mercury News	Auditor Turned Artist (re: fundraiser for IPA Teen Leadership Council)	Sal Pizarro
12/4/2014	KQED Radio	Re: Community and Police Relations	Joshua Johnson
12/6/2014	San Jose Mercury News	San Jose police take careful approach to body-worn cameras for officers	Robert Salonga
12/6/2014	Talk Radio 910AM	Re: Grand Juries	Gil Gross
12/9/2014	Metro Silicon Valley	Police Union Challenge Halts New Body Camera Program	Josh Koehn
12/9/2014	KQED Radio	Re: On-officers cameras	Peter John Schuler
12/9/2014	San Francisco Chronicle	Cordell seeks abolition of criminal grand juries in wake of two cases	LaDoris H. Cordell
12/9/2014	Slate Magazine	Grand Juries Should Be Abolished	LaDoris H. Cordell
12/10/2014	San Francisco Chronicle	Secrecy of grand juries blasted	Melody Gutierrez
12/12/2014	San Francisco Chronicle	Re: SJPD & 49ers Tickets	Henry Lee
12/13/2014	San Jose Mercury News	Internal Affairs: San Jose police auditor LaDoris Cordell calls for abolition of criminal grand juries	The Mercury News
12/14/2014	San Jose Mercury News	Editorial: Time to rid American justice system of secretive criminal grand juries	LaDoris H. Cordell
12/14/2014	San Jose Mercury News	Ranks of Bay Area police departments largely white	Thomas Peele, Robert Salonga & Daniel J. Willis
12/14/2014	San Jose Mercury News	San Jose police could tap into residents' private security cameras	Mike Rosenberg
12/15/2014	SFGate.com	Calls grow to eliminate grand juries' secrecy in police killing	Melody Gutierrez
12/15/14	Santa Cruz Sentinel	San Jose cop's tweets lead to calls for his dismissal	Robert Salonga & Mark Emmons
12/16/14	KCBS News Radio	Independent San Joe Police Auditor Says Grand Juries No Longer Serve Their Purpose	Mike Colgan
12/21/14	ABC 7 Eyewitness News	San Jose police officer on leave for controversial protest	Vic Lee
12/29/14	SFGate.com	Kamala Harris sees safeguards in D.A.s prosecuting police killings	Bob Egelko

# Appendix I: Additional Statistical Information

**Table 1: Ethnicity of Subject Officers in 2013**

Ethnicities	Subject Officers	%	SJPD Sworn Officers	%
Native American	2	1%	8	1%
Asian American/Pacific Islander*	43	19%	148	15%
African American	11	4%	43	4%
Hispanic/Latino	67	24%	231	23%
Caucasian	153	54%	534	54%
Not Available	9	3%	33	3%
<b>Total</b>	<b>285</b>	<b>100%</b>	<b>997</b>	<b>100%</b>

\* For the purpose of this illustration, Filipino and Vietnamese are listed separately from Asian/Pacific Islanders.

**Table 2: Force Case Complainants by Ethnicity in 2014\***

Ethnicities From Complainant Intakes	Force Complainants		Total Complainants		% of San José Population**
	Number	%	Number	%	
African American	8	9%	42	11%	3%
Asian American/Pacific Islander***	0	0%	21	6%	32%
Caucasian	18	21%	70	19%	29%
Hispanic/Latino	34	40%	112	30%	33%
Native American	1	1%	3	1%	1%
Other	1	1%	8	2%	2%
Decline/Unknown	24	28%	114	31%	0%
<b>Complainant Responses</b>	<b>86</b>	<b>100%</b>	<b>370</b>	<b>100%</b>	<b>100%</b>

\* 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.

**Table 3: Allegations Subject Officers Received in 2014, By Years of Experience\***

Allegations Received	0-1+		2-4+		5-6+		7-10+		11-15+		16+	
	#	%	#	%	#	%	#	%	#	%	#	%
Procedure	38	28%	14	36%	8	21%	29	33%	32	31%	65	41%
Courtesy	21	16%	4	10%	7	18%	14	16%	20	19%	39	24%
Force	21	16%	10	26%	9	23%	17	19%	19	18%	17	11%
Arrest or Detention	17	13%	5	13%	7	18%	16	18%	13	13%	12	8%
Search or Seizure	19	14%	4	10%	3	8%	4	4%	8	8%	11	7%
Bias Based Policing	13	10%	2	5%	2	5%	7	8%	7	7%	6	4%
Neglect of Duty	0	0%	0	0%	0	0%	0	0%	3	3%	1	1%
Conduct Unbecoming an Officer	6	4%	0	0%	3	8%	2	2%	2	2%	9	6%
<b>Total Allegations</b>	<b>135</b>	<b>100%</b>	<b>39</b>	<b>100%</b>	<b>39</b>	<b>100%</b>	<b>119</b>	<b>100%</b>	<b>104</b>	<b>100%</b>	<b>160</b>	<b>100%</b>

\* Data excluded Unknown officers.

**Table 4: Number of Subject Officers Receiving Complaints in 2014, By Years of Experience**

Years of Experience	0-1+	2-4+	5-6+	7-10+	11-15+	16+	Total Number of Officers Receiving Complaints
Number of Complaints							
1 Complaint	34	15	9	38	42	67	205
2 Complaints	13	5	4	8	10	18	58
3 Complaints	4	0	0	1	3	3	11
4 Complaints	2	0	1	1	2	2	8
4 Complaints	2	0	1	0	0	0	3
<b>Total Number of Officers Receiving Complaints</b>	<b>55</b>	<b>20</b>	<b>15</b>	<b>47</b>	<b>57</b>	<b>90</b>	<b>285</b>

**Table 5: Force Complaints and Complaints — Five Year Overview (2010-2014)**

Year	Total Force Allegations	Force Complaints Received	Total Complaints Received	% of Total Complaints
2010	98	60	281	21%
2011	120	72	355	20%
2012	98	60	329	18%
2013	177	88	357	25%
2014	139	76	340	22%

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

# Appendix J

## City of Seattle Police Manual — Selected Provisions on Use of Force

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### Seattle Police Manual

#### 8.000 – Use-of-Force Core Principles

##### **1. The Seattle Police Department and Its Officers Are Committed to Upholding the Constitution and Laws of the United States and the State of Washington, Including Civil Rights, the Dignity of Every Individual, Public Safety, and the Protection of Human Life**

The community expects and the Seattle Police Department requires that officers use only the force necessary to perform their duties and that such force be proportional to the threat or resistance of the subject under the circumstances.

It is the policy of the Seattle Police Department to accomplish the police mission as effectively as possible, and with minimal reliance upon the use of physical force.

An officer's commitment to public safety includes the welfare of members of the public, the officer, and fellow officers, with an emphasis on respect, professionalism, and protection of human life, even when force is necessary.

Officers who violate those values by using objectively unreasonable force degrade the confidence of the community, violate the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards.

Conversely, officers who fail to use timely and adequate force when it is necessary fail in their duty to act as public guardians and may endanger themselves, the community and fellow officers.

##### **2. When Time, Circumstances, and Safety Permit, There may be Opportunities for De-Escalation or Alternatives to Using Force**

When safe under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics in order to reduce the need to use force.

Officers should consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- Medical conditions
- Mental impairment
- Developmental disability
- Physical limitation
- Language barrier
- Drug interaction
- Emotional crisis

##### **3. Sometimes the Use-of-Force Is Unavoidable, and an Officer Must Exercise Physical Control of a Violent, Assaultive, or Resisting Individual to Make an Arrest, or to Protect Members of the Public and Officers From Risk of Harm**



In doing so:

- Officers should recognize that their conduct prior to the use of force, including the display of a weapon, may be a factor which can influence the level of force necessary in a given situation.
- Officers should take reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force, by placing themselves or others in jeopardy, or by not following policy or training.
- Officers should continually assess the situation and changing circumstances, and modulate the use-of-force appropriately.

#### **4. An Officer Shall Use Only the Degree of Force That Is Objectively Reasonable, Necessary Under the Circumstances, and Proportional to the Threat or Resistance of a Subject**

**Objectively reasonable:** The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

The reasonableness inquiry in an excessive-force case is an objective one: the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

**Necessary:** Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.

**Proportional:** The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.

#### **5. Each Officer Is Responsible for Explaining and Articulating the Specific Facts, and Reasonable Inferences From Those Facts, Which Justify the Officer's Use Of Force**

The officer's justification will be reviewed to determine whether or not the force used was in or out of policy. Failure to adequately document and explain the facts, circumstances, and inferences when reporting force may lead to the conclusion that the force used was out of policy.

#### **6. The Department Is Committed to Upholding Lawful, Professional, and Ethical Standards Through Assertive Leadership and Supervision Before, During, and After Every Force Incident**

This includes:

- Force prevention efforts,
- Effective tactics, and
- Objective review and analysis of all incidents of reportable force

## **7. A Strong Partnership Between the Department and the Community Is Essential for Effective Law Enforcement and Public Safety**

Uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community.

Both the Department and individual officers need to be aware of the negative effects of use-of-force incidents and be empowered to take appropriate action to mitigate these effects, such as:

- Explaining actions to subjects or members of the public
- Offering reasonable aid to those affected by a use-of force
- Treating subjects, witnesses, and bystanders with professionalism and courtesy
- Department follow-up with neighbors or family to explain police actions and hear concerns and feedback

## Seattle Police Manual

### 8.100 - Using Force

Department policies concerning the use of force and firearms are intended to offer general guidelines so that officers can be confident in their lawful exercise of such force, and are subject to reasonable exceptions. This Department policy may be viewed as an administrative guide to decision-making and review.

#### 1. Use of Force: When Authorized

An officer shall use only the force necessary, reasonable, and proportionate to effectively bring an incident or person under control, while protecting the lives of the officer or others.

Officers shall only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.

The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Factors to be considered in determining the objective reasonableness of force include, but are not limited to:

- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the subject;
- Whether the subject was posing an immediate threat to officers or a danger to the community;
- The potential for injury to citizens, officers or subjects;
- The risk or apparent attempt by the subject to escape;
- The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
- The time available to an officer to make a decision;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the subject;
- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects; and
- The environmental factors and/or other exigent circumstances.

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

The reasonableness inquiry in an excessive-force case is an objective one: the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

Necessary: Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.

To be proportional, the level of force applied must reflect the totality of circumstances surrounding the immediate situation, including the presence of an imminent danger to officers or others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

## **2. Officers Should Use De-Escalation Tactics in Order to Reduce the Need for Force**

De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, which seek to minimize the likelihood of the need to use force during an incident.

When safe under the totality of circumstances, officers should attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.

Officers should consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- Medical conditions
- Mental impairment
- Developmental disability
- Physical limitation
- Language barrier
- Drug interaction
- Emotional crisis

An officer's awareness of these possibilities, when time and circumstances reasonably permit, should then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of threat gives officers time to utilize extra resources, and increases time available to call more officers or specialty units.

The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.

Other examples include:

- Placing barriers between an uncooperative subject and an officer
- Containing a threat
- Moving from a position that exposes officers to potential threats to a safer position
- Decreasing the exposure to potential threat by using
  - o Distance
  - o Cover
  - o Concealment
- Communication from a safe position intended to gain the subject's compliance, using:
  - o Verbal persuasion
  - o Advisements
  - o Warnings
- Avoidance of physical confrontation, unless immediately necessary (for example to protect someone, or stop dangerous behavior)
- Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making
- Calling extra resources to assist or officers to assist:
  - o More officers
  - o CIT officers
  - o Officers equipped with less-lethal tools
- Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject

### **3. Officers Should Assess and Modulate the Use-Of-Force as Resistance Decreases**

For example, as resistance decreases, the use of force may decrease.

### **4. Officers Shall Not Use Force to Punish or Retaliate**

### **5. Use of Deadly Force**

Deadly force may only be used in circumstances where threat of death or serious physical injury to the officer or others is imminent. A danger is imminent when an objectively reasonable officer would conclude that:

- A suspect is acting or threatening to cause death or serious physical injury to the officer or others, and
- The suspect has the means or instrumentalities to do so, and
- The suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury.

### **6. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer Would Conclude That it Is Necessary and the Officer Has Probable Cause to Believe That:**

- The suspect has committed a felony involving the infliction or threatened infliction of serious physical injury or death; and
- The escape of the suspect would pose an imminent danger of death or serious physical injury to the officer or to another person unless the suspect is apprehended without delay; and
- The officer has given a verbal warning to the suspect, if time, safety, and circumstances permit.

### **7. Use of Reportable Force on Handcuffed or Otherwise Restrained Subjects is Prohibited Except in Exceptional Circumstances**

Exceptional circumstances exist when:

- No reasonably effective alternative to the use-of-force appears to exist in order to gain physical control of the subject, and
- A situation exists in which the subject's behavior or actions must be immediately controlled or stopped

o Examples may include, but are not limited to:

- Assaultive or destructive behavior
- Self-injury
- Escape
- Injury to any person

Use-of-force on restrained subjects shall be closely and critically reviewed. Officers must articulate both:

- The exceptional circumstances, and
- Why no reasonably effective alternative to the use-of force appeared to exist.

### **8. Officers Should Not Use Force Against Individuals Who Only Verbally Confront Them and do Not Impede a Legitimate Law Enforcement Function**

### **9. The Intended Purpose of Less-Lethal Devices**

Less-lethal devices are used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by greater force applications.

- Less-lethal devices alone cannot be expected to render a suspect harmless

Support officers should be prepared to take immediate action to exploit the brief opportunity created by the Less-lethal device and take control of the subject if safe to do so.

#### **10. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible**

Following a use-of-force, officers will request a medical aid response, if necessary, for suspects and others and will closely monitor subjects taken into custody.

Absent exigent circumstances, prone subjects will be placed on their side in a recovery position.

Officers shall not restrain subjects who are in custody and under control in a manner that compromises the subject's ability to breathe.

#### **11. Officers Shall Automatically Request Medical Aid in Certain Situations**

Any use-of-force, greater than De Minimus force on subjects who are reasonably believed or known to be:

- Pregnant
- Pre-adolescent children
- Elderly
- Physically frail

Any subjects or officers who:

- Sustain a CEW application
- Are struck by a beanbag shotgun round
- Sustain a impact weapon strike to the head
- Sustain a strike of their head against a hard, fixed object

#### **12. Consistent With the Timelines in 8.300, Officers and Supervisors Should Ensure That the Incident Is Accurately and Properly Reported, Documented, and Investigated**

See 8.300 – Reporting and Investigating Use-of-Force

# Appendix K: Selected Newspaper Article About The IPA Office

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Metro

metroactive.com | sanjose.com | metrosiliconvalley.com | JANUARY 8-14, 2014


**SILICON ALLEYS**

## Video Visions

**BUT, MR. GRANT** Actor Ed Asner will receive the Leigh Weimers Community Media Champion Award at the CreaTiVe Awards.

**CreaTiVe Awards** honor local videomakers and hail a free-speech legend

### BY GARY SINGH

**F**OR THE FOURTH ANNUAL CreaTiVe Awards gala hoedown spectacular, exploding at the California Theater on Jan. 18, television legend Ed Asner will descend upon San Jose once again to receive accolades. Asner, now 84, will receive the Leigh Weimers Community Media Champion Award.

Named after the *San Jose Mercury News* columnist and community legend, Leigh Weimers, the Weimers

award recognizes individuals who fight for the local voice, champions who, through public policy work or passionate support of independent media, help to ensure that community voices are represented in the mass-homogenization inflicted by the mainstream channels. Asner is a model choice, being a longtime freedom fighter for public access television. He realizes that freedom of the press is of the utmost importance, perhaps the most important right these days, because if that goes away, then most other freedoms might soon follow. Especially now that the NSA is spying on us, and the reporters who point out the problem are then accused of being the source of the problem.

The CreaTiVe Awards, held by community media center CreaTV, honor local videomakers and are always a treat, with several Bay Area media institutions, as well as elementary and junior high school-aged kids, receiving awards for their productions and efforts. You can mingle with future documentarians primed to take over the world and expose power to truth. You can meet citizen journalists, avant-garde educators, local TV personalities, community activists, non-profitting heroes and a veritable cosmic stew of altruistic individuals, all with rocking stories to tell. To me, that's a hell of a lot better than schmoozing with plastic surgery models in the commercial world.

And speaking of rocking stories, the documentary that Cinequest thought would never, ever, ever finally go away, *Rock the Block: The Story of the Cactus Club* is nominated in not one, but two categories, proving that the story itself will indeed never go

away. Director Lon Lopez is one of five in the running for the "CreaTiVe Excellence Awards—Director," and one of four in the running for "Filmmaker more than 30 minutes—Feature." If you want to learn more about the legendary rock & roll club that put San Jose on the map all across the United States from 1989-2002, the entire 50-minute film is on YouTube.

In any event, as in previous CreaTiVe Awards, the whole ceremony proves just how much media creativity unfolds here in San Jose, when the city can be a place difficult for even the natives to follow. In other words, even many of those who live here are unaware of just how much is actually going on and often seem surprised when they miss out on something. If you feel like you're one of those types, the CreaTiVe Awards is a slick opportunity to at least see what various media institutions are up to these days. And it's all about community access to materials.

It doesn't stop there. CreaTV recently unleashed two particular programs, which more than exemplify Asner's die-hard attitude toward the importance of public access television. "Make the Call, San Jose!" deals with unsolved homicides and families dealing with the painful aftermath of these crimes. An on-air collaboration between SJPD, the Independent Police Auditor and CreaTV San Jose highlights the unsolved crimes and encourages those with information to call the Police Department's tipline. The first episode aired on CreaTV San Jose's Channel 30, Nov. 29, 2013, at 7pm, and airs on that channel every Friday as well as via live stream on CreaTV's website.

Another program, an episodic magazine-style showcase produced in partnership with The Health Trust, focuses on what and how Silicon Valley eats, with a focus on access to healthy and organic choices for all, in order to fight obesity. Since obesity is often a direct result of life in suburbia, that makes a lot of sense to me.

Finally CreaTV also recently announced a project in collaboration with Norman Kline Productions and History San Jose. Together, they will produce a major documentary on the history of this entire city. It's more than overdue. Past, present and future are merging yet again.👍



San Jose Mercury News » Friday, January 24, 2014

# LOCAL NEWS

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102 SECTION B

## CRIME OR POLITICS

# Plan would tap private video

### Councilman unveils proposal to let police use database of citizens' security cameras

By Mike Rosenberg

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SAN JOSE — Police would be able to tap into private video camera recordings from San Jose residents who agree to provide access to authorities under a new proposal that would expand investigators' watchful eye over the city but already is raising big brother-type privacy concerns.

Councilman Sam Liccardo's proposal, un-

veiled Thursday and set to be discussed by a City Council committee next week, would allow property owners voluntarily to register their security cameras for a new San Jose Police Department database. Officers then would be able to access the footage quickly after a nearby crime has occurred.

It is the latest effort designed to shore up public safety in a city that has seen its reputation as one of the safest big cities in America take a hit in recent years as crime rates have surged and officers have left in droves. The issue is taking center stage heading into the June primary to replace outgoing Mayor Chuck Reed as five local leaders jockey for

position as tough-on-crime candidates.

Liccardo, among several council members running for mayor, unveiled the proposal in response to the string of arson fires that terrorized his downtown-area district this month. Police used surveillance videos provided voluntarily by nearby property owners as key evidence in identifying a suspect they arrested on suspicion of burning about a dozen buildings.

"It became apparent that there's a lot of evidence out there that residents want to provide," Liccardo said, predicting that the

See **CAMERAS**, Page 5



**Liccardo**  
Mayor  
hopeful says  
plan will make  
San Jose safer



**Cordell**  
Doesn't  
see idea as  
"intrusion on  
privacy"

## Cameras

*Continued from Page 1*

cost would be nominal because existing city technology employees could maintain the database. The new database "is something that costs very little but could have a big impact in making San Jose safer."

Already police can ask property owners like the ones in the arson-ravaged neighborhood for surveillance footage but have to go door-to-door searching for cameras, a cumbersome process for a police force that is understaffed.

The new program would allow property owners to sign up for a security camera database so that police responding to burglaries, assaults and other crimes would see a map of nearby locations with cameras. As long as property owners agree, police would be able to remotely tap into feeds for high-tech cameras, but older models would require residents to turn over the actual tapes.

"We also would have to factor in how such a system would be weighed against other pressing priorities for our limited time and resources," Sgt. Heather Randal said.

Privacy groups say the latest proposal is part of a broader trend toward a

world where authorities have more surveillance access to places that once were considered private.

"To me the really interesting and troublesome part of it is the way we are starting to privatize government surveillance — to enlist private citizens in a way that is kind of unprecedented and could be potentially really dangerous," said Hanni Fakhoury, a staff attorney for the Electronic Frontier Foundation, a San Francisco-based nonprofit. "Once you give the police unfettered access 24/7, you're relying on them to exercise their restraint."

Retired judge LaDoris Cordell, the city's independent police auditor, said the proposal is the next logical extension of technological advances that have helped provide cops with more video of crimes. It's common now for onlookers to take cellphone videos of officers, and the San Jose Police Department is working on a new program to equip officers with body-worn cameras.

"You tend to behave when the cameras are on you," Cordell said. She doesn't see the idea so much as an "intrusion on privacy" but as a way for residents to "know what's going on in their neighborhood."

San Jose would join big

cities such as Philadelphia and Chicago and small towns such as nearby Los Gatos and Monte Sereno that recently have launched similar initiatives.

The Los Gatos/Monte Sereno Police Department, which just started its database a few months ago, has 30 property owners signed up, said Officer Catherine Mann.

"We haven't had any negative responses, once we get it out to them that this is not a 'Big Brother' situation," Mann said. "We're not sitting around watching live videos from their home."

Liccardo knows he faces a similar privacy challenge in trying to get the plan approved in San Jose in the coming months but insists cops will not be viewing live feeds.

Also part of the political calculation is the fact that three of his colleagues also are running for mayor: Vice Mayor Madison Nguyen, Councilman Pierluigi Oliverio and Councilwoman Rose Herrera. In addition, Santa Clara County Supervisor Dave Cortese is running and has criticized the current administration for San Jose's rising crime rate.

Liccardo dismissed the idea that the proposal was politically motivated, saying it's about protecting residents.

## A COP'S COP AT THE TOP

## In S.J., chief keeps it simple, real for his force

By Robert Salonga  
rsalonga@mercurynews.com

SAN JOSE — A couple of days after a deadly shooting there, San Jose police Chief Larry Esquivel walked along Loma Verde Drive.

Clad in his dress blues and accompanied by Lt. Rob Millard, he chatted with residents, handed out police stickers to kids in the West San Jose neighborhood, and reflexively pointed out blight such as discarded mattresses he wanted to bring to the city's attention.

It's been about a quarter of a century since Esquivel, who recently became the city's permanent chief after serving about a year in the interim position, worked as a patrol officer. But Esquivel said he aims to walk a beat some-

See **ESQUIVEL**, Page 12



GARY REYES/STAFF

San Jose police Chief Larry Esquivel, right, and Lt. Rob Millard walk Eden Avenue two days after a fatal shooting nearby.

where in the city once a week, and he has been known to jump spontaneously into the shotgun seat of a patrol car and ride along with a police trainee.

"I'm more of a cop who has to be an administrator than the other way around," he said.

Times are about as tough as they've ever been for the San Jose Police Department, a storied agency that a decade ago regularly claimed credit for maintaining the safest large city in the country. Soured by an erosion of pay and benefits, officers have left in droves, and there has been only modest relief.

But Esquivel's no-nonsense attitude, empathy for street cops and deep roots in the community might be exactly what the embattled force needs, according to officers and city officials.

San Jose's top cop is fiercely loyal, whether to the city where he grew up or to former Supervisor George Shirakawa Jr., a childhood friend Esquivel stands by even as Shirakawa serves a yearlong sentence for corruption and gambling with public funds.

That same loyalty may explain why he took on the challenge of the chief's job when he could easily retire.

Longtime colleagues joke that Esquivel is an ageless wonder whose look — crew cut and all — hasn't changed since he joined the force in 1986. What also hasn't changed, they say, is his methodical, detail-oriented approach, which they described as reassuring in an environment of uncertainty.

"He's like me: pretty boring. But it's absolutely what we need," said Lt. Danny Acosta, a 29-year veteran and contemporary of the chief. "We know what to expect. That stability's key. It's one less thing an officer has to worry about, and lets us stay more focused on the job."

Esquivel, 52, grew up the oldest child in a single-parent household in working-class East San Jose, near 24th and William streets, as gritty a neighborhood then as it is now. He became a

## LARRY ESQUIVEL

**Title:** SJPD chief

**Experience:** 28-year department veteran

**Age:** 52

**Residence:** Gilroy

**Hometown:** San Jose

**Personal:** Married with three adult children

**Education:** Bachelor's in criminal justice, San Jose State University

father before he graduated from Yerba Buena High School, where he excelled in football, basketball and wrestling. Feeling the urgency that comes with supporting a young family, he became a carpenter's apprentice.

"I graduated on Thursday and had a job on Monday," he said.

He worked in construction for several years, but a childhood dream of police work always hovered in his mind, and he joined the police academy in 1986.

Since his first day on the force — when recruits were put on the street almost immediately — he has been known for an unwavering work ethic, which he said was instilled in part from his time as a carpenter.

"I always had to have that energy," Esquivel said. "You had to work hard or there would be no work for you."

In 28 years, his resume has come to include undercover narcotics detective, robbery unit supervisor, team leader on the MERGE (SWAT) unit, commander of the Internal Affairs division, and deputy chief overseeing patrol. Along the way he earned a degree in criminal justice from San Jose State University.

Esquivel was one of four MERGE officers involved in a 1993 gunbattle while

servicing a drug warrant at an apartment near Leigh Avenue in which they shot and killed a man out on bail in an earlier fatal shooting. The suspect narrowly missed hitting the officers, who included Dave Hober, now a deputy chief.

Esquivel said it was one of many instances that conveyed the emotional weight of the job, and it's a sensitivity that has stayed with him. He has made a point to visit the families of every homicide victim in the city.

"Whatever the circumstances, they were a member of the community," Esquivel said. "It's about treating them as human beings."

Additional touches, like his insistence on walking a beat, routinely dropping in on briefings and often suiting up in full uniform, don't go unnoticed by officers.

"It means something to them," Millard said. "I've worked under six chiefs, and he's the only one who gets out here like this."

When former Chief Chris Moore stepped down in January 2013, Esquivel was named interim chief as the city searched for a permanent replacement. But the search sputtered and after several months of dormancy, it became apparent that city leaders didn't have the appetite for another go.

Meanwhile, Esquivel wasn't content to just be a caretaker interim chief.

Consider the last week of May, when there were six homicides in the space of seven days. He ordered dozens of extra cops on the streets to crack down on gang hot spots. When that didn't work, Esquivel called his commanders in on a Saturday to alter the strategy. Less than two weeks later the department

unveiled a three-pronged gang suppression plan. The frequency of homicides and gang violence tapered off for the last half of the year.

Esquivel officially became police chief in December, when the City Council signed off on a recommendation from then-City Manager Debra Figone.

"Having to run the department in difficult times, he proved he can do the job," Mayor Chuck Reed said.

There have been some bumps for Esquivel. In 2012, when he was deputy chief, he repaid the county for meals Shirakawa improperly charged with a county credit card. The former supervisor is a close friend, and when asked about his relationship to Shirakawa, Esquivel responded with a brief written statement:

"I have many friends I have known for a long time and George happens to be one of them. His current situation is unfortunate for him and extremely unfortunate for the community."

More recently there was a controversy surrounding a change in how the department classified gang crime, which raised questions about the legitimacy of a

reported drop in those incidents in 2013.

Local civil rights groups also criticized him when, just days into his interim tenure, he suspended a police officer signed by the outgoing Moore to vastly expand the in-field documentation of police stops with the aim of answering racial-profiling allegations. Esquivel said he did it after hearing officers complain the process was so cumbersome it risked dissuading them from making all but the most major stops. The policy has since been implemented after some revision, which even policy backers now see as necessary.

"He was wise to roll this out in a way where officers can appreciate what it's about," said LaDoris Cordell, a retired judge and the city's independent police auditor.

"We don't agree on everything, but there's never a second of disagreeability," she said.

And for the most part, Esquivel has avoided much of the community's ire about understaffing. The police union, which once considered a "no confidence" vote in Moore because of a perceived lack

of advocacy at City Hall, has largely refrained from criticizing Esquivel in favor of turning its vitriol toward the mayor and the budget measures that slashed police pay to retain jobs.

"I hope people don't blame the chief," Reed said. "I'm responsible. I happen to think it was the right decision, but it's not the chief's decision."

It's all been a dizzying change of pace for a man who said he never had chiefly aspirations. After almost three decades on the force, Esquivel admits that retirement is near, but he's not slowing down. An astonishing example of that surfaced last year, when he became a national weightlifting record holder among police and firefighters in his age range by dead-lifting more than 418 pounds.

"I know I could have retired now. But I grew up in this department, and this is the most challenging time I've seen," Esquivel said. "I can stay a little bit longer, develop the other executive staff. Whatever I can do to better the department."

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# LOCAL NEWS

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101 SECTION B

## SAN JOSE POLICE

# Proposal: Lie and you're fired

City councilman is suggesting reforms that would make lying grounds for instant dismissal

By Robert Salonga  
[rsalonga@mercurynews.com](mailto:rsalonga@mercurynews.com)

**SAN JOSE** — After an audit chastised the San Jose Police Department for continuing to employ two officers who lied about having sex on duty or in police attire, a city councilman is advocating reforms to make such conduct grounds for automatic firing.

If approved, Councilman Sam Liccardo's proposal would compel either city administrators or Chief Larry Esquivel to revise the police duty manual to expressly make lying to

obscure or impede a police investigation immediate cause for termination.

In a memo for Tuesday's council meeting, Liccardo — who is running for mayor — acknowledged the possibility of mitigating circumstances that are unknown because the investigatory details are not public. But Liccardo said employing such officers raises credibility issues with both public trust and any future court testimony the officers would give.

"This rule is as much about ethics as it is about the pragmatic reality of ensuring that our officers can be effective witnesses in future criminal prosecutions," said Liccardo, a former Santa Clara County prosecutor. "Without

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"This rule is as much about ethics as it is about the pragmatic reality of ensuring that our officers can be effective witnesses in future criminal prosecutions."

— Sam Liccardo, San Jose city councilman



"I would like to see him add his own profession to that bill so if a politician is caught lying, they lose their job too."

— Police union President Sgt. Jim Unland

# Police

*Continued from Page 1*

passing judgment on these particular cases, both our workforce and the public need to hear a clear and unequivocal message that while we expect everyone to make mistakes, we cannot operate a police department if lying to criminal or IA investigators is tolerated."

The police department said it already has policies in place that punish officers who lie to investigators.

"It's unfortunate that the council member has submitted this memo without giving the department a chance to discuss and analyze our current process with council," police spokeswoman Sgt. Heather Randol said. "We absolutely do not tolerate misconduct, especially dishonesty. That said, each case is unique and there are mitigating circumstances to each investigation. When appropriate, we impose discipline, including termination."

Liccardo's proposal comes as the police department just released figures showing an 83 percent drop in department-initiated internal affairs investigations of alleged misconduct.

The drop has been interpreted two main ways: Officers, in the face of unprecedented police understaffing, are behaving better; or because of said personnel woes, officers are too pressed to call out each other's bad acts.

Meanwhile, the city's Independent Police Auditor reported citizen-fueled police complaints are at a four-year high.

At the heart of the reform proposal is an annual report released last week by the IPA, helmed by retired Judge LaDoris Cordell. The report took particular issue with two unnamed officers who were found to have lied to police internal affairs investigators about sexual incidents.

One officer wore San

Jose police attire while working an off-duty job at a local school and had sex with a woman at the school, which spurred the woman to make sexual assault allegations.

In a separate instance, another officer violated policy by routinely going home during shifts and had sex with a woman while in uniform. Both officers received one-month suspensions, but the IPA report suggested they be fired.

Police union president Sgt. Jim Unland echoed the idea that the chief can already fire officers for lying, which he said should "lead reasonable people to believe there is more to the story" about the two officers. He then suggested an expansion of Liccardo's proposal.

"I would like to see him add his own profession to that bill so if a politician is caught lying, they lose their job too," he said.

Cordell, the police auditor, was critical of the idea that an officer could be found to have lied to investigators but could still be fit for the force. She supports a stringent zero-tolerance policy.

"I'm curious as to what mitigates a finding that an officer is a liar. I don't know what that means," she said. "I have yet to hear anybody explain to me, or give me one mitigating circumstance that says, 'You're a liar, but it's still OK for you to be here.' I'd love to get an explanation for it."

However, she did not agree with the manner by which Liccardo is pursuing the change, saying she would rather have a running dialogue with police brass in which they see each reform as being in their best interest. She noted the police department implemented all of her office's recommendations from 2012.

"I don't believe it's appropriate for council to micromanage the department," Cordell said. "It might one day get to the council, but there's a reason you hire a chief to run the department."



WORDS WITH FRIENDS



***"It's not the sex as much as the lying I'm concerned about. The integrity of the department is based on the honesty of the officers. You can't build trust with the community if we have officers lying and getting away with it. Honesty is critical, absolutely."***

—Independent Police Auditor LaDoris Cordell, commenting on her annual review of the San Jose Police Department, which pointed out that two officers lied to investigators after they were caught having sex on duty but still kept their jobs.

Tuesday, April 22, 2014

## SAN JOSE POLICE

### Cop complaints against fellow officers decline

Drop comes as residents file more misconduct grievances

By Mike Rosenberg

*mrosenberg@mercurynews.com*

SAN JOSE — Even as community complaints against San Jose police officers rise, cops have almost entirely stopped the practice of tipping off their superiors to misbehaving colleagues — resulting in far fewer officers being punished.

New figures from Chief Larry Esquivel show that compared with a few years ago, the department last year launched 83 percent fewer investigations into Police Department employees based on evidence submitted by fellow officers. Those complaints are key in helping San

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# Police

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Jose determine whether an officer needs to be disciplined or trained, yet last year only 1 percent of the police force was investigated based on allegations from colleagues.

"It's very troubling, and I hope that the chief would have an explanation for this at next week's meeting" when the City Council discusses the new figures, Vice Mayor Madison Nguyen said.

Police say it's possible the number of complaints is down because cops are simply behaving better. They point to new training programs that may have helped officers' conduct. Yet in allegations ranging from improper force to rude language, residents filed more misconduct complaints against the police force last year than at any point in the past four years.

The internal affairs unit, under the direction of the chief, emphasized it looks into all complaints cops submit about their fellow officers.

"From an IA point of view, we're not sure what's causing the decreases," said Lt. Loyd Kinsworthy, the internal affairs commander.

A South Bay civil rights group, however, expressed concern that cops may be ignoring behavior they once reported.

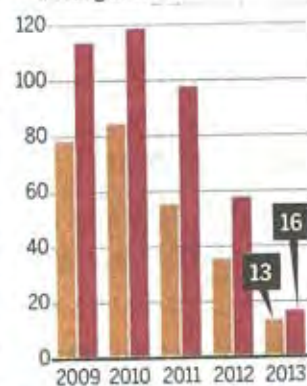
"The last thing you want, particularly for a Police Department, is officers protecting bad behavior and bad actors," said Raj Jayadev, coordinator for the Silicon Valley De-Bug community group, which has criticized the Police Department. "That's the point where really it becomes a danger to the community."

Some in the department, speaking on background, said the police force is now so short-staffed that supervisors — long the main source for evidence on misbehaving officers — no longer have time for such

## Police probes dwindling

The number of internal investigations the San Jose Police Department has launched based on tips from fellow cops has fallen 83 percent since 2009.

■ Officer-initiated investigations  
■ Allegations covered in those investigations



Source: San Jose Police Department

BAY AREA NEWS GROUP

responsibilities as they focus on more pressing day-to-day issues.

The statistics mirror an overall trend of declining investigations at the department, which has seen the number of arrests and the percentage of crimes that are investigated drop in half in the past half-decade, even as crime has increased. At the same time, the number of officers has dipped from about 1,400 to 1,000 in the past decade as the city struggles to afford its cops, and officers leave for better-paying cities after pension cuts voters approved in 2012.

The internal affairs team must investigate all complaints about officers, dispatchers and other police employees. But the allegations that originate with officers are especially key because about three-quarters of those complaints are ultimately confirmed and lead to punishment or counseling.

In 2010, following similar numbers from 2009, internal affairs acted on tips from its own department to initiate 84 administrative investigations, covering 118 allegations of misconduct

from police employees, mainly officers. After steady decreases in 2011 and 2012, last year the department initiated just 13 investigations covering 16 allegations of misconduct.

As a result, the department went from launching nearly seven officer-initiated investigations per month to about one per month.

Most of the officers who violated department policy for a range of administrative infractions typically received training or counseling, or a short suspension. Most offenses fell into two categories — conduct unbecoming of an officer and violating police procedure — but Esquivel's report does not spell out specific acts of misconduct.

Some complaints are more serious, however. From 2009 to 2012, four to six police employees per year were fired after officer-initiated investigations. But no one was terminated last year.

In all, the number of officers punished from investigations stemming from officer tips plummeted 61 percent last year compared with 2009 and 2010. The reporting of the figures didn't begin until summer 2008.

Police union head Sgt. Jim Unland said he views the plummeting investigation numbers as a positive development. "It is a testament to the dedication and professionalism of our remaining officers that the number of department-initiated complaints has declined so dramatically," Unland said in a statement.

But retired Judge LaDoris Cordell, the city's independent police auditor, said she expects the council to grill police brass at the April 29 meeting over why the officer-initiated IA investigations have plummeted — though she, too, did not have an explanation.

"Why is there this dramatic drop?" she asked.

Contact Mike Rosenberg at 408-920-5705. Follow him at [Twitter.com/RosenbergMerc](#).

San Jose Mercury News » Saturday, April 19, 2014

# LOCAL NEWS

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102 SECTION B

## SAN JOSE POLICE DEPARTMENT

# Auditor urges firing of 2 cops

Report says officers lied during investigation about sexual incidents

By Mike Rosenberg

[mrosenberg@mercurynews.com](mailto:mrosenberg@mercurynews.com)

SAN JOSE — Two San Jose police officers who had sex in questionable circumstances should be fired for lying to internal affairs investigators about various acts of misconduct, the city's police auditor says in a new report.

In her annual review of the San

Jose Police Department, retired Judge LaDoris Cordell also found fault in about a dozen internal affairs investigations that cleared officers from allegations that they improperly used force. Still, the report concludes the vast majority of the police force and its internal affairs unit are performing well.

Cordell took issue with two unnamed officers who the police department's internal affairs unit said it examined for alleged criminal and policy violations, only to be caught lying during the investiga-

tion. They received suspensions that lasted about one month — the only suspensions the department handed out in either 2012 or 2013.

But many of the departments the auditor's office surveyed said they fire cops for lying to detectives and that should be San Jose's policy, too, she said.

"Most (other departments) say, 'you lie, you die. You're useless, why would we keep you?'" Cordell said in an interview Friday. "That's

"Most (other departments) say, 'you lie, you die. You're useless, why would we keep you?' That's the whole integrity of your department — it depends on the honesty of those wearing badges and having guns."

— retired Judge LaDoris Cordell, the city's police auditor



Cordell

Released her annual report on San Jose police

See REPORT, Page 4

## Report

*Continued from Page 1*

the whole integrity of your department — it depends on the honesty of those wearing badges and having guns.”

One of the two officers in question was working a secondary job at a local undisclosed school, where he often broke policy by wearing a “San Jose Police” windbreaker and a polo shirt that had another officer’s name and badge number on it, the IA team found. He also often failed to report his hours working at the school.

Once, he had sex with a woman at the school while he was supposed to be working there, which ultimately led the woman to allege the officer sexually assaulted her, according to the report. The report said

the officer lied to IA detectives during their criminal investigation. Those results were not made public by the police department and not known by the auditor.

In the other case, a different officer often secretly went home while he was supposed to be on duty and had sex with a woman while in his uniform — both department violations. He also lied in his IA interview, according to the report.

Neither a police department spokeswoman nor the president of the police officer’s union returned messages seeking comment.

The report’s other main findings involved officers using weapons, takedowns or other uses of force on suspects. The auditor found that in 2012 and 2013, people lodged 275 complaints against cops, accus-

ing them of improperly using force. The department, however, determined every complaint was either bogus or represented a justified use of force.

The auditor’s office reviewed about half of those recent allegations and determined about 9 percent of the IA investigations were not thorough enough for the department to know whether use of force was warranted.

“I think it’s worthy of discussion,” said Cordell.

Most of the other violations outlined in the report involved officers failing to file police reports, using improper language to the public or speeding through streets in their cruisers when there wasn’t an emergency.

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# LOCAL NEWS



**AROUND TOWN**

SAL PIZARRO

which received the Human Relations Commission Award; Silicon Valley De-Bug, which received the Office of Human Relations Director's Award; and retired Judge LaDoris Cordell, currently San Jose's Independent Police Auditor, who was presented with the James P. McEntee Sr. Lifetime Achievement Award.

**HUMAN RIGHTS CHAMPIONS:** Santa Clara County honored those who work to protect and advocate for human and civil rights Thursday night at its annual Human Relations Awards, held at the County Government Center on Hedding Street in San Jose.

This year's honorees were the Services, Immigration Rights and Education Network (SIREN),

Also recognized at the event were award winners from each supervisor's district: Community Technology Alliance (District 1); Viet Nam Nguyen (District 2), the Affordable Housing Network of Santa Clara County (District 3); the Equity Project (District 4); and Civility Roundtable Project of the Mt. View Human Relations Commission (District 5).

San Jose Mercury News

AUGUST 24, 2014

# Sunday

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IN WAKE OF FERGUSON, IS RACE AN ISSUE IN BAY AREA?

## When white officers dominate the police

By Thomas Peele, Robert Salonga  
and Daniel J. Willis  
*Staff writers*

As the killing of an unarmed black teen by a white cop roils predominantly black Ferguson, Missouri, one of that community's challenges is replicated even in the highly diverse Bay Area: White police officers disproportionately

dominate in cities with large minority populations.

More than 83 percent of larger cities in the region have higher percentages of white police officers than their percentages of white residents, according to U.S. Census estimates — sometimes by a staggering proportion.

"Race is the elephant in the room" of

policing, said LaDoris Cordell, a retired Superior Court judge who is San Jose's independent police auditor.

If an institution that wields power "is to have the respect of the people it serves, it must look like the people it serves," said Cordell, who is black.

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In Daly City, where 2010 census data shows a white population of 14 percent, the census calculated an estimate that the police force that year was all white. The census numbers for cities of 50,000 or more people also estimated no minority officers in three Contra Costa County cities: Walnut Creek, Antioch and Brentwood; Novato in Marin County; and the city of Napa.

Many local departments say they have improved in diversity — and several challenged the zero minority estimate, which has no single explanation. Many of the communities were historically whiter and have simply changed faster than their police; observers also said that minority youths tend not to be attracted to police work because of how their communities view the institution.

But whatever the reason, some saw a troubling trend in the predominance of white officers, as the Missouri protests ignite a national debate on race and policing.

Lack of police diversity, law enforcers and experts said, undermines perhaps the most important element in policing: community trust.

"Police carry guns and have an immense amount of power over us," Cordell said. "Their effectiveness depends upon the trust that the community has in them. Where there is no trust, people have no investment in following the rules."

The lack of diversity in Bay Area police departments "is surprising and concerning," said Micaela Davis, a criminal justice attorney with the ACLU of Northern California. "There are so many underlying tensions," Davis said. "It happened with Oscar Grant."

The 2009 killing of Grant, a black man who was lying on a BART platform when a white officer shot him in the back, set off weeks of protests in Oakland and elsewhere.

The percentages of white police officers, Davis said, show "underlying problems that have existed in the Bay Area for decades. Looking at the makeup of police departments is part of the solution."

The president of a statewide black officers group agreed.

"It's extremely important to have a police department that reflects the (ethnic) makeup of its community," said Sgt. Bryan Pendleton, head of the California chapter of the National Black Police Association. "It brings an understanding, and it provides role models for young kids."

When he encounters "people who look like me" in a stressful situation, "I tend to understand where they are coming from," said Pendleton, a San Diego police officer. "My fear level is not going to be where a white police officer's is going to be."

In Oakland — 26 percent white with a police force that has an estimated

49 percent white officers — minority cops often serve as unofficial recruiters in their communities, said Assistant Chief Paul Figueroa.

The department seeks out officers who speak Spanish, Mandarin and Cantonese as recruiters and has concentrated on convincing young Latinos and blacks to consider working in Oakland despite misgivings they might have about the department or police in general.

"We have to take extra steps in those communities to explain why it's important for us to have diversity so that we evolve into the type of organization we want to be," Figueroa said. "When you have people who can empathize with those communities, it makes a big difference."

Oakland Mayor Jean Quan, the city's first Asian-American mayor, said that as the city has diversified, it has more young people who grew up there and are sensitive to the plight of many ethnic groups, making them ideal police recruits.

"It's not just racial, it's cultural. We're not there yet, but we're getting much closer to where we want to be," she said.

But minority recruits are often held to higher standards than others when trying to enter law enforcement, said the Rev. Jeff Moore, president of the San Jose chapter of the NAACP.

"We have to be way above the qualifications. We can't just clear the bar, we've got to be way above

## Nonwhite officers underrepresented

White officers dominate police departments in many cities where minorities have the larger share of population. The U.S. Census figures below are calculated estimates that reveal the broad trend in 2010, though some departments have changed since then.

City	% white population	% white police
Alameda	44%	32%
Antioch	34	100
Berkeley	56	41
Brentwood	56	100
Concord	51	59
Cupertino	30	65
Daly City	14	100
Fairfield	36	61
Fremont	27	46
Hayward	19	43
Livermore	66	74
Milpitas	16	29
Mountain View	47	88
Napa	57	100
Novato	71	100
Oakland	26	49
Palo Alto	60	47
Pleasanton	59	22
Redwood City	45	55
Richmond	18	57
San Francisco	42	52
San Jose	29	63
San Leandro	26	33
San Mateo	48	60
San Rafael	59	84
San Ramon	47	14
Santa Clara	36	82
Santa Cruz	67	80
So. San Francisco	22	34
Sunnyvale	35	73
Tracy	34	68
Union City	13	80
Vallejo	25	86
Walnut Creek	73	100

Source: U.S. Census Bureau  
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"Police carry guns and have an immense amount of power over us. Their effectiveness depends upon the trust that the community has in them."

— *LaDoris Cordell, retired Superior Court judge*

the bar," he said.

Between white officers and minorities "the relationship can be such an antagonistic one, we sometimes don't see it as a career choice," Moore said.

In San Jose, the census estimated 63 percent of officers are white among a white population of 27 percent.

"We know we are a melting pot and that an officer who has knowledge of the customs of a group will be better able to deal with that segment of the population," said Officer Albert Morales, a department spokesman.

"You can generally see that frustration disappears," when a crime victim and a police officer both speak Spanish, he said. "There's that sense of 'this officer understands, so now I'm going to be more forthcoming.'"

In Napa, a city where more than one-third of residents are Hispanic, the 75-member police department has five Hispanic officers. The others are white, said Capt. Jeff Troendly.

"We are trying to balance things out," he said. "I don't think we are absolutely perfect, but we are actively" trying to recruit more Hispanic officers. The department is moving to a neighborhood policing model that it hopes will help diversify the department's recruitment pool and attract officers who grew up in the city. "We still have room to grow, no two ways about it," Troendly said.

In Antioch, police Capt. Tammany Brooks, who is black, said the department obviously is not all white as the census estimated. He said he could not detail the department's ethnic breakdown and declined to comment further.

In Mountain View, Police Chief Max Bosel said his department was also more diverse than the census estimates, but agreed that diversity was a core element to effective law enforcement. But he added, "It is a constant effort to try to recruit and hire diverse applicants."

Pendleton said too many minority youngsters develop negative perceptions before they ever meet an officer. "You have to catch them early. By the time they are in middle school, they already have opinions about police. We have to change their perceptions," he said.

"If we don't do things differently, nothing is ever going to change."

*Staff writers Matthew Artz and David DeBolt contributed to this story. Follow Thomas Peele at [Twitter.com/Thomas\\_Peele](https://twitter.com/Thomas_Peele).*

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Friday, August 29, 2014

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MILITARIZATION OF MUNICIPAL POLICE

# UNWANTED



REDWOOD CITY POLICE DEPARTMENT

The Redwood City Police Department debuted its new armored vehicle, identical to the one San Jose police are returning to the military, at the city's Fourth of July parade. Redwood City police plan to keep theirs.

## P.R. move: San Jose to jettison vehicle to keep community trust

By Robert Salonga  
rsalonga@mercurynews.com  
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SAN JOSE — Amid a national furor over police militarization, the San Jose Police Department has decided to get rid of a 15-ton armored vehicle it received earlier this year from a federal military surplus program.

San Jose's move comes right on the heels of similar plans by the city of Davis to jettison its mine-resistant, ambush-protected troop transport, or MRAP. Among the handful of other Bay Area agencies that own the hulking transports, Redwood City, South San Francisco and Antioch are standing by them.

In San Jose, the MRAP, designed to withstand improvised explosive devices used against U.S. forces in Iraq and Afghanistan, has been in an undisclosed storage garage in the city. It was being outfitted for street use when police brass — already facing criticism for their recent purchase of a drone — decided it wasn't worth the potential damage to the department's image and community

See **POLICE**, Page 10

## Built for bombs

The San Jose Police Department has decided to send back a mine-resistant, ambush-protected armored transport that came via donation from the Pentagon earlier this year, citing its potential impact on community trust and perceptions of police militarization.



- 15 tons
- Six wheels
- About 10 feet tall
- 24 feet long
- 2-foot ground clearance
- 65 mph top speed
- 74-gallon gas tank
- V-shaped hull to deflect force from explosives
- Valued around \$500,000+
- Costs about \$20,000 to outfit for street use

Source: BAE, Department of Defense, SJPD BAY AREA NEWS GROUP

# Police

*Continued from Page 1*

relationships.

San Jose police spokeswoman Sgt. Heather Randol said internal department conversations about forfeiting the MRAP were already happening before the vehicles gained wide notoriety during the civil unrest in Ferguson, Missouri, where local police deployed them for crowd control and sparked a national conversation over their use on American streets.

"We've been going through the analysis process," Randol said. "It is a useful tool, but we realize it could be viewed by the community as the militarization of SJPD. It could create a divide, and we want the community's trust."

The decision to give back the vehicle is the second such move in Northern California this week: Tuesday night, the Davis City Council ordered their police chief to get rid of his department's MRAP.

"Symbol matters. We are a species that uses symbol, and this symbolizes the most destructive force on the planet, which is the U.S. military," Mayor Pro Tem Robb Davis said at the Davis council meeting.

He added that "this piece of equipment, because of its powerful symbolism, will hurt" trust between police and residents.

Several agencies in the Bay Area have some form of armored transport, but only a handful have an MRAP, with San Jose the only Santa Clara County city to have one. The vehicle, standing about 10 feet tall, dwarfs most fortified vehicles used by police, such as the more commonly used Bearcat.

In addition to its size, the MRAP is designed to withstand the kinds of roadside bombs that killed scores of U.S. troops in Iraq and Afghanistan. San Jose got the half-million dollar vehicle, manufactured by BEA Systems and known as a Caiman, for free through the Pentagon's 1033 program, which donates surplus equipment to law-enforcement agencies.

"It was acquired to provide protection to our bomb unit members," Randol said. "We are the regional bomb facility. We are a resource in the county and statewide."



Like many police departments across the United States, the South San Francisco Police Department has acquired an armored military vehicle. The tactical vehicles have caused an uproar in many communities.

Micaela Davis, an attorney with the ACLU of Northern California, credited police leaders for the decision but took issue with how it came and went with little public oversight, echoing protests from the organization over the department's acquisition, also earlier this year, of an unmanned aerial vehicle that is currently shelved pending the formation of a use policy and community input.

"The department should be commended for responding to concerns," Davis said of San Jose. "But it brings up questions about whether it was needed in the first place. It's why public hearings should be required on the front end."

The pending return of the MRAP is unpopular with much of the rank and file at SJPD, who are backed by Sgt. Jim Unland, president of the San Jose Police Officers' Association.

"This was politically expedient. I don't know why you wouldn't want the best equipment for your officers," he said. "You can't predict the hazards and dangers that will come in 10 or 20 years."

He noted the integration of military equipment in police work is long-standing.

"Helicopters were primarily a military vehicle. So are AR's (rifles), and so are the tactical vests and helmets we wear," Unland said. "Those come from military usage, have been incorporated in law enforcement, and save lives. If there are issues of trust with the community, explain the use, and create a firm policy of when we can use it and when we can't."

But LaDoris Cordell, the city's Independent Police Auditor and a retired judge, said community

trust in police is threatened by the show of might that such an armored vehicle projects.

"SJPD, if it is to continue its efforts to build trust with the communities it serves, must not go down the path of militarization," she said.

In Redwood City, spokesman Malcolm Smith said police leaders are keeping those sensitivities in mind as they write guidelines for the transport's use, though it has already been rolled out for a major event — the city's Fourth of July celebration.

South San Francisco says its MRAP has already come in handy.

"It has a horrible public perception, but in reality, this is designed just to protect the occupants," said Lt. Michael Remedios, SWAT commander for the South San Francisco Police Department.

Remedios said the vehicle can bring police and emergency personnel closer to a hostile scene to give immediate help to victims without waiting for an area to be secured. He also highlighted its ability to traverse broken streets and downed power lines after a disaster.

He also contended that the imposing nature of the vehicle can prevent violence. On three occasions since his department got the MRAP in October, South San Francisco police used it to serve high-risk search warrants.

"It looks intimidating," Remedios said. "If we roll out to an armed-and-dangerous person's house, they're less likely to engage police officers."

Contact Robert Salonga at 408-920-5002. Follow him at [Twitter.com/robertsalonga](#).



C2 | SAN FRANCISCO CHRONICLE AND SFGATE.COM

## BAY AREA

SAN JOSE

# Police got freebies from 49ers

By Henry K. Lee

The San Jose Police Department's ties with the San Francisco 49ers once again came under scrutiny after it was revealed that two top police officials had accepted free tickets from the team.

Police officials said Friday that the department has since reimbursed the team for tickets given to Assistant Chief Eddie Garcia, who is second in command, and Deputy Chief Jeff Marozick, who oversees the bureau of technical services.

The two apparently violated city and department regulations that prohibit the acceptance of tickets to professional sporting events.

The issue comes as the department is embroiled in controversy over its response to an Aug. 31 domestic violence call from the home of 49ers defensive lineman Ray McDonald.

Earlier this month, Chief Larry Esquivel barred his officers from moonlighting.

*Tickets continues on C2*

## Brass' free tickets

*Tickets from page C1*

ing as security guards for the 49ers after revelations that a police officer who works security for the team was already there when officers responded to the home of McDonald and his pregnant fiancée.

McDonald was arrested on suspicion of felony domestic violence, but prosecutors have not decided whether to file charges.

On Thursday, KGO-TV reported that Garcia accepted a free ticket to the team's first preseason game at Candlestick Park in August 2013 and that Marozick was given a ticket to attend the Aug. 24 game against the San Diego Chargers at the new Levi's Stadium in Santa Clara.

Police officials said the department reimbursed the team \$187 for each ticket after inquiries by the television station. Officials said both chiefs had filled out a state form declaring that they accepted the gifts as part of Law Enforcement Appreciation Day.

But a San Jose city ordi-

nance prohibits top city officials from accepting gifts worth more than \$50, and expressly bars them from receiving free tickets to pro sporting events. The Police Department's 760-page duty manual prohibits officers from accepting "favors or gratuities which would not ordinarily be accorded private persons."

"You can't take anything as a gift or a discount unless members of the public get the same thing," said LaDoris Cordell, San Jose's independent police auditor.

That means police officers can't accept a free cup of coffee even if Starbucks wants to show its appreciation, Cordell said.

Speaking generally, Cordell noted that even if police officers later pay for any gifts received, the city ordinance has no provision "that says you can break the rule and then if you get caught, then just reimburse."

*Henry K. Lee is a San Francisco Chronicle staff writer. E-mail: hlee@sfbchronicle.com Twitter: @henryklee*

# San Jose Mercury News

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## PILOT PROJECT IN LIMBO

# S.J., cops union debating use of body cameras

Focus intensifies with protests around country, Obama advocacy

By Robert Salonga

*rsalonga@mercurynews.com*

SAN JOSE — Amid a national push for police officers to wear body cameras, San Jose's efforts to equip its officers have stalled for years, most recently waiting for the city and its police union to agree on a policy covering the use of cameras.

A number of Bay Area police agencies already had officers wearing body cameras or were on the verge of rolling them out when President Barack Obama this week announced his intention to dramatically increase the number of cops with the recording devices, in the wake of police distrust evoked by the events in Ferguson, Missouri.

### USE BY AREA POLICE

Body cameras are rolling out across the region.

**Now:** Oakland, Gilroy, Los Gatos, Campbell, Union City, East Bay Regional Parks and BART

**Next month:** Richmond

**Next year:** Mountain View

See **CAMERAS**, Page 9

# Cameras

*Continued from Page 1*

Cameras are being worn by cops in Oakland, Richmond, Gilroy, Los Gatos, Campbell, Union City, East Bay Regional Parks and BART. Mountain View, home of tech giant Google, expects to outfit officers over the next year.

But in San Jose, the Bay Area's largest city and self-proclaimed capital of Silicon Valley, the cameras have yet to be tested,

more than two years after a pilot program appeared poised to begin. The program was left in limbo after Chief Chris Moore retired in 2013 and more recently has been delayed as the police union and the department work out how footage taken by the cameras can be used.

"I'm very frustrated. This department should have cameras," said Independent Police Auditor LaDoris Cordell, a retired judge who has pushed for the cameras for nearly four years. "This delay is unnecessary. We need to move forward."

As of Friday, department

and union officials say there is no clear timetable for when the first San Jose officers will be equipped with the tiny cameras. In 2013, the Santa Clara County Police Chiefs Association agreed on a use policy for body-worn cameras. But union leaders say the array of privacy issues posed by the devices means their deployment has to pair with the creation of a more comprehensive policy that protects officers' rights by limiting who can access the footage.

"There's this race to get body cams on police as soon as possible, but it's a very complex issue," said Officer James Gonzales, incoming vice president of the San Jose Police Officers' Association. "We realize these are law-enforcement tools of the future. Our goal is to make sure our process is thoughtful."

Police officials point to other logistical hurdles, noting that besides Oakland, which adopted the devices in part to comply with court-ordered reforms, the Bay Area agencies that have body cameras are much smaller than the 1,000-officer SJPD and can adopt new technology quicker

than their larger counterparts.

In 2012, under Moore, the San Jose department purchased 50 cameras and sketched out a pilot program to outfit six officers, but that never got off the ground. Earlier, during Chief Rob Davis' term, which ended in 2010, SJPD conducted a short-term test of body cameras for Taser International, the pre-eminent supplier of police stun guns.

SJPD is considering three types of cameras, two made by Taser — one mounted on a pair of eyeglasses — and one from Viewu, a company headed by a former Oakland police sergeant. The cameras retail between \$400 and \$600 apiece. That does not include the ongoing expense of keeping the footage, either with in-house data storage or an outside vendor.

While the union and department discuss a more detailed body camera protocol, 12 cops who volunteered to be the department's latest pilot officers and a task force are on the sidelines.

The next union-city meeting on the issue is set for Jan. 5. Even if an agreement was reached then

and there, it could still be years before the cameras hit the streets. In Richmond, a city one-tenth the size of San Jose, it took a pilot program and the expected official launch next month.

There is some tangible data and a wealth of anecdotal accounts that suggest the use of body cameras leads to a decrease in complaints about police. For example, in Rialto, San Bernardino County, police say the first year officers wore body cameras in 2012, instances where they used force dropped by 59 percent and citizen complaints fell by nearly 88 percent.

"I guarantee you there will be many complaints that people might ordinarily make will not be made," Cordell said.

Police spokeswoman Sgt. Heather Randol noted that body-camera video will not by itself indict or exonerate anyone.

"Footage is just one piece of the process," she said. "We still have to do thorough investigations."

Raj Jayadev, director of Silicon Valley De-Bug, a social-rights advocacy group that has sparred with SJPD

about its use of force, said a grand jury's decision this week not to hand down an indictment in the case of Eric Garner, a New York man who was killed by police in a struggle caught on cellphone video, shows how even the most innovative technology is limited by human judgment.

"Having cameras hasn't helped in that case," Jayadev said. "It's still just a tool relying on the public to wield it."

On that point, the union agrees with Jayadev.

"The recent tragedy in New York, captured on film, should bring pause to those that believe body-worn cameras in and of itself will automatically improve police and community relations," Gonzales said. "There is no substitute for a fully staffed police department that allows police officers the opportunity to spend time interacting with

the community and building trust."

Gonzales also said transparency with the public will be especially important when video of police using force becomes more widely seen, to give context for the violent elements of police work.

"There need to be realistic expectations because even justifiable use of force, caught on camera, is not pretty," he said.

But those and other questions will remain before and long after the cameras hit the streets, Cordell said, and they shouldn't deter the momentum, which she warns has sputtered in the past.

"The time is now," she said. "I mean today."

*Staff writer Robert Rogers contributed to this report. Contact Robert Salonga at 408-920-5002. Follow him at Twitter.com/robertsalonga.*

# San Jose Mercury News Sunday

**SAN JOSE POLICE**

**SUNDAY, OCTOBER 26, 2014**

## Oversight of officers' 49ers gig was lax

Before top brass shut down moonlighting, cops acted as 'liaisons' for team's security

By Robert Salonga and Mark Emmons

*Staff writers*

SAN JOSE — Just like the 49ers, a cadre of officers inside the San Jose Police Department had Super Bowl aspirations this season.

Sgt. Sean Pritchard wrote in an August email to other cops that off-duty work for the NFL team could be a "cash cow" with "strong potential as we move forward that there will be the opportunity to work directly with the team if they make the play-offs/Super Bowl."

The email, one of hundreds of internal police documents obtained by this newspaper about the security detail in which SJPD officers moonlighted for the team, adds to a growing picture of the department's lax oversight of its officers' relationship with the team. Two cops, Pritchard and Sgt. Lawrence Day, appear to have served as gatekeepers of that relationship, handpicking colleagues for the plum jobs.

Critics of the arrangement say the

See **POLICE**, Page 19

**Relationship over:** San Jose police halted all off-duty work with the 49ers after one cop was present at Ray McDonald's home before officers arrived to investigate a 911 call.



AP ARCHIVES

# Police

*Continued from Page 1*

emails punctuate potential problems with such "secondary employment" relationships: that the demanding off-duty detail could lead to fatigue when officers return to regular duties, and that the relationships between officers and players could become so close as to undermine the ability of SJPD to investigate team members in criminal cases.

"This sounds too much like the SJPD was acting like the department was part of the team. ... You shouldn't have officers acting as liaisons with outside companies," said Peter Keane, a Golden Gate University School of Law professor and a former San Francisco police commissioner. "This situation sounds like they created their own football bureau. You have Juvenile, Homicide and Football. Maybe it should be its own office."

SJPD brass halted all off-duty work with the 49ers over concerns about whether some officers had unduly close relationships with the team. The move occurred after it became public that Pritchard was president at the home of defensive lineman Ray McDonald on Aug. 31 before officers arrived to investigate a suspected domestic violence incident that night involving the 49ers player and his

the 49ers logo.

He added in the same email: "There will be other benefits that we will explain in person." He concluded by writing, "Thank you and we look forward to working with all of you, making some decent money, and having a good time."

Pritchard and Day, who is part of the robbery unit, both traveled with the team. In one email to a friend, Day wrote about being "dog tired" while flying back from a preseason game in Baltimore. "Worked 78 hours this week and get home to go back to detective work tomorrow," Day wrote.

In a Sept. 2 email to colleagues, shortly after McDonald's arrest, Day wrote that officers were selected for their reputation and integrity. He said the officers' work was "valued" by team officials, adding, "They do not want to lose our assistance as we move forward."

He continued: "Because of circumstances beyond our control, we are under the spotlight in regards to our interaction with the team," saying that their role as law enforcement officers is "first and foremost."

McDonald was arrested on suspicion of causing "visible injuries" to his pregnant fiancée, according to an official police account. Pritchard, who was on duty and in uniform, had been called to the home by McDonald before other officers arrived in response to a 911 call. Sources

have told this newspaper that he also had been there earlier in the evening during a birthday party McDonald threw with teammates. Even before the ban on work with the team — affecting 17 officers — Pritchard was barred from moonlighting for the team, pending the results of an internal investigation into the case. Sources say Pritchard's presence contributed to why it took the department a month to present the case to the Santa Clara County District Attorney's Office, which continues to examine the accusation.

Both Pritchard and Day are well-regarded veterans of the police force. Pritchard did not respond to a request for comment, and Day declined to comment, citing the ongoing investigation.

SJPD Assistant Chief Eddie Garcia maintains that both the McDonald investigation and the ongoing Internal Affairs inquiry into Pritchard's actions that night are above reproach. He cautioned against jumping to conclusions. "I understand the perception, but our members are extremely professional," he said. "If they show they are not, then we can take action."

But Garcia has become ensnared in conflict-of-interest talk involving the 49ers. Emails obtained by this newspaper chronicle how excited he was to receive complimentary VIP passes to an Aug. 24 preseason game at the new

Levi's Stadium in Santa Clara. Deputy Chief Jeff Marozick attended as his guest. Photos of Garcia's appearance there and at a similar event last year at Candlestick Park recently surfaced amid the McDonald controversy. Garcia noted that they were part of a broader law enforcement appreciation event held annually by team owners and attended by other police departments.

The assistant chief said he paid back the cost to the team last week. But Cordell contends that the acceptance of the passes was a violation of the police duty manual and its gift policy guarding against organizations trying to curry favor with police. SJPD officials said they strongly disagree with her interpretation.

The 49ers have stressed that the team didn't hire officers. A third-party vendor, Oakland-based Star Protection Agency, manages the hiring for security. Emails from Pritchard and Day indicated that most of the work centered on providing security at Michael Mina Restaurant at Levi's Stadium. Nine officers were needed for each game at the upscale eatery, which becomes a \$5,000-a-season VIP tailgate party on game days.

Collin Wong, vice president of Star Protection Agency and a former Oakland police officer, said he understands the department's rationale for sus-

pending the work. But he hopes to have the officers back eventually.

"It was a surprise until I started learning more based on what has been reported," he said. "You pretty much have to put them on the bench until the dust settles."

In comparison, at the Santa Clara County Sheriff's Office, all secondary-employment opportunities must go through the department and they are offered to all full-time sworn staff. They also are not allowed to work for third-party security companies, barring them from emulating the SJPD arrangement.

Garcia said he hopes the controversy does not sour the public's view of all relationships between the department and the team, some of which he says are rooted in charity and community service. "If we can craft policies and procedures to ensure this kind of perception doesn't occur again, we're going to take a look at that," he said.

But Keane said it's troubling that a "direct branch" appears to have developed between the team and police. "There just should not be a cozy relationship between a metropolitan police department and an important local company."

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# LOCAL NEWS

## FATAL SHOOTING

### Man alleges intimidation by officers

Refused to give up phone

By Robert Salonga

[rsalonga@mercurynews.com](mailto:rsalonga@mercurynews.com)

SAN JOSE — A San Jose resident who was one of several people recording the aftermath of an officer-involved shooting in South San Jose last month is alleging he was intimidated and threatened with detainment for refusing to surrender his cellphone or delete the images he took.

The allegations are contained in an Aug. 21 internal-affairs complaint filed by Andrew Payne and comes as the issue of recording police performing their duties in public has gained national attention in light of the civil unrest in Ferguson, Missouri.

Earlier this summer, the U.S. Su-

See **POLICE**, Page 3

preme Court ruled in *Riley v. California* that warrantless searches and seizures of cellphones and their contents during an arrest were unconstitutional.

Because Payne was not under arrest at the time he said police demanded his cellphone, it is clearer that the officers were wrong, said Margaret Russell, a constitutional law professor at Santa Clara University.

"They can't seize and search cellphones of criminal suspects, so they definitely can't do that to someone in the street," she said.

Police declined to comment on the complaint, citing the ongoing internal-affairs investigation, which can take up to one year to complete. An internal police bulletin was sent out in July on the heels of the *Riley* decision to inform all sworn staff about the new search-and-seizure rules.

Payne said he was out for a jog the morning of Aug. 14 when he came upon the scene where San Jose police, responding to a 911 call involving a weapons threat, shot and killed a 19-year-old San Jose woman near Blossom Hill Road and Playa del Rey. He said he was one of several people taking pictures and recording video with their cellphones who were approached by officers at the scene asking if anyone had witnessed the police encounter.

But unlike some of the other people, Payne said he refused to hand over his phone for officers to search or give them his personal information. He said he was approached a few minutes later by Sgt. Teresa Jeglum, who is the sole officer named in his complaint. Payne said Jeglum asked him if he was taking pictures, and when he answered affirmatively, told him to clear them from his phone.

"She told me, 'You either need to delete those photos or I'm confiscating your cellphone,'" Payne said. "I told her she couldn't do that, and then she reached to grab my phone."

He said he later relented to officers' requests for his personal information after they asked him if he wanted to go to police headquarters.

"They threatened to detain me if I didn't give them my info," Payne said.

Payne said he spoke with a lieutenant after the encounter and said he just wanted an apology. He said he got a call from Jeglum, but instead of an apology, he got an assertion that she was trying to protect her officers. That didn't hold water with Payne, who said he was singled out.

"There were 20 people there with cellphones, and



LIPO CHING/STAFF

San Jose police investigators work at the scene of an officer-involved fatal shooting on Blossom Hill Road and Playa Del Rey on Aug. 14. Some residents captured images of the incident on their cellphones.

they harassed me when I didn't cooperate," he said.

Payne filed his police complaint with the city's Independent Police Auditor, which then forwarded it to SJPD's internal-affairs division.

LaDoris Cordell, the IPA and a retired judge, said the SJPD duty manual makes clear that as long as they are not interfering with police duties, citizens are free to record officers working in public view.

"Police officers everywhere are subject to increasing scrutiny by the public in light of recent officer-involved shootings around the country. The result is that policing and cellphone recordings by the public are the new norm," Cordell said. "They are here

to stay."

Russell noted that anecdotes about clashes between citizens and police over cellphone recordings have been on the rise nationally. She said what might need some judicial clarity is what constitutes police interference when it comes to recording.

"People may record even if embarrasses or angers or upsets the police officer," she said. "But what does it mean to interfere with performance of a police officer?"

Ultimately, the issue could be control of the recordings, since some police departments across the country have long had dashboard cameras in patrol cars and more agencies are implementing body-worn cameras, including SJPD.

Cordell said the added cameras from the public only work toward increased police transparency.

"It is my hope that police officers will not simply accept, but welcome these recordings by the public," she said. "If they do, it will be a major step toward building trust between the community and the police."

Payne said he hails from a family of law-enforcement officers — his father is a lieutenant with the Santa Cruz County Sheriff's Office — and says they're all firmly behind him.

"I'm totally for police officers," Payne said. "But I'm also for civil rights."

*Contact Robert Salonga at 408-920-5002. Follow him at [Twitter.com/robertsalonga](https://twitter.com/robertsalonga).*

# Video shows CHP needs civilian oversight

By LaDoris Cordell

A cellphone video that has gone viral shows a CHP officer pummeling a mentally ill African-American woman who had been walking barefooted, along Interstate 10 near downtown Los Angeles.

Community members have decried what appears to be excessive force by the officer, who can be seen repeatedly punching 51-year old Marlene Pinnock in the head as she lies on the ground. The CHP has vowed to carry out a thorough investigation.

At a news conference, California Highway Patrol's Assistant Chief Chris O'Quinn stated, "We are known as an agency that really polices itself."

Seriously? If ever an incident called for independent oversight, this one is it. Law enforcement officers wield enormous power over us. Independent civilian oversight

provides a check on that power.

Today, the value of civilian oversight for law enforcement is well-settled. Fifteen countries, ranging from South Africa to Israel to Belgium, utilize civilian oversight. And 200 cities and countries across this nation have oversight agencies, including Atlanta, Philadelphia and San Jose, where the Office of the Independent Police Auditor has been in existence for 21 years.

Still, there are many law enforcement agencies that have no accountability to the public. The FBI is one of them.

Since 1993, every single one of the FBI's shootings was deemed justified by the FBI. Among the 289 deliberate shootings, there were 70 fatalities and 80 wounded. Not one FBI agent was disciplined, except for five letters of censure, veritable slaps on the wrists.

Even when the FBI paid a shooting victim over \$1 million, the agency's internal review found that the agent did not use excessive force.

The California Highway Patrol is the largest state police agency in the United States, with more than 7,500 sworn officers. It has patrol jurisdiction over California highways and acts as the state police. CHP officers enforce traffic laws on public roads anywhere in the state and possess full law enforcement authority to enforce all state laws.

When the conduct of CHP officers is called into question, internal inquiries into the allegations are not subject to any form of independent oversight. Rather, these allegations are handled exclusively by their Internal Affairs Unit, which is staffed by CHP officers.

The 1988 case of Officer Craig

Peyer, a six-year veteran of the CHP, is a stunning example of why police policing themselves without independent oversight doesn't work. Peyer stopped 20-year old Cara Knott for a traffic violation. When she refused the officer's sexual advances, he bludgeoned her with his flashlight, strangled her and threw her body over a bridge.

It was subsequently revealed by the media that numerous young women had been subjected to similar advances from Peyer, all of whom filed complaints with the CHP's Internal Affairs Unit. Their complaints were dismissed by the CHP, however, because of Peyer's reputation within the department.

With independent oversight, an officer's reputation is never a consideration in a misconduct determination. Peyer was convicted of her murder and is serving a life

sentence.

Perhaps today's CHP's Internal Affairs Unit conducts objective and thorough investigations of its fellow officers. But that isn't the point. It is the independence of the oversight agency that gives the investigations credibility and builds trust. Credibility and public trust fall by the wayside when the police police themselves without independent oversight.

In the wake of the Marlene Pinnock incident, we must demand that the California Legislature mandate an independent civilian oversight agency for the CHP. In this way, something very good may come of something very bad.

*LaDoris Cordell is San Jose's independent police auditor and a retired Santa Clara County Superior Court judge. She wrote this for this newspaper.*



## NATION

### POLICE KILLINGS

# Time to rid American justice system of secretive criminal grand juries

By **LaDoris H. Cordell**

In our system of law, police and prosecutors have strong and close relationships. If prosecutors file charges against police officers, however, they alienate the police on whom they depend to investigate the crimes they prosecute. If they don't file charges, they face outrage and condemnation from the public. The criminal grand jury process allows prosecutors to emerge unscathed, leaving the jurors to be blamed and vilified no matter what the jury decides.

In short, there's nothing grand about criminal grand jury proceedings. It is time to get rid of them.

The grand jury decisions in the aftermath of the officer-involved deaths of Michael Brown and Eric Garner are demonstrations of the mischief that is done when court hearings are held in secret. Criminal grand jury proceedings are antithetical to our system of justice and an affront to our democratic values.

Grand jury proceedings were designed to protect the reputations of accused individuals should the grand jury decide they should not stand trial. In them, witnesses testify but are not cross-examined. Because there are no rules of evidence, no one objects. The



J. Scott Applewhite / Associated Press

Congressional staff members protest grand juries' failure to indict police officers in the killings of unarmed black men.

only lawyer in the room is the prosecutor; the jurors hear only his or her side of the story. Prosecutors present evidence in whatever fashion they choose to get the results they want. The entire proceeding is shrouded in secrecy, closed to the public. This sounds like the description of a trial in repressive countries such as China or Iran.

In fact, these star-chamber-like hearings happen in several states across America.

In state courts, preliminary hearings are commonly held to determine if there is probable cause to believe that a person should stand trial for felonies. Judges preside, and the proceedings are open to the public. The accused, defense attorneys and prosecutors all participate, and the rules of evidence apply. Preliminary hearings are adversarial,

with checks and balances to ensure that the rights of the accused and the rights of the people are protected.

Criminal grand juries, on the other hand, are convened by and at the sole discretion of prosecutors. Their purpose is the same as preliminary hearings — to determine if there is probable cause. Unlike preliminary hearings, these proceedings are closed to the public. They are so secret that the prosecutor and even the court personnel (court clerk, court reporter and bailiff) are prohibited by law from disclosing anything that occurs inside the courtroom.

When the proceeding is over, the grand jurors can never disclose to anyone how or why they reached their probable-cause decisions. Prosecutors

**Thursday at 1 p.m. on SFGate:** LaDoris H. Cordell and San Francisco District Attorney George Gascón discuss grand juries with The Chronicle's Editorial Board. Tweet questions with #SFCgrandjuries.

choose the witnesses, question the witnesses and decide what evidence the jurors will consider. There are no checks and balances. Behind closed doors, prosecutors can — and do — have their way with grand juries.

Our criminal justice system is founded upon principles of public accountability, fairness and transparency. The grand jury process undermines these principles; and in doing so, it undermines our trust in the courts. The public's loud and widespread protests

against the grand jury decisions in the Brown and Garner cases make that abundantly clear.

One-sided, secret proceedings have no place in our criminal justice system. In 1791, the framers of our Constitution followed England's lead in bringing the grand jury system to America. In 1948, England abolished criminal grand juries, and all of the countries in the former British Empire have followed suit. We should do the same.

*LaDoris H. Cordell, a retired Santa Clara Superior Court judge, is San Jose's independent police auditor. She monitors the Police Department's investigations of its own officers. To comment, submit your letter to the editor at [www.sfgate.com/submissions/#1](http://www.sfgate.com/submissions/#1).*

# Appendix L: 2014 IPAAC Members

<b>Name</b>	<b>Employer</b>	<b>Occupation</b>
Astacio, Mauricio	Barracuda Networks	Sales & Marketing
Bailey, Robert	Pratt & Whitney Space Propulsions (Ret.)	Naval Officer/Rocket Scientist
Barousse, Joshua	Dave Cortese for Mayor 2014	Field Director
Bui, Mydzung	Santa Clara Unified School District	Educationally Related Mental Health Services Coordinator
Callender, Norma	Self-employed	Semi-retired Independent Paralegal
Colar, Linda Young	The Colar Team, Coldwell Banker Realty	Realtor
Fadem, B.J.	Law Offices of B.J. Fadem & Assoc., APC	Attorney
Hammond, Che	Netflix, Inc.	Software Engineer
Morales, Hilbert	El Observador	Publisher
Perry, Randi	Fresh Lifelines for Youth	Law Program Manager
Ramirez, Yesenia	Evergreen Valley College	Business Services Coordinator
Saban, Panteha	Santa Clara County Public Defender's Office	Attorney
Shelton, Merylee	San Jose City College	Professor
Watson, Otis	Comerica Bank	Banking/Financial Services
Wong, Jorge	Asian Americans for Community Involvement	Director of Clinical and Regulatory Affairs





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

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

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