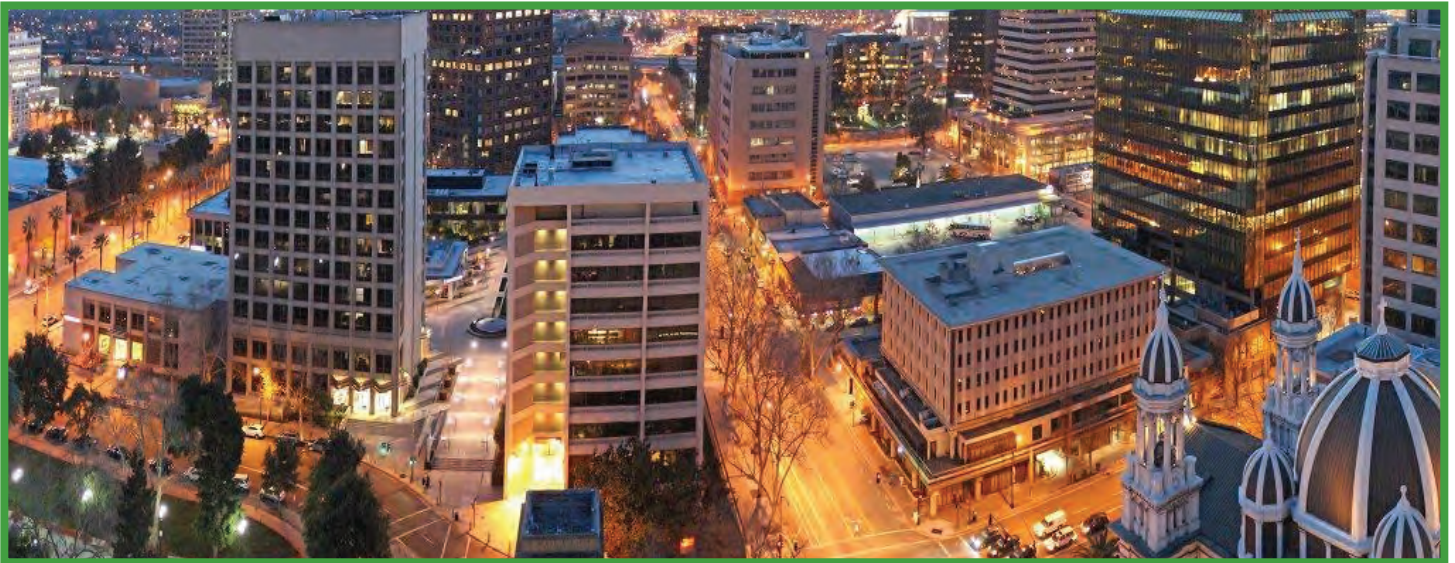




2016 IPA Year End Report

Office of the Independent Police Auditor
City of San José



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2016 IPA Year End Report



Issued June 2017

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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 twenty-three years that the IPA office has existed, there have been five Independent Police Auditors: Teresa Guerrero-Daley (1994-2005); Barbara J. Attard (2005-2008); Shivaun Nurre, Interim IPA (2009-2010); Judge LaDoris Cordell (Ret.) (2010-2015); Shivaun Nurre, Interim IPA (2015); Walter Katz (2016), and Shivaun Nurre, current interim IPA (2017).

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

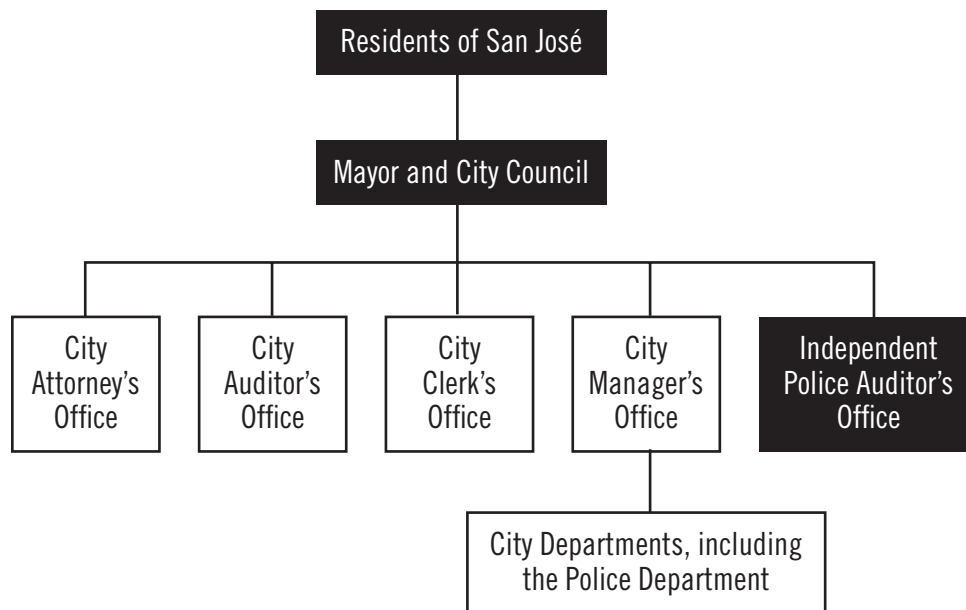


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Chapter One: Introduction

Twenty years ago, in November 1996, the citizens of San José voted to place the Office of the Independent Police Auditor (IPA) into the City Charter. While different models of civilian oversight agencies had emerged with varying success since the 1920s, San José was the first auditor model in the United States.¹ The new charter provision made the IPA a permanent branch of city government. The change to the City Charter also directed the City Council to appoint the police auditor to serve four-year terms and established that the midterm removal of the police auditor requires a vote of approval of at least ten of the eleven City Council members. See **Appendix A** for the complete San José Charter Section 809.

Since 1996, the auditor/monitor model of oversight has been recreated, in various forms, in many cities including Denver, New Orleans, Tucson, Los Angeles and New York.² Counties who have recently implemented oversight based on the San José IPA office include Fairfax County VA (2016) and Sonoma County CA (2015). Through the years, the auditor/monitor model of oversight has revealed its strengths and weaknesses. Some jurisdictions have moved to revise the model or to add additional layers of oversight onto the existing auditor model.³ Experts agree that there is no

perfect model of oversight; each jurisdiction must evaluate its own unique culture and circumstances to determine how best to structure oversight that is effective and creates trust between the police and the community it serves.⁴

Over the last twenty years, the world of policing has also changed. Over the last three years, there has been more focus on policing practices at the local, state and national level than there may have ever been before in American history. In 2014, President Barack Obama created the President's Task Force on 21st Century Policing. Members of the task force, including academics, law enforcement officials, and civil rights activists, were asked to identify the best practices and make recommendations. Testimony and hearings were organized around six topics: (1) Building Trust and Legitimacy (2) Policy and Oversight (3) Technology and Social Media (4) Community Policing and Crime Reduction (5) Training and Education, and (6) Officer Wellness and Safety. The Task Force's Final Report was issued in May 2015.⁵ San José Police Department (SJPD) Chief Eddie Garcia and his staff studied the recommendations in that Final Report and have taken steps to bring the Department in line with best practices

¹ Joseph DeAngelis, Brian Buchner, Richard Rosenthal, "Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models," *National Association for Civilian Oversight of Law Enforcement*, September 2016. www.ojpdagnosticcenter.org/sites/default/files/NACOLE_Civilian_Oversight.pdf.

² Some of these cities have more than one agency that plays a role in civilian oversight, thus for accuracy the names of the agencies we refer to are: Office of the Independent Monitor, Denver, CO; Independent Police Monitor, New Orleans, LA; Independent Police Auditor, Tucson, A.; Los Angeles Board of Police Commissioners, Office of the Inspector General, Los Angeles, CA; and Office of the Inspector General for the New York City Police Department, New York, NY.

³ For example, components similar to a citizen review board have been formally added to police oversight in jurisdictions with the auditor model for BART (Bay Area Rapid Transit) CA, Denver, CO and Fairfax, VA.

⁴ DeAngelis et al., "Civilian Oversight of Law Enforcement: A Review."

⁵ https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

that strive to both reduce crime and build public trust. The SJPD website has dedicated a page entitled “SJPD ‘21st Century Policing’” that summarizes the Department’s projects and corresponding status.⁶ The Department’s efforts towards implementing the Task Force recommendations are commendable.

There was big change in the IPA office in 2016. Walter Katz, appointed as the IPA by the City Council in November 2015, started work the first week in January 2016. Mr. Katz brought new perspectives on oversight and big ideas about the scope of the auditor model. Evidence of his vision is apparent throughout this report, especially in Chapter Four which outlines policy recommendations to the SJPD. In March 2017, Mr. Katz resigned from the San José IPA position to work on oversight policy in Chicago, IL. As of the publication date of this report, efforts are underway to identify a new IPA for the City of San José.

I. 2016 Report in Brief

The San José Municipal Code requires that the IPA prepare an annual report. The Municipal Code further specifies that the report provide (1) a statistical analysis of complaints, (2) an analysis of trends and patterns, and (3) policy recommendations. Here are some notable elements in the 2016 Year End Report:

- **Continuation of Trends identified in our 2015 Report.**

- Complaints Received Dipped.

- The number of officer misconduct complaints has decreased steadily since 2013. In 2015, 303 complaints were received; in 2016, that number dropped to 292. However, the percentage of persons who initiated their complaints with the IPA office instead of with the

Internal Affairs (IA) Unit jumped from 39% in 2015 to 54% in 2016.

- Lesser Experienced Officers Receive Disproportionally More Complaints.

The most experienced officers – those with 16 or more years of service – comprise 50% of the SJPD; they accounted for 42% of the complaints received in 2016 and 28% of all Force allegations. On the other hand, the least experienced officers – those less than five years of experience – make up 21% of the Department but accounted for 30% of conduct complaints and 35% of Force allegations.

- **Allegations Received**

Although the number of complaints dipped from 2015 to 2016, the allegations identified in those complaints increased from 688 allegations in 2015 to 742 in 2016. Relative to the year prior, allegations received in 2016 showed an increase in Procedure, Arrest/Detention, Courtesy and Neglect of Duty. The allegations of Force, Search/Seizure, and Conduct Unbecoming an Officer decreased in 2016 compared to 2015. In 2015 and 2016, the number of Bias-Based Policing allegations received was the same – 50 allegations.

- **The Sustained Rate**

The Sustained Rate is the percentage of closed conduct complaints that contain at least one allegation with a Sustained finding. In 2016, 29 (11%) closed Conduct Complaints had an allegation with a Sustained finding. This is a significant increase in the Sustained Rate compared to 2015 in which 6% of the closed conduct complaints had an allegation with a

⁶ <http://www.sjpd.org/COP/21st.html>

Sustained finding. In fact, this is the highest Sustained Rate since 2004.

- **Summaries of Audited Cases**

Internal Affairs closed 305 cases in 2016. IPA staff audited 91% or 277 of these cases. Chapter Five outlines how we critically examine the Internal Affairs investigations. We close our audits in one of four ways: Agreed at First Review, Agreed After Further, Close with Concerns and Disagreed. We have provided summaries of 20 sample cases closed as Agreed and summaries of all cases that were not closed as Agreed. Our goal is to provide some insight on the issues that arise during the audit process and our efforts to ensure that the IA investigations are fair and complete.

- **Policy Recommendations**

Chapter Four discusses the policy recommendations made during 2016 by the IPA to the Department including a new process – the Policy Brief - developed by Mr. Katz to bring critical issues forward expeditiously. Recommendations include evaluating how officers are used on school campuses and use of force accountability.

II. 2016 Year in Review

Other notable efforts not otherwise mentioned in this Report, continued or started in 2016.

- **Limited Detention Stops**

In 2011, the IPA recommended that SJPD track data on those traffic and pedestrian detentions where officers either sit civilians on a curb, handcuff or place them in patrol cars.⁷ As a direct result of

our recommendation, the Department implemented a new policy in 2013 which required the documentation of self-initiated pedestrian and/or vehicle stops.⁸ Officers were now required to notate the stop and how it was carried out in the Computer Aided Dispatch system, including the type of detention (curb, handcuffed, or police vehicle). In 2016, the Department contracted with the University of Texas at El Paso's Center for Law and Human Behavior to identify patterns of racial and/or ethnic disparity that may exist in the data and provide recommendations to the Department for reducing or eliminating such disparities. The final report was presented before City Council on February 28, 2017.⁹

- **Body Worn Camera Evidence Informs IA Investigations**

In July 2016, members of the SJPD were equipped with body worn cameras. For the first time, evidence generated by body worn cameras can be viewed by both IA staff and IPA staff in the investigation of citizen complaints of police misconduct. Review of such video has, in some cases, provided a solid basis to support IA's findings without the need to interview witnesses and/or officers. Police use of body worn cameras has greatly expanded over a short period of time. Issues such as how the cameras should be used and who can access the video footage are being debated in a host of jurisdictions large and small throughout California and the country. The IPA will track complaints about the cameras and will keep abreast

⁷ 2011 Year End Report, Recommendations 1, 19 and 20.

⁸ San José Police Department, Duty Manual section L 5108.

⁹ http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2673&meta_id=619075

of best practices identified by both the law enforcement and civilian oversight communities.

- **Community Trust in Policing Project**

In late 2016, the IPA and the Silicon Valley Community Foundation started discussions on how to strengthen relations between communities of color and law enforcement in San José. Both entities were interested in efforts using community outreach and data collection/evaluation. In January 2017, the IPA hosted a forum to elicit ideas from the community about how to measure and improve community trust in the SJPD.

- **Recommendations for More Accountability Are Still Pending**

We noted in our 2014 report that the IPA does not have any access to Department-Initiated Investigations (DII), that is, those investigations which are not the result of a complaint by a member of the public but which originate from inside the Department. We recommended that there be independent oversight of such investigations, either by our office, which has extensive experience reviewing investigations, or by the City Attorney, if there are overriding concerns about peace officer privacy. That recommendation is still under discussion.

Chapter Two: Overview of the Process and Statistics

This chapter discusses the Independent Police Auditor's (IPA) role in the complaint process. Statistical information about the types of cases received, the classification of cases, findings reached, officer discipline and the audit process is detailed.

It helps to understand the complaint and investigation process to best make sense of the statistics drawn from those complaints made in 2016. Terms like "complaints," "allegations" and "findings" can appear interchangeable, but they all refer to a part of the process that begins when a person files a complaint with either the IPA or the police department. (The terms can also be found in the glossary at the end of this Report.)

I. Step One: Intake

The complaint process begins when a member of the public files a complaint about a San José Police Department (SJPD) officer(s) or an SJPD policy. Complaints can be filed either with the IPA or with 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 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 2016, 292 complaints and concerns were received. This was a four percent (4%) decrease in the number of complaints and concerns received compared to 2015, and the lowest number of complaints received in five years.

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.

Illustration 2-A: Complaints Received—Five-Year Overview (2012-2016)

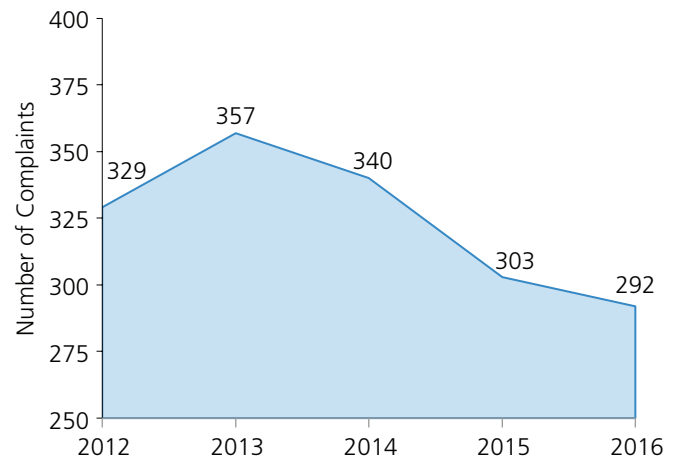
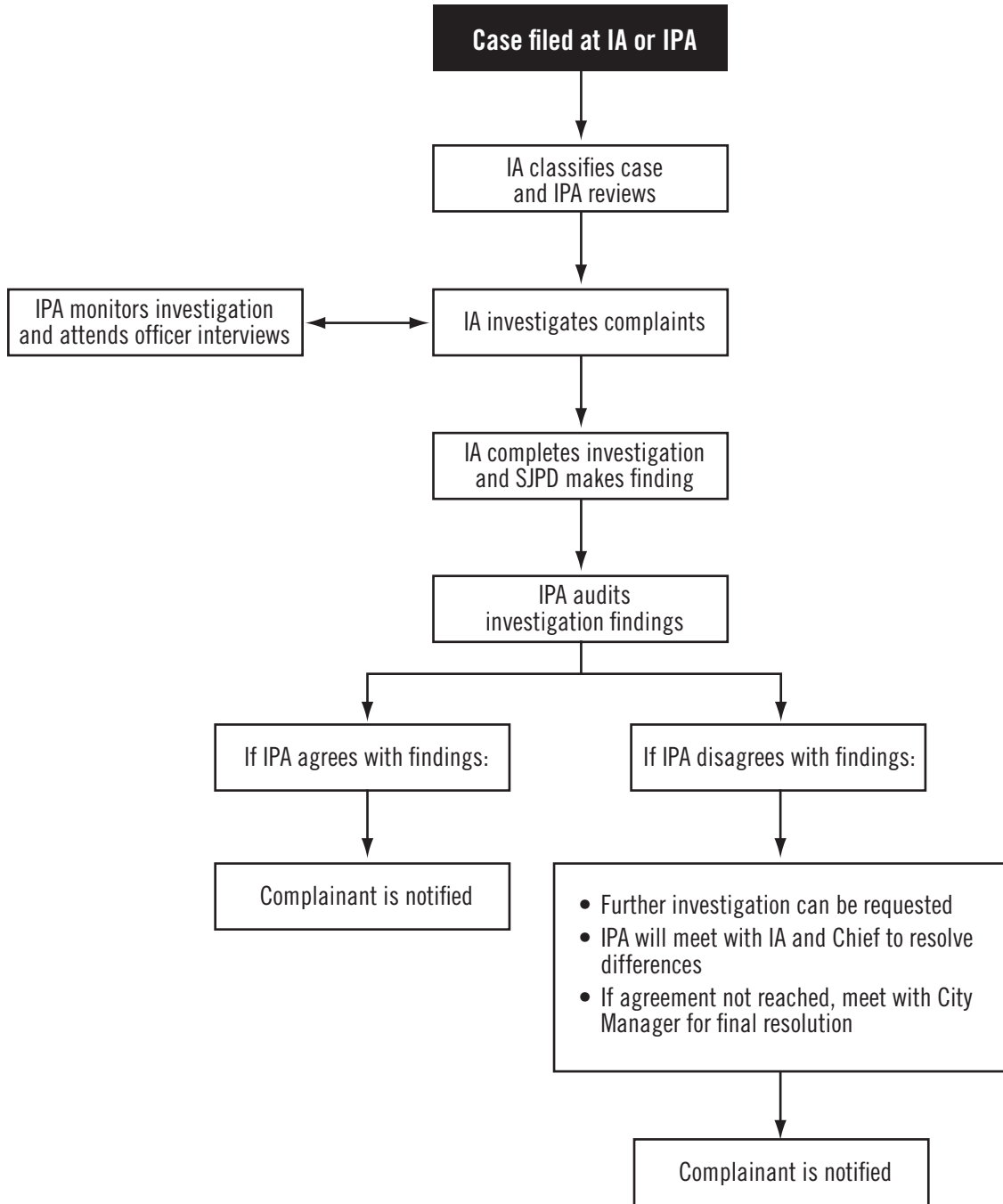
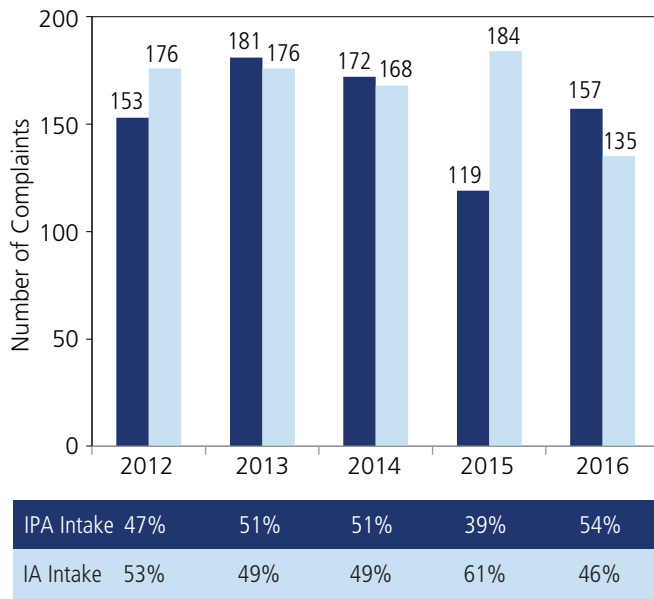


Illustration 2-B: Complaint Process



In 2016, 54% of complainants brought their complaints and concerns directly to the IPA office, while the remaining 46% contacted IA.

Illustration 2-C: IPA and IA Intakes—Five-Year Overview (2012-2016)



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 identify trends that point towards problematic police practices is if members of the public speak up about their concerns and file complaints.

• Mediation

When a complainant expresses a desire to discuss their complaints directly with the officer, 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. Both the Internal Affairs Unit and the Office of the IPA must agree that mediation is appropriate and the complainant must be willing to withdraw the complaint. Two mediations were conducted in 2016.

• Policy Changes

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

There is a consequence if an officer accumulates many individual complaints. If an officer receives too many complaints, the officer will receive mandatory Intervention Counseling by the Department to identify and correct problematic behaviors. Refer to the illustration below for a more detailed description of SJPD’s Complaint Intervention Counseling Program.

Intervention Counseling Definition and Policy

The Intervention Counseling Program is used as an “early warning system” to track police officers with significant complaint histories for the purpose of identifying potential problems and providing guidance. To receive intervention counseling, the subject officers must have received the following:

- Five or more Conduct Complaints and/or Department-Initiated complaints within a twelve-month period.
- Three or more Conduct Complaints and/or Department-Initiated complaints containing the same allegation within a twelve-month period.
- “Unfounded” cases are excluded

During intervention counseling, the subject officers meet with the Deputy Chief of their assigned Bureau, the IA Unit Commander, and their immediate supervisor for an informal counseling session. This session involves a review of the complaints against the subject officer, whether sustained or not, in an attempt to assist the officer with identifying potential deficiencies. No formal record is made of the substance of this counseling session.

In our 2007 Year End Report, we advocated that the early warning system be improved. Currently, the SJPD looks solely at the police misconduct complaint process to identify officers exhibiting possible problematic behaviors requiring corrective action. Looking solely at complaints, however, may not provide a complete or accurate reflection of officer behavior, both individually and department-wide. To provide a more complete picture of officer conduct, more factors must be gathered and examined than merely complaints. The best practice utilized by other jurisdictions is to take a number of factors into account so that there is a more complete picture of the officer’s behavior, such as use of force reports, commendations and civil lawsuits. In 2009, the City Manager decided that more

proactive steps should be made to see what “best practices” can be brought to San José.¹⁰ No action has been taken on developing an improved early intervention system since 2009. However, with SJPD’s interest on implementing best practices identified by the federal Task Force on 21st Century Policing, perhaps the development of a robust early intervention system will be moved forward.¹¹

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. Officers Receiving Multiple Complaints

A number of officers received multiple (two or more) complaints in 2016. Twenty officers received three or more complaints.

¹⁰ Deputy City Manager Deanna Santana’s Supplemental Memorandum to the Public Safety, Finance & Strategic Support Committee dated October 14, 2009 provides a brief summary and timeframe for the plan to enhance the SJPD Early Intervention System. http://www3.sanjoseca.gov/clerk/CommitteeAgenda/PSFSS/20091015/PS20091015_d2sup2.pdf

¹¹ See the SJPD web site for information about what steps the department had already taken to implement best practices identified by the Task Force. <http://www.sjpd.org/COP/21st.html>

Illustration 2-D: Subject Officers Receiving Complaints (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	22	30	0	27	35	86	200
2 Complaints	8	17	0	9	8	22	64
3 Complaints	3	4	0	2	0	5	14
4 Complaints	0	1	0	0	0	4	5
5 Complaints	0	0	0	0	0	1	1
Total Number of Officers Receiving Complaints	33	52	0	38	43	118	284

It is interesting that the plurality of officers with three or more complaints had sixteen or more years of experience with SJPD. However, this group does comprise 50% of the sworn officers in the Department. Eight officers with less than five years of experience with the SJPD received three or more complaints. Only two officers with five to fifteen years of experience received three or more complaints.

C. Demographics of Complainants and Subject Officers

1. Complainant Demographics

During the intake process, IA and the IPA office gather demographic data about complainants. In 2016, 70% of complainants chose to identify their ethnicities at intake; such disclosure is entirely voluntary. Of the 30% of complainants whose ethnicity remains unknown, 76% filed their complaint with IA. This is an improvement from 2015; in that year, of the 51% of complainants whose ethnicity was unknown, 90% had filed their complaint with IA. It is important that IA capture this data so that the IPA can meaningfully assess the impact ethnicity has on complaints, allegations, and findings. Without this information,

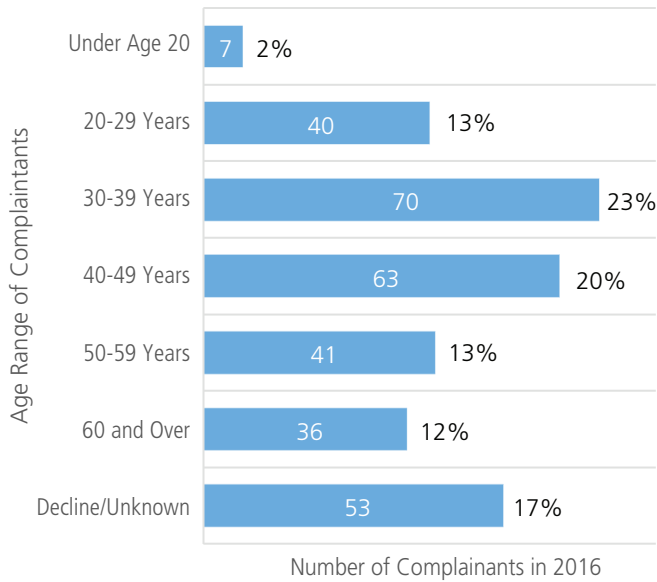
our process remains incomplete. Below is a summary of complainant demographics in 2016:

- Twenty-nine percent of the complainants in 2016 self-identified as Hispanic/Latino. Hispanics/Latinos represent 33% of the population of San José.
- Seventeen percent of the complainants in 2016 self-identified as Caucasian. Caucasians represent 29% of the population of San José.
- Ten percent of the complainants in 2016 self-identified as African American. African Americans represent 3% of the population of San José.
- Ten percent of the complainants in 2016 self-identified as Asian American/Pacific Islanders. Asian American/Pacific Islanders represent 32% of the population of San José.¹²

As shown in Illustration 2-E, of the complainants who chose to identify their age at intake, 43% were between the ages of 30 and 49 years old.

¹² Asian American/Pacific Islanders include Filipino and Vietnamese.

Illustration 2-E: Age Range of Complainants in 2016



2. Subject Officer Demographics

The SJPD provided demographic data about subject officers who were employed during the 2016 calendar year. The data reveal that the number of subject officers who identify with a specific ethnicity continues to closely mirror the representation of ethnicities of the Department. This data reflects Conduct Complaints only and does not include officers named in Department-Initiated Investigations, Policy Complaints and Non-Misconduct Concerns.

- Caucasian officers are 52% of the Department and were subject officers in 51% of complaints.
- Hispanic/Latino officers are 24% of the Department and were subject officers in 25% of complaints.
- African American officers are 4% of the Department and were subject officers in 3% of complaints.

- Asian American/Pacific Islander officers are 12% of the Department and were subject officers in 13% of complaints.¹³

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

Illustration 2-F: Gender of Subject Officers in 2016*

Gender	Subject Officers	%	SJPD Sworn Officers	%
Male	264	93%	831	90%
Female	20	7%	95	10%
Total	284	100%	926	100%

*Does not include officers named in Department-Initiated Investigations, 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,¹⁴ and Other.¹⁵ The Department is ultimately responsible for classifying complaints before investigating. IPA staff reviews the Department's decisions early in the process and can appeal the classification if it is not appropriate. Illustration 2-G shows a breakdown of the various complaints received in 2016. Ninety percent of all complaints received in 2016 were classified as Conduct Complaints.

¹³ Asian American/Pacific Islanders include Filipino and Vietnamese.

¹⁴ Six (6) 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.

¹⁵ Fifteen (15) cases were closed (not received) as Other this year because (a) the complaint did not involve any SJPD officers (12), (b) the complaint was duplicative of an existing case (2), and (c) the complaint concerned another City Department (1). The IPA reviews all cases classified as Other to ensure this classification is appropriate.

Illustration 2-G: Complaints/Concerns Received in 2016*

Matter Received in 2016	IA	IPA	Total	%
Conduct Complaints	129	134	263	90%
Policy Complaints	0	1	1	0%
Non-Misconduct Concerns	2	4	6	2%
Decline to Investigate	0	6	6	2%
Other	4	12	16	5%
Total	135	157	292	100%

*Excludes Department-Initiated Investigations

A. Conduct Complaints

Conduct Complaints contain one or more allegations. An allegation is an accusation that a 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.sanjose.ca.gov/ipa). There are eight types of allegations that, if proven, could result in officer discipline:

1. Procedure (P),
2. Search or Seizure (SS),
3. Arrest or Detention (AD),
4. Bias-Based Policing (BBP),
5. Courtesy (C),
6. Conduct Unbecoming an Officer (CUBO),
7. Force (F), and
8. Neglect of Duty (ND).

In 2016, a total of 742 allegations were identified in the 276 complaints received. Illustration 2-H describes each allegation type, lists examples of allegations, and gives the number of each type of allegation received in 2016. By comparison, there were 688 allegations identified in the 291 cases received in 2015. Although the number of complaints decreased, the number of discrete allegations identified in each case increased.

Illustration 2-H: Misconduct Allegations

MISCONDUCT ALLEGATIONS RECEIVED IN 2016

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

- 307 allegations (41%)
- **Example:** An officer allegedly failed to complete a thorough DUI investigation after a driver had crashed into a parked car and a witness told the officer that the driver admitted she had been drinking.

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

- 109 allegations (15%)
- **Example:** An officer allegedly told the complainant, "You're a thief and a liar...Shut the f--- up, and stop making a scene."

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

- 108 allegations (15%)
- Example: A complainant who stated that she was compliant with officers' orders alleged that an officer threw her to the ground causing facial cuts, abrasions, and ultimately requiring stitches to her lip.

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

- 102 allegations (14%)
- **Example:** A complainant alleged that an officer made an unlawful traffic stop and unlawfully arrested him.

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

- 38 allegations (5%)
- **Example:** A complainant stated that officers accessed her house by jumping her neighbor's fence and then unlawfully searched her house. The officers did not have a search warrant or her consent.

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.

- 50 allegations (7%)
- **Example:** A complainant was pulled over for speeding. The complainant denied speeding and believed the officer singled him 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.

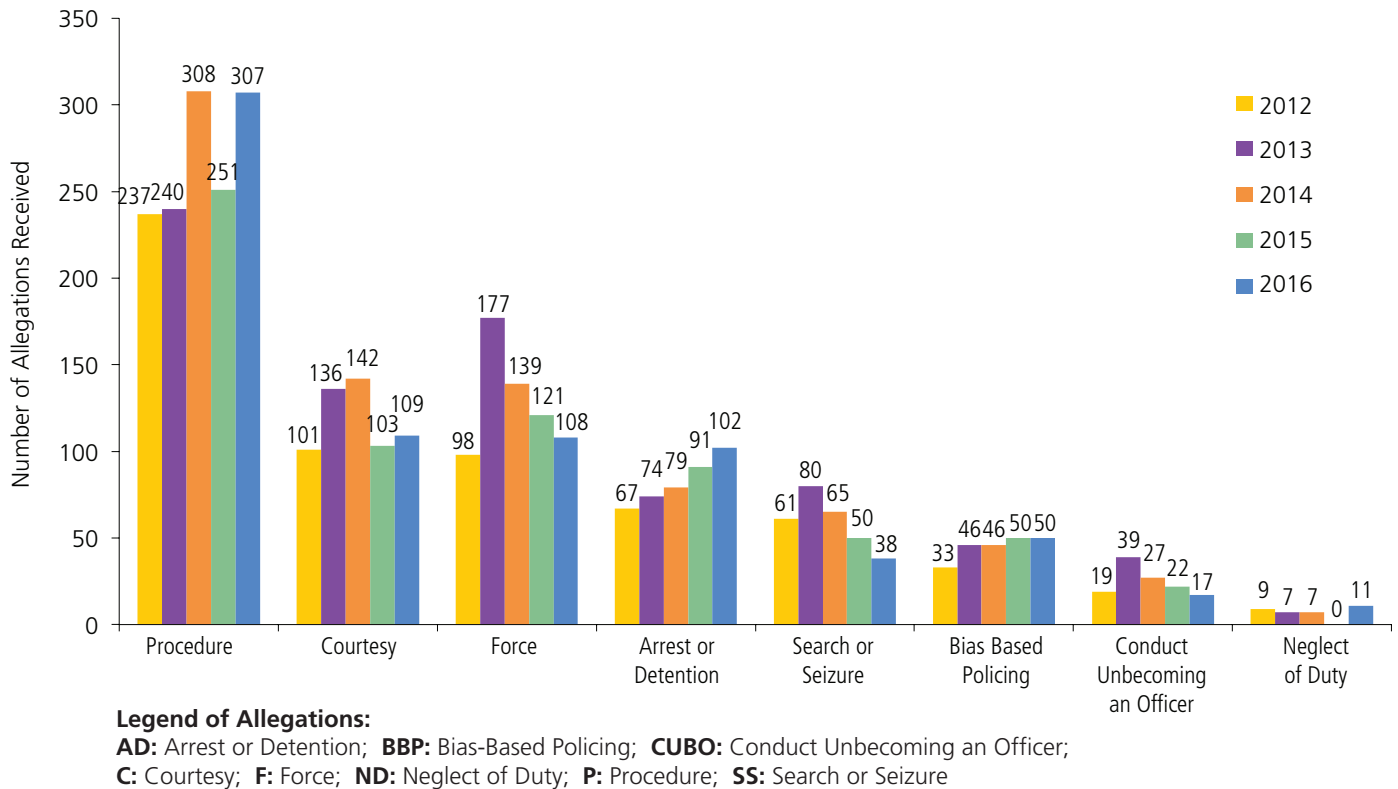
- 11 allegations (1%)
- **Example:** Complainant alleged that officers failed to provide safe passage for persons attending a political rally near the Convention Center.

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.

- 17 allegations (2%)
- **Example:** During his interview at Internal Affairs, an officer lied about his conduct.

Illustration 2-I depicts the frequency of allegations over the last five years. Procedure allegations continue to be the most common allegation in Conduct Complaints over the past five years. In 2015, 251 Procedure allegations were filed - a 19% decrease from the 308 Procedure allegations filed in 2014. However, in 2016, the number of Procedure allegations (307) rose to almost equal the number of Procedure allegations filed in 2014. Neglect of Duty allegations increased from zero in 2015 to 11 in 2016. Arrest or Detention allegations increased by 12% within the last year, but by 52% over the past five years, increasing from 67 in 2012 to 102 in 2016. Search or Seizure allegations decreased by 24% in 2016.

Illustration 2-I: Allegations Received—Five-Year Overview (2012-2016)



B. Policy Complaints

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

Only one complaint received in 2016 was classified as a Policy Complaint.

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.

After the supervisor confirms to IA that the subject officer has been spoken to, the officer's name and allegations are removed.

In 2016, six complaints (2% of all complaints received) were classified as NMCs.

III. Step Three: The Department Investigation

After intake and classification, IA is solely responsible for investigating all Conduct Complaints. The IPA office does not investigate complaints. IA investigations include the review of all relevant documentation, such as police reports, medical records, photos, and the Computer-Aided Dispatch (CAD)¹⁶ records. 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.

Although the IPA lacks investigatory powers, 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

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 investigators 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.

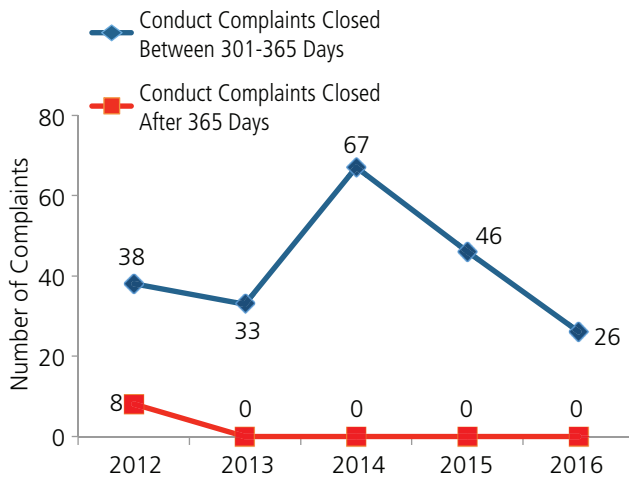
Timeliness of Closed Investigations

California state law mandates that all misconduct investigations of law enforcement officers must be completed and notice of any discipline intended 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.

The IPA's 2014 Year-End Report stated that the Department closed 67 complaints (26% of 253 closed complaints) after the 300-day deadline. We saw marked improvement in 2015 where the Department only closed 46 cases of 304 (15%) conduct complaints after the 300-day standard. There was further improvement in 2016; the Department closed 26 cases of 275 (9%) after the 300-day standard. This demonstrates a continued solid effort by the Department to complete investigations and submit them to the IPA staff for audit in a timely fashion.

¹⁶ 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.

Illustration 2-J: Timeliness of Conduct Complaint Investigations Closed by the Department—Five-Year Overview (2012-2016)



IV. Step Four: Department Makes Finding

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-K lists and defines each of the findings and gives the number of each finding in 2016. It is important to note that many complaints opened in 2015 are closed in 2016. Therefore, many findings made in 2016 are based on complaints from the prior year. Officer discipline is imposed if an allegation receives a Sustained finding.¹⁷

¹⁷ On occasion, officers may also receive counseling or training even if the investigation results in a finding of Exonerated or Not Sustained. See SJPD Duty Manual sections C 1722, C 1804 and C 1812.

Illustration 2-K: Findings for Misconduct Allegations Closed in 2016

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.”¹⁸ This means that the officer engaged in the conduct and the conduct was within policy.

- Result: The officer cannot be disciplined when there is an Exonerated finding. However, the officer may be required to undergo counseling or training.
- 381 allegations (49%) were closed as Exonerated in 2016.

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.
- 114 allegations (15%) were Not Sustained in 2016.

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.
- 37 allegations (5%) were Sustained in 2016.

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.
- 141 allegations (18%) were Unfounded in 2016.

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 sufficient information for IA to investigate, or the officer is no longer employed by SJPD.

- Result: The officer is not disciplined.
- 36 allegations (5%) were closed with No Finding in 2016.

Withdrawn: “The complainant affirmatively indicates the desire to withdraw his/her complaint.” This means the complainant decided not to pursue the complaint.¹⁹

- Result: This finding does not result in officer discipline.
- 13 allegations (2%) were Withdrawn in 2016.

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

- Result: No officer is investigated and the officer name is removed.
- 50 allegations (6%) were closed as Other in 2016.

¹⁸ All definitions in quotations in this table are from the 2010 Duty Manual § C 1723.

¹⁹ 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 2016

Illustration 2-L lists the number of allegations closed by SJPD in 2016 and their respective findings.

Illustration 2-L: Dispositions of all Allegations Closed in 2016

Type of Dispositions	Dispositions of Allegations								Total	%
	AD	BBP	C	CUBO	F	P	SS			
Sustained	0	0	2	1	1	32	1	37	5%	
Not Sustained	2	1	68	1	7	28	7	114	15%	
Exonerated	78	0	20	0	92	155	36	381	49%	
Unfounded	3	53	16	12	10	47	0	141	18%	
No Finding	3	4	7	2	2	14	4	36	5%	
Complaint Withdrawn	1	1	5	0	1	5	0	13	2%	
Other	10	0	2	13	3	21	1	50	6%	
Total Allegations	97	59	120	29	116	302	49	772	100%	

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. The Sustained Rate

The **Sustained Rate** is the percentage of closed Conduct Complaints that contain at least one allegation with a Sustained finding. In 2016, 29 (11%) closed Conduct Complaints had an allegation with a Sustained finding. This is a significant increase in the Sustained Rate compared to 2015 in which 6% of closed conduct complaints had an allegation with a Sustained finding. In fact, this is the highest Sustained Rate since 2004.

Illustration 2-M: Complaints Closed with Sustained Allegations—Five-Year Overview (2012-2016)

Year Closed	Conduct Complaints Sustained	Conduct Complaints Closed	Sustained Rate
2012	10	302	3%
2013	18	202	9%
2014	25	253	10%
2015	19	304	6%
2016	29	275	11%

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 audited 277 complaints in 2016. The IPA is required to audit all complaints with Force allegations and at least 20% of all other complaints. In 2016, the IPA fulfilled this requirement by auditing all completed investigations containing Force allegations (62 complaints) and 78% 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-N: Issues Reviewed During IPA Audit

ISSUES REVIEWED DURING IPA AUDIT

Timeliness / tolling	Was the investigation completed in a timely manner?
Classification	Was the case properly classified?
Presence/absence of allegations	Do the listed allegations adequately capture the concerns voiced by complainant?
Presence/absence of supporting documentation	If pertinent, did the investigator obtain and review documentation such as: CAD (SJPD Computer-Aided Dispatch logs) Medical records Photographs Police reports/citations TASER activation logs Use of force response reports
Presence/absence of interviews conducted by Internal Affairs	Witnesses — what efforts were taken to identify and contact witnesses? Witness officers — what efforts were taken to identify and interview officers who witnessed the incident? Subject officers — what efforts were taken to identify and interview subject officers?
Presence/absence of logical objective application of policy to the facts	What is the policy/Duty Manual section that governs the conduct in question? Is this authority applicable to the case or is other authority more pertinent? Does the analysis apply all the factors set forth in the authority to the facts?
Presence/absence of objective weighing of evidence	What weight was given to officer testimony? Why? What weight was given to civilian testimony? Why? Does the analysis use a preponderance standard? Does the analysis logically address discrepancies?

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

- **Agreed at First Review** with the Department’s investigation (in 2016, 79% 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 (in 2016, 9% of audited cases);

- **Closed with Concerns**, which means the IPA had issues with the Department’s investigation and/or analysis, but the concerns did not warrant a formal disagreement (10% of audited cases); or
- **Disagreed**, meaning the IPA determined that the Department’s investigation and/or analysis were not thorough, objective, and fair (2% of audited cases).

Illustration 2-O: IPA Audit Determinations in 2016

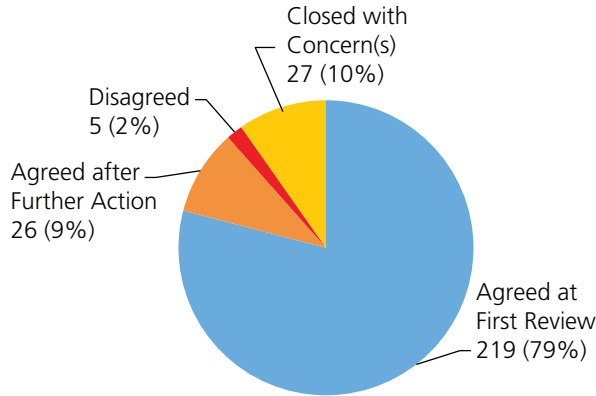


Illustration 2-P: IPA Audit Determinations in Closed Complaints—Five-Year Overview (2012-2016)

Audit Determinations in Investigated Cases	2012		2013		2014		2015		2016	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	257	74%	179	76%	207	74%	202	69%	219	79%
Agreed after Further Action	35	10%	32	14%	29	10%	39	13%	26	9%
Disagreed	23	7%	13	6%	19	7%	27	9%	5	2%
Closed with Concern(s)	30	9%	12	5%	25	9%	24	8%	27	10%
Total Complaints Audited	345	100%	236	100%	280	100%	292	100%	277	100%

The 2016 IPA audits show an increase in the number of Agreed at First Review and Closed with Concern determinations. In 2015, the IPA closed 51 cases as Disagreed or Closed with Concerns. In 2016, the IPA closed 32 complaints as Disagreed or Closed with Concerns.

VI. Officer Complaint Rates and Experience Levels

A. Officer Complaint Rates

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

- Number of complaints received by each subject officer
- Types of allegations attributed to each subject officer in the complaint
- Experience level of each subject officer

In 2016, 284 officers were named in Conduct Complaints – 31% of all SYPD officers. Of these officers, most (200 or 70% of subject officers) received only one complaint. Sixty-four (64) subject officers received two (2) complaints (23% of subject officers). Fourteen (14) subject officers received three (3) complaints and six (6) subject officers received four (4) or more complaints.

Illustration 2-Q provides a five-year overview of complaints received by individual officers. This data reflects only those complaints in which individual officers are identified by name either by the complainant or through the IA investigation process. There were 40 Conduct Complaints received in 2016 in which officers could not be identified (“Unknown” officers).

Illustration 2-Q: Complaints Received by Individual Officers—Five-Year Overview (2012-2016) *

Officers Receiving	2012	2013	2014	2015	2016
1 Complaint	178	218	205	198	200
2 Complaints	30	53	58	49	64
3 Complaints	5	18	11	19	14
4 Complaints	3	9	8	6	5
5 Complaints	0	0	3	2	1
Total Number of Officers Receiving Complaints	216	298	285	274	284

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

The number of total officers receiving complaints has increased over the last five years from 216 in 2012 to 284 in 2016. Notably, the number of total sworn officers has decreased significantly. In 2011, there were 1,054 sworn officers and in 2016, there were 926 sworn officers.

B. Officer Experience Levels

As with other city employees, police officers have differing employment start dates throughout the calendar year. For this 2016 Year End Report, data reflecting the total number of sworn officers employed by SJPD was captured on January 1, 2017. For each complaint, however the experience level of the subject officers is captured at the time of the

Illustration 2-R: Years of Experience of Subject Officers in Complaints Received in 2016*

Years of Experience	Total		Total SJPD		Subject Officers as a % of Sworn Officers
	Subject Officers	%	Sworn Officers	%	
0- 1+	33	12%	86	9%	38%
2- 4+	52	18%	110	12%	47%
5- 6+	0	0%	5	1%	0%
7-10+	38	13%	115	12%	33%
11- 15+	43	15%	143	15%	30%
16+	118	42%	467	50%	25%
	284	100%	926	100%	31%

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

complaint incident—any date during the 2016 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. Similar to years past, officers with more experience received more complaints than officers with less experience. For example, 42% of all subject officers were officers with sixteen or more years of experience. The officers with 5-6 years of experience received no complaints, however, they comprised just 1% of the Department.

Although officers with zero to one year of experience comprised just 9% of all sworn SJPD staff in 2016, these officers accounted for 12% of all subject officers. In fact, 38% of officers in the least experienced group received a complaint. Officers with two to four years of experience on the force made up 12% of the Department but 18% of all subject officers. Nearly half (47%) of this group received a complaint in 2016.

We sought to determine whether particular types of allegations were more likely to be correlated to different experience levels. In other words, we wanted to learn whether certain experience cohorts were either over- or

under-represented in the various allegation categories of Arrest/Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, Procedure and Search and Seizure.

Illustration 2-S: Allegations Received by Subject Officers in 2016, By Years of Experience*

Years of Experience	Type of Allegations and Percentage															
	AD		BBP		C		CUBO		F		ND		P		SS	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
0- 1+ Years	15	15%	11	23%	14	14%	0	0%	7	7%	0	0%	32	12%	5	14%
2- 4+ Years	25	26%	4	9%	19	19%	2	13%	29	28%	0	0%	46	17%	8	22%
5- 6+ Years	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
7- 10+Years	12	12%	8	17%	8	8%	1	7%	23	23%	0	0%	42	16%	2	6%
11-15+Years	13	13%	4	9%	12	12%	5	33%	14	14%	0	0%	30	11%	7	19%
16+ Years	33	34%	20	43%	47	47%	7	47%	29	28%	0	0%	119	44%	14	39%
	98	100%	47	100%	100	100%	15	100%	102	100%	0	0%	269	100%	36	100%

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

More Experienced Officers (16+ years)

As of 2016, 50% of the SJPd force had 16 or more years of experience. This contrasts with the relatively small proportion of officers with less than five years on the job.

Illustration 2-S shows that the most experienced officers (those with more than 16 years) were never over-represented in any one category. For example, that 50% group were the subjects of 47% of Courtesy allegations, 47% of CUBO allegations, 44% of Procedure allegations and 43% of Bias-Based Policing allegations.

Mid-Experienced Officers (5-6, 7-10 and 11-15 years)

The mid-experienced cohorts show a moderate disparity in certain allegation categories as set forth in Illustration 2-T.

The 5 to 6 year group is only 1% of the SJPd due to a hiring freeze during the last recession.

Illustration 2-T: Over-representation of Mid-Experienced Officers in Specific Allegations

Years of Experience	Representation in the Department	Over-represented in these allegations
11 to 15 years	15% of sworn officers	<ul style="list-style-type: none"> • 33% of the CUBO allegations • 19% of the Search/Seizure allegations.
7 to 10 years	12% of sworn officers	<ul style="list-style-type: none"> • 23% of the Force allegations • 17% of the Bias-Based Policing allegations • 16% of the Procedure allegations
5 to 6 years	1% of sworn officers	No allegations received of any type

Least-Experienced Officers (0-1 and 2-4 years)

It is the two least-experienced groups which provide the most significant concern. Joined together, the 0 to 1 year (9%) and 2 to 4 years of experience (12%) groups represent only 21% of the Department but are an out-sized portion of allegations in several important

categories. Officers with less than five years' experience received 41% of all Arrest and Detention allegations, 36% of Search/Seizure allegations and 35% of Force allegations. They also combined to represent 33% of Courtesy allegations, 32% of Bias-Based Policing allegations, and 29% of Procedure allegations.

Illustration 2-U: Over-representation of Least-experienced Officers in Specific Allegations

Years of Experience	Representation in the Department	Over-represented in these allegations
0 to 1 years	9% of sworn officers	<ul style="list-style-type: none"> • 23% of the Bias-Based Policing allegations • 15% of the Arrest/Detention allegations • 14% of the Courtesy allegations • 14% of the Search/Seizure allegations • 12% of the Procedure allegations
2 to 4 years	12% of sworn officers	<ul style="list-style-type: none"> • 28% of the Force allegations • 26% of the Arrest/Detention allegations • 22% of the Search/Seizure allegations • 19% of the Courtesy allegations • 17% of the Procedure allegations • 13% of the CUBO allegations

Illustration 2-V: Officers Receiving Arrest / Detention Allegations by Experience

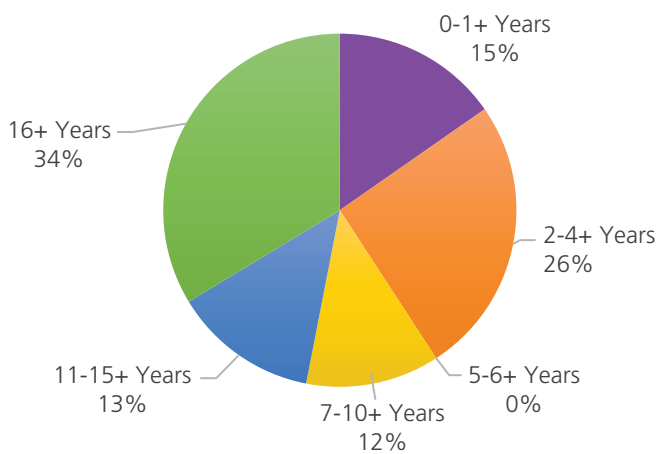


Illustration 2-W: Officers Receiving Procedure Allegations by Experience

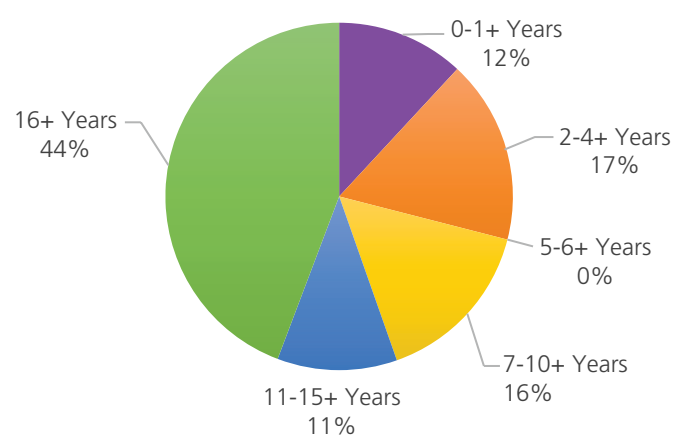
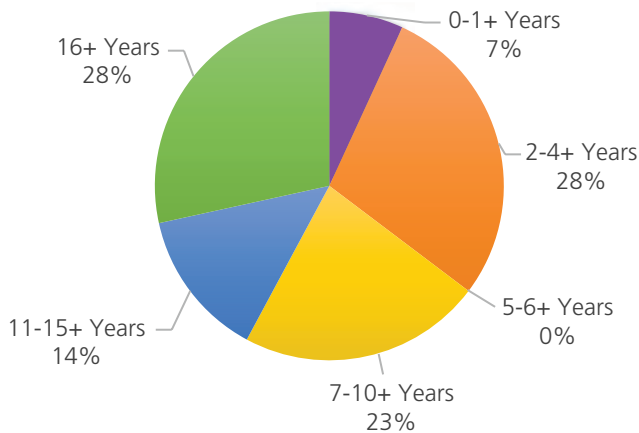


Illustration 2-X: Officers Receiving Force Allegations by Experience



VII. Overview of Sustained Findings

In 2016, the Department investigated and closed 275 conduct complaints containing 772 allegations. Of these allegations, the Department closed 37 (5%) with findings of Sustained. A finding is sustained when Department concludes that the investigation disclosed sufficient evidence to clearly prove that the alleged misconduct occurred.

Thirty-two of the 37 sustained findings in 2016 (86%) were for Procedure violations of the Duty Manual. The remaining five sustained findings were for misconduct related to Courtesy (2), CUBO (1), Search/Seizure (1), and Force (1). Between 2012 and 2016, the Department has investigated and closed 686 Force allegations; only two have been closed as Sustained.

Illustration 2-Y: Allegations Closed by the Department in 2016*

Type of Dispositions	Dispositions of Allegations								Total	%
	AD	BBP	C	CUBO	F	P	SS			
Sustained	0	0	2	1	1	32	1	37	5%	
Not Sustained	2	1	68	1	7	28	7	114	15%	
Exonerated	78	0	20	0	92	155	36	381	49%	
Unfounded	3	53	16	12	10	47	0	141	18%	
No Finding	3	4	7	2	2	14	4	36	5%	
Complaint Withdrawn	1	1	5	0	1	5	0	13	2%	
Other	10	0	2	13	3	21	1	50	6%	
Total Allegations	97	59	120	29	116	302	49	772	100%	

*Excludes Department-Initiated Investigations

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

A. Officer Discipline for Sustained Findings

Officers who receive sustained findings are subject to discipline by the San José Police Department. By state law, the names of the officers and the discipline imposed upon them are confidential and cannot be disclosed to anyone, not even the complainants. The Department does not disclose to the IPA the discipline that is imposed on an officer with a sustained complaint. What we can reveal are the number of officers who were disciplined,

and the types of discipline imposed in 2016.

There were two cases with serious discipline. One officer was suspended for 20 hours and another officer was suspended for 80 hours.

According to SJPD data, seventeen (17) officers received training and/or counseling, nine (9) officers received documented oral counseling, one (1) officer received documented oral counseling and training, and one (1) officer was given a letter of reprimand.

Illustration 2-Z: Officer Discipline Imposed by the Department in 2015 and 2016

Type of Discipline	2015		2016	
	# of Times	% of All Discipline	# of Times	% of All Discipline
Training	5	23%	2	7%
Training & Counseling	11	50%	15	50%
All Training and/or Counseling	16	73%	17	57%
Documented Oral Counseling (DOC)	2	9%	9	30%
DOC and Training	1	5%	1	3%
Letter of Reprimand (LOR)	0	0	1	3%
All DOC & LOR	3	14%	11	37%
10-Hour Suspension	1	5%	0	0%
20-Hour Suspension	0	0%	1	3%
80-Hour Suspension	0	0%	1	3%
All Suspensions	1	5%	2	7%
Termination	2	9%	0	0%
Total Discipline Imposed	22	100%	30	100%

B. Experience Levels of Officers with Sustained Findings

Of the 31 officers who received sustained findings in 2016, fifteen (15) of them had 16 or more years of experience. This means that 48% of the officers with proven misconduct were the most experienced ones

on the force. Of the 32 sustained findings for Procedure allegations, 17 (53%) were against officers who had more than sixteen years of experience. Seven officers with the least experience (under 5 years) had proven misconduct in 2016.

Illustration 2-AA: Years of Experience of Officers with Sustained Findings in 2016

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+	3	10%	0	0	0	3	0	3	8%
2- 4+	4	13%	0	0	0	3	1	4	11%
5- 6+	1	3%	0	0	0	2	0	2	5%
7-10+	5	16%	0	1	0	4	0	5	14%
11- 15+	3	10%	1	0	0	3	0	4	11%
16+	15	48%	1	0	1	17	0	19	51%
	31	100%	2	1	1	32	1	37	100%

C: Courtesy; **CUBO:** Conduct Unbecoming an Officer; **F:** Force; **P:** Procedure; **SS:** Search or Seizure

C. Five-Year Overview of Sustained Findings (2012-2016)

Over the last five years, there have been 160 sustained findings. Procedure allegations (122) accounted for 76% of the sustained findings. CUBO (16) and Courtesy (14) allegations were

the basis, respectively, for 10% and 9% of the sustained findings. There were just two sustained findings for Force allegations, one in 2014 and one in 2016. In 2015, IA sustained the first ever Bias-Based Policing allegation.

Illustration 2-AB: Types of Sustained Findings by the Department (2012-2016) *

Year	Type of Allegations								Total
	AD	BBP	C	CUBO	F	ND	P	SS	
2012	1	0	0	0	0	0	12	1	14
2013	0	0	3	5	0	0	27	0	35
2014	0	0	6	3	1	0	31	1	42
2015	0	1	3	7	0	0	20	1	32
2016	0	0	2	1	1	0	32	1	37
	1	1	14	16	2	0	122	4	160

*Excludes Department-Initiated Investigations

The number of sustained findings reached a low of 14 in 2012. In the following two years, sustained findings jumped significantly—in 2013 there were 35, and in 2014 sustained findings rose to 42. In 2015, sustained findings dropped to 32 but in 2016, sustained findings increased to 37.

Over the last five years, discipline was imposed on 115 officers. Discipline has ranged from the relatively minor—training and/or counseling, to the severe—suspension and termination.

Illustration 2-AC: Discipline Imposed on Officers by the Department (2012-2016) *

Type of Discipline	2012 # of Times	2013 # of Times	2014 # of Times	2015 # of Times	2016 # of Times
Training and/or Counseling	9	15	20	16	17
Documented Oral Counseling and/or Training	2	2	6	3	10
Letter of Reprimand	0	2	1	0	1
10-Hour Suspension	0	0	0	1	1
20-Hour Suspension	0	0	1	0	0
40-Hour Suspension	0	0	1	0	0
80-Hour Suspension	0	0	0	0	1
120-Hour Suspension	0	1	0	0	0
160-Hour Suspension	0	1	0	0	0
Termination**	0	2	0	2	0
Total Discipline Imposed	11	23	29	22	30

*Data provided by SJPD

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

Chapter Three: Use of Force Complaints and Audits

I. Force Complaints and Force Allegations

A. Overview

When it comes to public perceptions about policing, the use of force generates the most controversy. Because of the high degree of interest in how, why and on whom police officers use force, this chapter of our report focuses solely on misconduct complaints containing Force allegations. The data include Force Complaints received as well as Force Complaints closed by the Department and audited by the Independent Police Auditor (IPA) in 2016.

The legal foundation for the use of force is found in California Penal Code section 835a:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

Such force must be in accordance with the legal standard that all force used must be objectively reasonable. The San José Police Department (SJPd) Duty Manual 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 L 2602)

The Independent Police Auditor is required by the City's Municipal Code to audit all

complaints containing Force allegations filed by members of the public. The IPA does not have the authority to review Department use of force when no complaint has been filed. This is the case even when the use of force is serious and results in loss of consciousness, broken bones, hospitalization or death.

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.

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 to determine whether 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.

Sixty (60) Force Complaints were received in 2016.²⁰ That number is 9% lower than the number of Force Complaints received in 2015 (66) and is 14% lower than the average number of Force Complaints received over the past five years (70). Illustration 3-A shows the number of Force Complaints received in years 2012 through 2016.

²⁰ Even if a complaint is received in 2016, it may not necessarily be closed in 2016.

Illustration 3-A: Force Complaints Received—Five Year Overview (2012-2016)

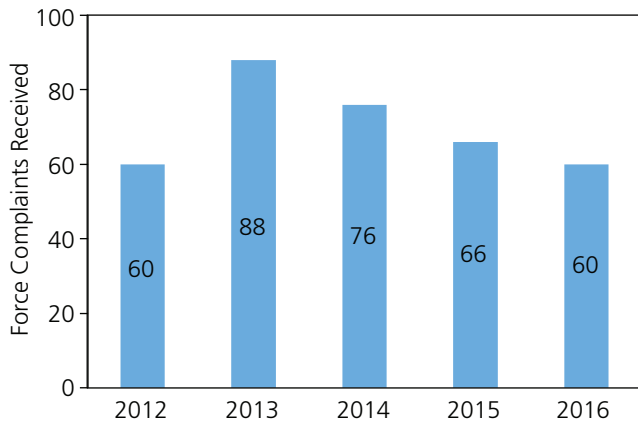
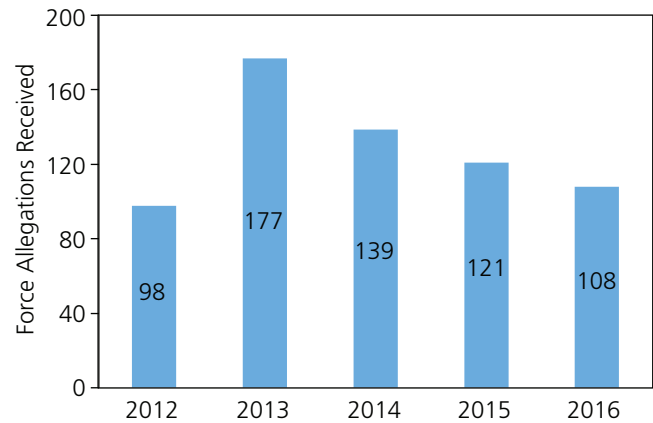


Illustration 3-B: Force Allegations Received—Five Year Overview (2012-2016)



C. Force Allegations

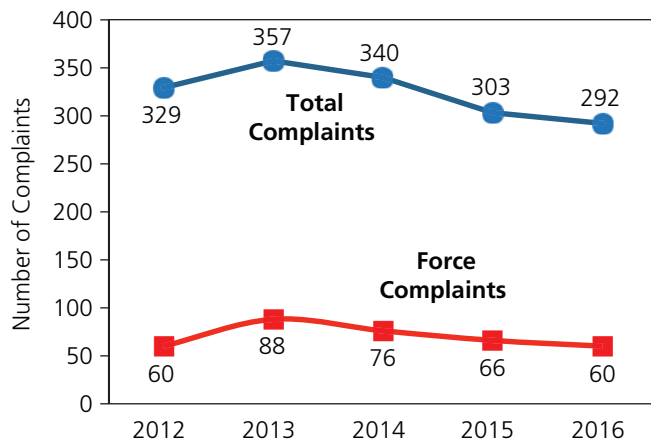
The annual number of Force **allegations** in complaints is always higher than the annual number of Force Complaints because one complaint can have more than one Force allegation. For example, a complainant might allege that one officer struck him with a baton and then another officer kicked him while he was on the ground; this example reflects one Force Complaint with *two* Force *allegations*. The 60 Force Complaints received in 2016 contained 108 Force allegations. Thirteen fewer Force allegations were received in 2016 than in 2015; an average number of 129 Force allegations were received over the past five years. As we stated in last year's report, the Department does not publish statistics about overall use of force, thus we have no way of attributing the decrease in Force allegations to any particular reason. Per the Department, force data will be published for 2017 incidents. This in an encouraging step towards transparency. Illustration 3-B shows the number of Force allegations received over the past five years.

Twenty-one percent (21%) of all complaints received in 2016 were Force Complaints. Illustration 3-C shows the number of Force Complaints relative to all complaints received from the public from 2012 to 2016. The percentage of Force Complaints received in 2016 is comparable to the percentage of Force Complaints received over the previous four years.

Illustrations 3-A, 3-B, and 3-C reflect that, when comparing 2016 data to 2015 data, fewer Force Complaints were filed in 2016 and those Force Complaints contained fewer Force allegations. However, the percentage of Force Complaints relative to all complaints remained steady.

Illustration 3-C: Force Complaints Received Relative to Total Complaints Received (2012 – 2016)

Year	Total Force Allegations	Total Force Complaints	Total Number of Complaints	Force Complaints As % of Total Complaints
2012	98	60	329	18%
2013	177	88	357	25%
2014	139	76	340	22%
2015	121	66	303	22%
2016	108	60	292	21%

Illustration 3-D: Force Complaints Received Relative to Total Complaints Received (Five-Year Trend)

II. Force Complaint Demographics

A. Ethnicities of Complainants of Force Complaints Received in 2106

The IPA attempts to identify the ethnicities of complainants during the initial complaint intakes. Illustration 3-E shows the ethnicities of the 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-E: Force Complaints Received in 2016 — by Complainant Ethnicities*

Ethnicities From Complainant Intakes	Force Complainants		Total Complainants		% of San Jose Population**
	Number	%	Number	%	
African American	6	10%	32	10%	3%
Asian American/Pacific Islander***	5	8%	31	10%	32%
Caucasian	9	14%	54	17%	29%
Hispanic/Latino	24	38%	90	29%	33%
Native American	2	3%	3	1%	1%
Other	0	0%	6	2%	2%
Decline/Unknown	17	27%	94	30%	0%
Complainant Responses	63	100%	310	100%	100%

* 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

B. Subjects of Force Allegations Closed in 2016

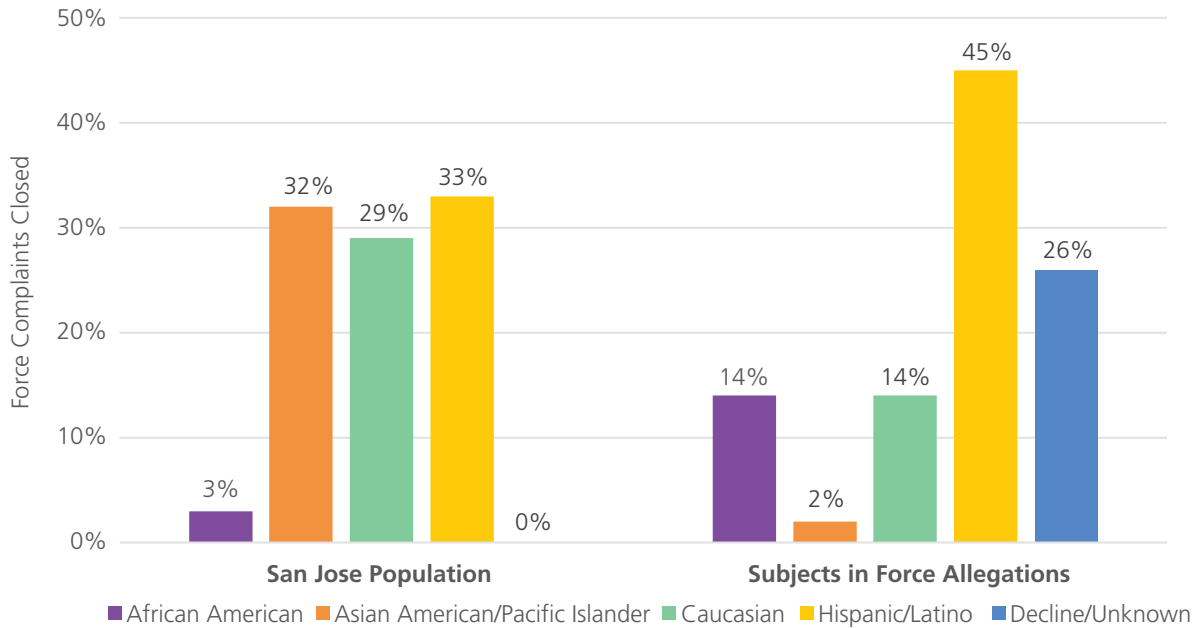
Anyone can file a complaint, regardless of the person's connection to the incident. A complainant may be the subject of force, a witness to force used on another, a relative of the suspect, or a civilian who, having learned about force used upon another, has concerns about that force. Since anyone can 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 62 Force Complaints closed in 2016 to determine the ethnicities, ages and genders of the subject of the alleged force; this data is reflected in Illustrations 3-F, 3-G, and 3-H. This detailed information was gleaned from police reports, citations, and/or medical records. We could identify the race and ethnicities of 66 individuals against whom force was allegedly used, the gender of these persons and their ages. As we have consistently observed in prior years, Hispanics and African-Americans are over-represented in force-related complaints relative to their representation in the city's population.

SJPD Duty Manual Section C 1305 Equality of Enforcement

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

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

Illustration 3-F: Force Complaints Closed in 2016 — Subjects of Alleged Force by Ethnicity



*Source: U.S. Census Bureau, Census 2010. Not all subjects reside within the City of San José; however, all complainants are members of the public.

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

Illustration 3-G: Gender of Subjects in Force Allegations Closed in 2016

Gender	Number of persons	% of Total persons
Male	50	76%
Female	16	24%
Total persons	66	100%

Illustration 3-H: Ages of Subjects in Force Allegations Closed in 2016

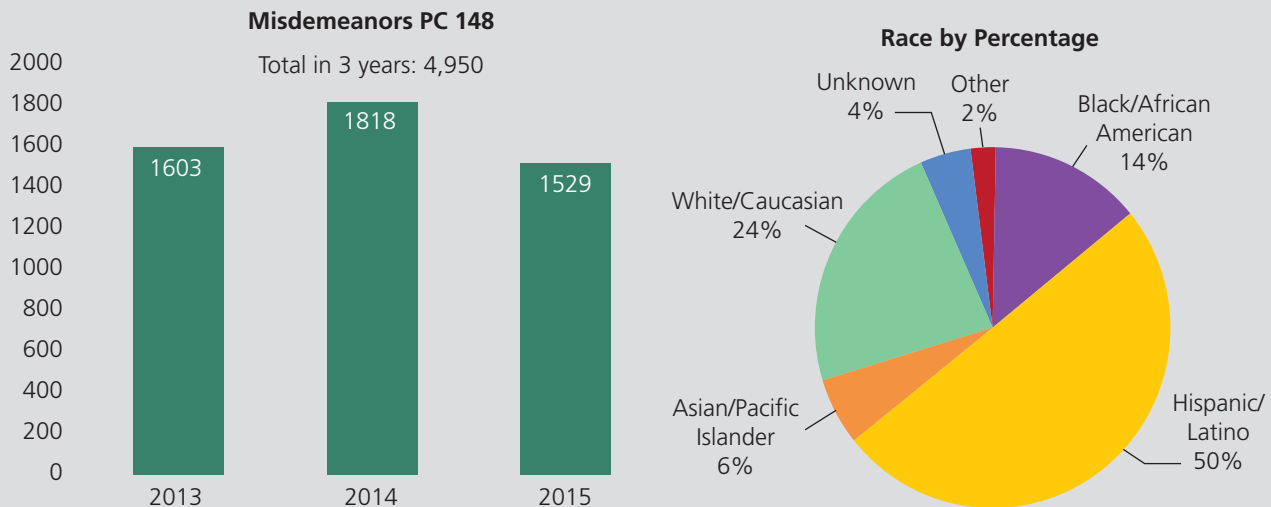
Age Range	Number	%
Under age 20	13	20%
20-29 years	17	26%
30-39 years	18	27%
40-49 years	7	11%
50-59 years	10	15%
60 and over	1	2%
Total persons	66	100%

Disparities found elsewhere in the criminal justice system in Santa Clara County

Because the San José Police Department has not released use of force data since 2009, we are unable to determine whether racial disparities in complaints received reflected similar disparities in use of force by officers.

The Santa Clara District Attorney, however, released a study in 2016 which showed racial disparities in the filing of criminal complaints.* We particularly focused on individuals arrested and charged with resisting arrest (Penal Code section 148) because that charge often follows a use of force incident. The District Attorney's study found a racial disparity in filing of resisting arrest charges. The racial breakdown of the county is roughly: 3% African American, 27% Hispanic, 33% Caucasian, and 35% Asian/Pacific Islander. The study revealed this racial breakdown for resisting arrest charges: 14% African American, 50% Hispanic, 24% Caucasian and 6% Asian/Pacific Islander.

Resisting Arrest Misdemeanors; Penal Code section 148



A disparity does not necessarily mean that there is discrimination by law enforcement or the prosecution. It does mean, though, that further exploration is critical to understand why the disparities exist. Being transparent about such an inquiry would go a long way to improve relations with communities of color.

*Race and Prosecutions 2013-2015, A Report of the Santa Clara County District Attorney's Office.

https://www.sccgov.org/sites/da/newsroom/newsreleases/Documents/Race%20and%20Prosecutions%20Report_1.pdf

III. Data Tracked from Force Complaints

The IPA analyzed data from Force Complaints to determine whether any trends or patterns can be detected. The IPA tracked 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 gathered 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 collected data about the types of force used to track the frequency as shown in Illustration 3-1. The total number of types of force alleged is always greater than the total number of Force Complaints because there is often more than one type of force alleged in one complaint. There may also 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 applications of force by 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 108 Force allegations included 130 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, electronic control weapons (TASER) 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 his/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-I: Types of Force Applications in Allegations Closed from 2012 through 2016

Type of Force	2012		2013		2014		2015		2016	
	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications
Baton	15	7%	10	8%	14	6%	14	8%	9	7%
Body Weapons	40	18%	38	29%	66	31%	57	31%	30	23%
Canine Bite	1	0%	1	1%	1	0%	6	3%	7	5%
Car Impact	1	0%	0	0%	1	0%	0	0%	1	1%
Chemical Agent	2	1%	1	1%	4	2%	3	2%	0	0%
Control Hold	86	39%	53	40%	74	34%	62	33%	55	42%
Flashlight	0	0%	0	0%	0	0%	0	0%	1	1%
Gun	3	1%	8	6%	8*	4%	4**	2%	2***	2%
Lifting up cuffs	3	1%	1	1%	2	1%	1	1%	1	1%
Takedown	60	27%	19	14%	37	17%	31	17%	21	16%
Taser	10	5%	2	2%	9	4%	8	4%	3	2%
Other	0	0%	0	0%	0	0%	0	0%	0	0%
Total	221	100%	133	100%	216	100%	186	100%	130	100%

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

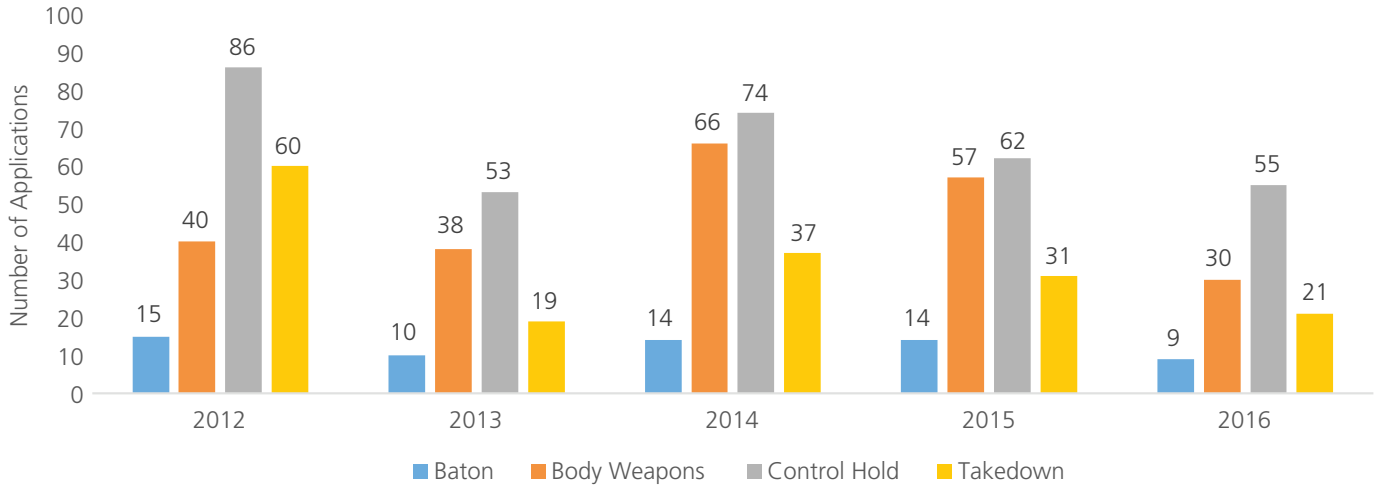
** In 2015, there were 4 gun applications; 2 involved use of a less lethal projectile weapon.

*** In 2016 there were 2 complaints alleging gun-related force, neither involved use of a less lethal projectile.

Control holds was the type of force most frequently alleged in Force Complaints that were closed in 2016. The next most frequently alleged type of force was **body weapons**. The use of **takedowns** and **batons** were, respectively, next in order. Illustration 3-J shows the frequency trend over the past five years.

Reviewing types of force applications over a five-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 dropped to 23% in 2016 after several years of increases.

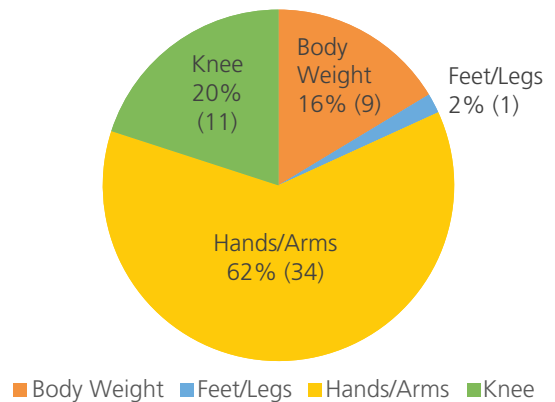
Illustration 3-J: Five-Year Trend Types for Most Complained of Force Applications (2012-2016)



1. Control Holds

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 2016, there were 55 control hold applications that formed the bases of Force allegations. Most of these, 62% (34), involved officers’ uses of hands.

Illustration 3-K: Control Hold Methods in Force Allegations Closed in 2016 (55 total)

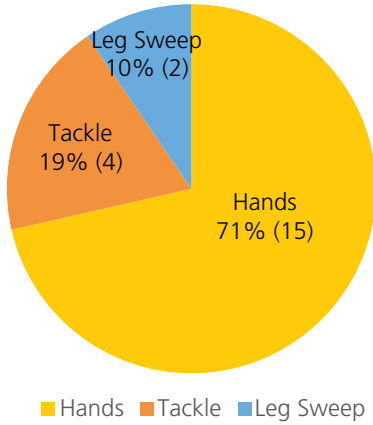


2. Takedowns

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 so to better control his/her movements during handcuffing.

In 2016, there were 21 allegations of an improper takedown. Most of these, 71% (15), involved officers’ uses of their upper limbs (including hands, forearms, and elbows) to push or pull suspects.

Illustration 3-L: Takedown Method in Force Allegations Closed in 2016 (21 total)

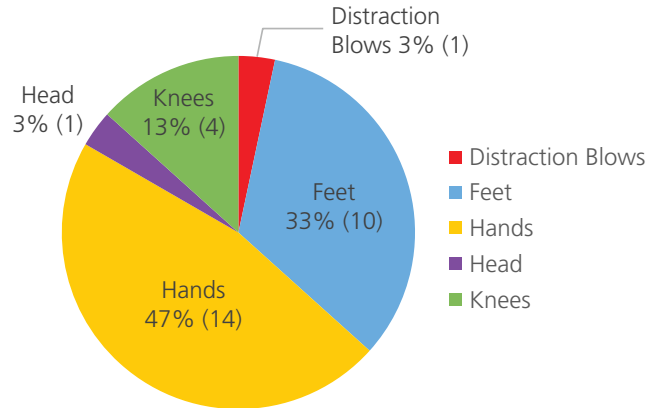


3. Body Weapons

Depending on the circumstances, an officer may need to strike, punch or kick a suspect in order to counter the suspect’s force, to gain compliance or to protect the officer or other persons. For example, if a fleeing suspect suddenly turns and throws a punch at the pursuing officer, that officer may respond with a punch or kick to the suspect. SJPD calls these strikes or blows **body weapons** because

the officer is using a part of his/her body in a manner similar to an impact weapon (e.g., a baton). In 2016, there were 30 body weapon applications that formed the bases of Force allegations. Most of these, 47% (14) involved officers’ use of hands/fists to punch or hit suspects.

Illustration 3-M: Body Weapons Method in Force Allegations Closed in 2016 (30 total)



B. Injuries in Force Allegations Closed in 2016

1. Levels of Injury in Force Allegations Closed in 2016

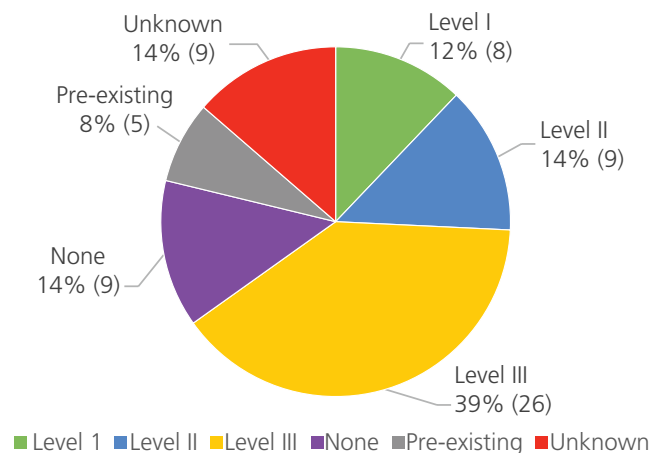
We track the level of injury sustained by civilians through six categories: Level I, Level II, Level III, “none,” pre-existing,” and “unknown.” Level I contains the most serious injuries and Level III reflects the least serious injuries.

Illustration 3-N: Levels of Alleged Injuries

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

Data from Force Complaints closed in 2016 show that allegations of the most serious, Level I, injuries accounted for 12% of incidents resulting in force complaints. In another 14% of complaints that alleged force, moderate or Level II injuries were sustained. The largest source of complaints came from incidents that resulted in the least significant injuries, Level III, accounting for 39% of complaints.

Illustration 3-O: Levels of Most Serious Injury in Force Allegations Closed in 2016



2. Location of Force Applications in Allegations Closed in 2016

The IPA tracks which part of the body the complainant alleges was affected by the use of force. 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 a great potential to cause serious injury. In 2016, the IPA closed 15 complaints in which the complainant alleged an officer applied force to the complainant’s head. This represented 16% of all closed force complaints, a decrease from 24% in 2015. Illustration 3-P provides data showing the parts of the body that complainants reported were impacted by the use of force.

Illustration 3-P: Location of Force Applications in Allegations Closed in 2016

Locations of Force Applications	Number	%
Head	15	16%
Neck	4	4%
Torso	35	38%
Limbs	33	35%
Unknown	6	6%
Total	93	100%

IV. Force Complaints and Allegations Closed

A. SJPD Findings for Force Allegations Closed in 2016

From 2012 through 2016, two Force allegations were sustained. Each year, the Department has closed the majority of the Force allegations with a finding of Exonerated,

meaning that their investigations determined that the level and the type of force used by the officers were found to be reasonable and justified. In 2016, 79% of Force allegations were closed as Exonerated. This is within the range of prior five years from a low of 67% in years 2012 to a high of 84% in 2015. The percentage of Force allegations closed as Not Sustained saw a steady decrease from 2012 (4%) to 2015 (0%). Not Sustained means that IA’s investigation “failed to disclose sufficient evidence to clearly prove or disprove the allegation.” In 2016, however, the number of Not Sustained findings in Force allegations rose to 7 (6%). Illustration 3-Q provides information about Department findings for each of the 686 Force allegations closed between 2012 through 2016.

Illustration 3-Q: SJPD Findings for Force Allegations Closed — Five Year Overview (2012-2016)

Disposition of Force Allegations	2012		2013		2014		2015		2016	
	#	%	#	%	#	%	#	%	#	%
Sustained	0	0%	0	0%	1	1%	0	0%	1	1%
Not Sustained	7	4%	0	0%	4	2%	0	0%	7	6%
Exonerated	107	67%	75	81%	141	77%	114	84%	92	79%
Unfounded	23	14%	14	15%	24	13%	12	9%	10	9%
No Finding	12	8%	4	4%	5	3%	8	6%	2	2%
Complaint Withdrawn	3	2%	0	0%	6	3%	1	1%	1	1%
Other	7	4%	0	0%	1	1%	1	1%	3	3%
Total	159	100%	93	100%	182	100%	136	100%	116	100%

B. IPA Audit Determinations

The IPA is mandated to audit all complaints with Force allegations. In 2016, the IPA audited 62 Force Complaint investigations. The IPA agreed with the Department in 44 (71%) of these cases after a first review. In 18 instances (29%) we requested that Internal Affairs provide additional documentation, conduct additional interviews, collect more evidence, and/or conduct a re-analysis of the facts and supporting rationales. Once the additional investigation or analysis was completed, we

conducted a second review before issuing our audit assessment. If standards were now met, we closed the case with an assessment of Agreed After Further. That was the conclusion in seven (11%) of the Force Complaints. We had reservations about the Department’s investigation or analysis in eight cases (13%) that we closed as Closed with Concerns. In three Force Complaints (5%) we concluded that the Department investigations were not complete or objective and closed the case as Disagreed.

Illustration 3-R: IPA Audit Determinations of Force Complaints Closed in 2015 and 2016

IPA Audit Determination	Explanation of IPA Audit of the IA Investigation of Force Complaints	2015		2016	
		Audits	%	Audits	%
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	53	73%	44	71%
Agreed after Further	IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	12	16%	7	11%
Closed with Concerns	IPA questioned the IA investigation and/or IA analysis.	3	4%	8	13%
Disagreed	IPA audit concluded that the IA investigation was not thorough, fair and objective.	5	7%	3	5%
	Total Force Complaints Audited	73	100%	62	100%

Illustration 3-R reflects that, in 2016, the IPA closed Force complaint investigations with an assessment of Disagreed or Close with Concerns in 18% of such complaints. In 2015, the IPA completed audits with an assessment of either Disagreed or Close with Concerns in 11% of Force complaint investigations.

V. Officer Involved Shootings

SJPD policy prescribes the circumstances when an officer may use lethal force, namely a firearm:

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. (Duty Manual section L 2638)

A. SJPD Officer-Involved Shooting Investigation Process

Criminal Process

Every officer-involved shooting that results in death is subject to a thorough investigation

and review process as depicted in Illustration 3-U. As the illustration indicates, the Department's **Homicide Unit conducts a criminal investigation** which is then submitted to the Santa Clara County District Attorney. Historically, the District Attorney's office presented the deadly force cases to a grand jury. However, the current District Attorney, Jeffrey Rosen, has had a policy of reviewing cases and then making the determination internally whether the officer-involved shooting was a crime. A new statute took effect on January 1, 2016 that prohibited a grand jury from bringing an indictment against any officer in an officer-involved shooting. (California Penal Code section 917(b).) However, the Third Appellate District recently ruled that the statute was in violation of the State Constitution.²¹ No appeal of that ruling was filed.

²¹ *People v. Superior Court of El Dorado County (South Lake Tahoe Police Officers' Association, et al.)* 7 Cal. App. 5th 402 (2017).

Administrative Process

In addition to the investigation conducted by the Homicide Unit, the **Department's Internal Affairs Unit conducts** a separate investigation.²² This is **an administrative investigation** to determine whether the use of force was within Department policy. If a member of the public files a complaint about the shooting incident, the investigation by Internal Affairs is provided to the IPA; the IPA then reviews and completes its audit of that

investigation.

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-S, 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 administrative investigation of the incident.

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

All Officer-Involved Shooting Incidents	Officer-Involved Shooting Incident Where 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 Officer Involved Incident Training Review Panel. IPA is provided with pertinent documents to prepare for panel.	IPA can participate in the Officer Involved Incident Training Review Panel. IPA is provided with pertinent documents to prepare for panel.
The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.	The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.
IPA NOT PRESENT	IPA can attend interviews of witnesses and any subject officers conducted by IA during the Department's investigation of whether the force was in policy.
IPA CANNOT AUDIT	The Department investigation determines whether the officer acted within SJPD policy. The IPA audits the Department's investigation to determine whether it was fair, thorough, complete and objective.
IPA CANNOT APPEAL	IPA can appeal the Department's determination of whether the force was within policy to the City Manager.

²² The Duty Manual requires that the Internal Affairs Unit "conduct an investigation . . . (w)hen injury or death results from police use of deadly force." (Duty Manual section L 2607)

Officer Involved Incident Training Review Panel

The Department also convenes a shooting review panel to examine whether the incident reveals that a possible training, equipment or policy issue exists requiring closer examination.

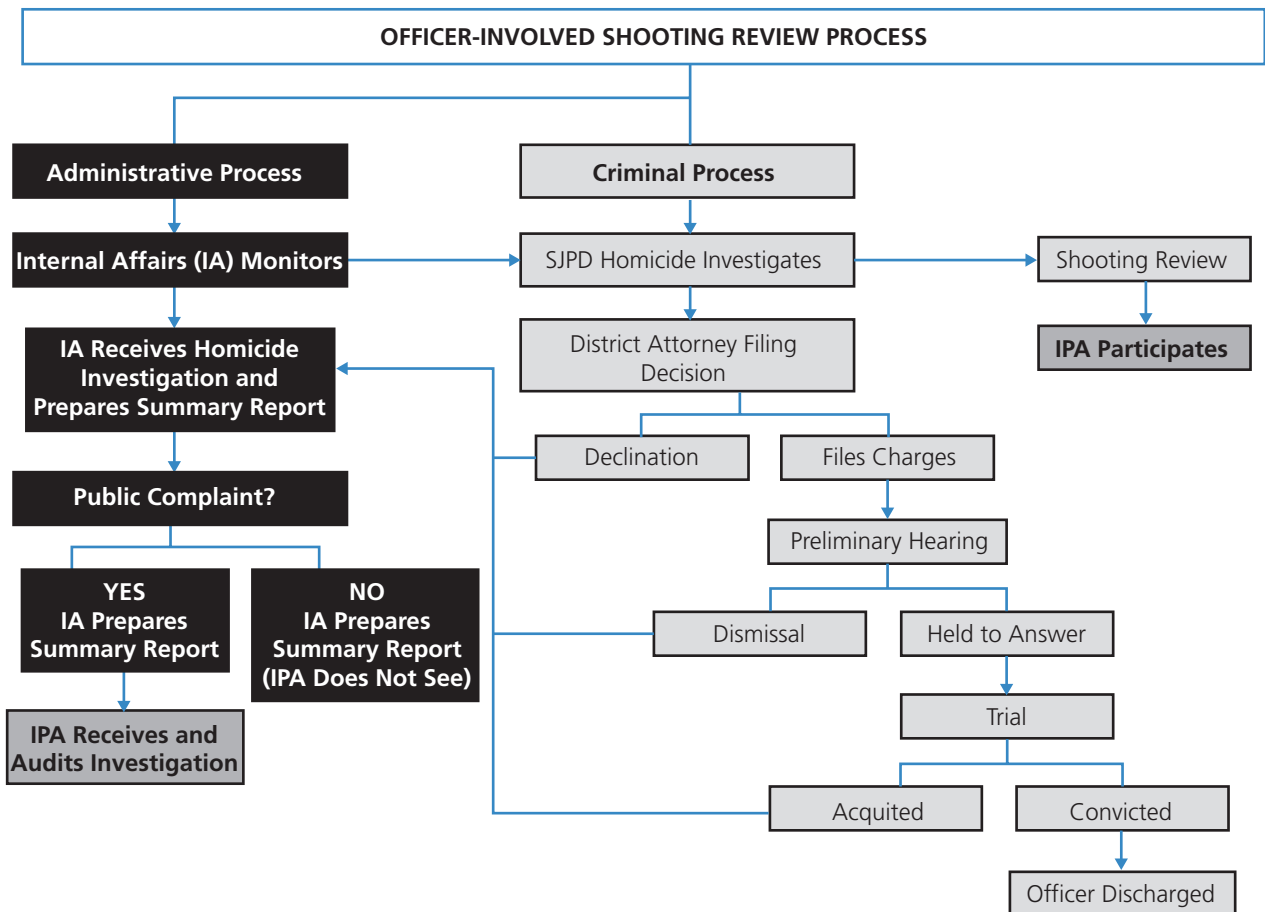
Duty Manual section L 2646 provides:

The Internal Affairs Unit Commander will convene the Officer-Involved Incident Training Review Panel within 90 days of the incident to determine and recommend any training that should be provided from what is learned about the incident. This meeting shall occur even though the District Attorney's Office has not issued its final report. Since the City Attorney participates in the OIS Training Review Panel, these sessions are subject to the attorney-client privilege and thus the discussions are confidential.

Officer-Involved Incident Training Review Panel Presentation. Homicide Unit Investigators will present a factual synopsis of the incident and investigation to the Panel for the purpose of reviewing Department policy and procedures, training and tactics, officer safety, equipment and communication.

Since the implementation of the new policy, the Department has been holding Officer Involved Incident (OII) review panels within 90 days of the incidents. The IPA and the Assistant IPA attend the OII review panels and can ask questions about training, procedures and equipment. These sessions provide the IPA with valuable information that can serve as the foundation for future policy recommendations. The IPA and Assistant IPA attended all seven review panels that were held in 2016.

Illustration 3-T: Officer-Involved Shooting Review Process



B. Officer-Involved Shooting Statistics

The San José Police Department had five officer-involved shootings incidents (OIS) in 2016. This is a significant decrease from 12 incidents that occurred in 2015. Two of the shootings in 2016 were fatal, two were hit-shootings resulting in injury, and in one incident the suspect was not struck.

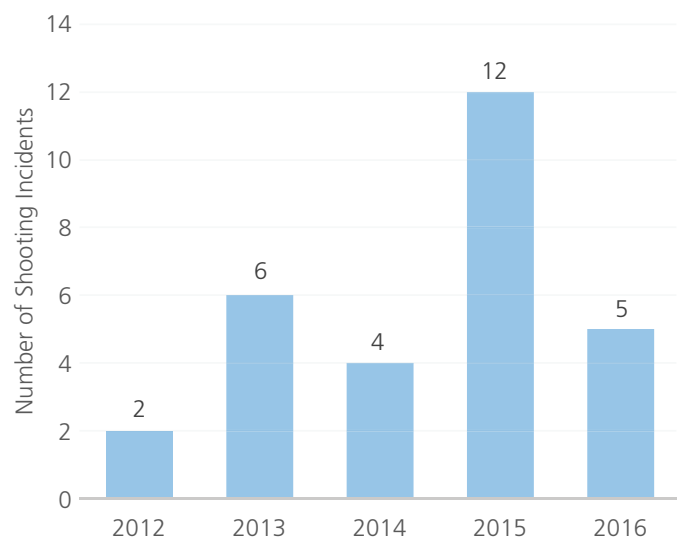
The data supplied by SJPD for 2016 showed that Hispanic suspects were involved in four of the five OIS incidents. In all five incidents, SJPD classified the suspect as armed. According to SJPD, only one of the five civilians who was part of an officer-involved shooting incident had a history of mental illness that was known to the Department – namely as a result of prior calls for service or holds initiated by Welfare & Institutions Code section 5150. The five OIS incidents are summarized in Illustration 3-V.

In our last Year End Report, we wrote:

Recently, the Ruderman Family Foundation published a study where it concluded that “it is safe to say that a third to a half of all use-of-force incidents involve a disabled civilian.”²³ It is important that the Department gather as much information as possible about a person’s history and whether the person was in some form of an acute state at the time of the force was used to get a proper understanding of the role of disability and mental illness in police encounters. This will help the Department refine its policies and de-escalation training and thus hopefully reduce the likelihood of resorting to force during encounters with the mentally ill.

A year later, we do not believe that the SJPD has taken any steps to better understand the role of mental illness and the effectiveness of Crisis Intervention Training regarding the use of lethal force. We discuss the need to validate its Crisis Intervention Training later in the Policy Recommendation chapter (See Recommendation #5).

Illustration 3-U: Officer-Involved Shootings (2012-2016)



²³ David M. Perry and Lawrence Carter-Long. “The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability,” March 2016.

Illustration 3-V: Officer-Involved Shooting Incidents in 2016

OIS No. 1	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	Knife (on-going assault on person)
	Prior convictions --	No (active restraining order)
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	No
	Number of officers who fired weapon	1
	Involved officer(s) experience --	20 years
OIS No. 2	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Injured
	Armed --	Assault pistol
	Prior convictions --	Misdemeanor
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	3
	Involved officer(s) experience --	9, 2.5 and 2.5 years
OIS No. 3	Race of suspect --	White
	Gender --	Male
	Deceased or injured --	Injured
	Armed --	Axe (on-going assault on civilian)
	Prior convictions --	Felony
	On probation or parole --	No
	Known mental health history --	Yes
	CIT on scene --	Yes
	Number of officers who fired weapon --	2
	Involved officer(s) experience --	24, 3.5 years
OIS No. 4	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	Handgun
	Prior convictions --	Felony
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	2
	Involved officer(s) experience --	15, 11 years
OIS No. 5	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	No
	Armed --	Vehicle
	Prior convictions --	Felony
	On probation or parole --	Yes - probation
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	3
	Involved officer(s) experience --	3.7, 3.7, 2 years

Chapter Four: PA Policy Recommendations to the SJPD

I. INTRODUCTION

One of the roles of the Office of the Independent Police Auditor (IPA) is to make policy recommendations to the San José Police Department (SJPD). Through our independent review of complaint investigations, as well as information we learn from the public through community outreach, we have a unique perspective to make informed proposals to the SJPD about policies and procedures. These can range from the ways in which Internal Affairs conducts complaint investigations to policies which have a direct impact on how officers engage with the public.

In 2016, the Office of the IPA reviewed how we develop and make policy recommendations to the SJPD. We identified a significant time delay in our process that warranted improvement. Traditionally, we would note issues for recommendations throughout a calendar year – mainly through our audits of completed conduct complaint investigations. But the investigation is usually not completed until long after the incident of alleged misconduct occurred. Two factors create the time gap: (1) complaints are sometimes not filed until months after an incident and (2) once the complaint is filed, the investigations can take up to a year to complete. Thus, it is possible that a serious policy issue may not be brought to the surface until nearly two years after the incident took place.

Further delay was created because our office would generally collect possible recommendations throughout the calendar year and then deliver them to the SJPD in December. These recommendations would

then be described in the Year End Report published the following Spring. The SJPD would decide during the ensuing year whether to enact, or not enact, the policy recommendations. In other words, we found that taken to its extreme, it could take more than three years from the date of an incident to the implementation of a new policy. We concluded that the time-frame was far too long for critical issues to be addressed and were determined to substantially shorten it.

When we now identify potential policy issues, we first determine whether it is an issue which, if left unaddressed, could directly impact the physical well-being of civilians. In such instances, rather than following the path described above, we drafted Policy Briefs where we quickly developed detailed policy recommendations and presented them to the SJPD Command Staff.

II. POLICY BRIEFS

As stated above, we developed a new product to deliver to the SJPD called a Policy Brief where we took the following steps:

1. Identified the issue.
2. Identified current SJPD policy and training.
3. Reviewed relevant policies at other larger agencies both within and outside California.
4. Learned best practices recommended by the federal government, such as the Department of Justice, and other law enforcement organizations, such as the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF).

In 2016, Mr. Katz produced two policy briefs on particularly urgent issues: (1) head strikes with impact weapons and (2) positional asphyxiation. The first brief was due to a review of a force complaint where an officer arresting an armed assaultive person, struck him in the head with his baton. The officer stated that he had been aiming for the suspect's shoulder but, because the suspect was thrashing around on the ground, missed and accidentally struck him in the head. The impact caused a serious injury leading to the suspect's admission into the intensive care unit at a local hospital.

In our review of that incident, we discovered that the SJPD did not have a policy which expressly prohibited the intentional striking of a person's head with an impact weapon. While there was no evidence in the case that the baton strike to the head was intentional, we thought that the absence of policy regulating intentional head strikes was similar to the absence of a chokehold policy that the IPA identified in 2014.

Our review of other large police departments found that most other agencies had policies specifically prohibiting head strikes with impact weapons unless deadly force was justified. Policy Brief #1 reflects that standard; the brief can be found at Appendix H. Mr. Katz delivered the policy brief in June 2016; the very next month, SJPD responded with a draft of new policy reflecting our recommendations. We had hoped that the policy would be formalized by the publication of this report; however, it is still in a draft stage.

Another urgent issue identified in November 2016 formed the basis for Mr. Katz's second policy brief. Some highly combative persons – especially if under the influence of certain controlled substances – can exhibit symptoms of “excited delirium,” which can lead to

sudden cardiac death, especially while being restrained after a struggle. Many departments have policies, protocol and training in place to mitigate that risk. We discovered that while the SJPD had provided some guidance on the risk in the past, it did not have current policy or updated training.

Because any particular incident can lead to a fight with a combative suspect at risk of sudden cardiac death, we determined that it was urgent to provide policy guidance to the SJPD as quickly as possible. Mr. Katz presented Policy Brief #2 on positional asphyxiation and sudden cardiac death *within two weeks of identifying the issue*. This brief can be found at **Appendix I**.

III. 2016 IPA RECOMMENDATIONS

In addition to the two recommendations described in the policy briefs (head strikes with impact weapons and positional asphyxiation), Mr. Katz presented additional policy recommendations to the Department. The topics range from narrow technical matters relating to IA procedures to broader issues calling for significant commitments by the SJPD to reform or improve areas of ongoing concern. These policy recommendations are summarized here.

3. Initiation of Allegations of Force:

Two complaints gave rise to this recommendation to clarify an officer's duty to report allegations of excessive force. These two complaints revealed an inconsistency in how supervisors handle allegations of misconduct made by arrestees. In the first incident, officers used force while arresting a suspect. A supervisor interviewed the arrestee at the scene and recorded the interview. In the recording, the arrestee clearly alleged that the officers had used excessive force and that they were

“bad officers.” The supervisor did not contact his superior or Internal Affairs to inform either of these allegations. A few days later, the arrestee filed a complaint at Internal Affairs and a formal investigation was launched. The complaint was subsequently closed with a Sustained finding against an officer.

The second incident also involved a use of force. Similar to the case above, the arrestee told the on-scene supervisor that the officer’s use of force was excessive, although his description of what occurred was vague. Regardless, the supervisor sent an email advising Internal Affairs of the allegation. The notification eventually led to a formal investigation.

Identified issue:

The SJPD Duty Manual does not expressly require personnel to report an allegation of excessive or unreasonable force.

Recommendation:

The SJPD Duty Manual should be amended to place an affirmative duty on personnel to report any allegation of unreasonable force to a supervisor. The supervisor, in turn, should be obligated to report the allegation to Internal Affairs.

4. Vehicle Blocking Maneuver / Tactical Parking:

SJPD Duty Manual section L 2115 allows any officer to engage in “tactical parking” which are coordinated maneuvers to apprehend a “fleeing vehicle.” Such tactics in other police departments are limited to specialized units who receive regular training in executing the difficult tactic of using police vehicles to box in a moving suspect vehicle. The IPA is concerned that patrol officers are not regularly trained in such tactics. Such lack of training increases risk of traffic collisions and harm to the public. In some incidents, officers are placing themselves in a position where any further movement by

the suspect vehicle can be viewed as an assault on a peace officer which can then lead to an officer-involved shooting. Because of the nature of “tactical parking,” officers are then likely to be in the cross-fire or backdrop should a shooting occur.

Identified issue:

The SJPD Duty Manual does not restrict which officers are allowed to use tactical parking maneuvers. SJPD does not regularly train officers to maintain their skills in such tactics.

Recommendation:

Review SJPD training and policy to determine whether the risks of a broad tactical parking policy outweigh the benefits and determine appropriate policy as a result of the review. Additional training requirements should also be considered.

5. Crisis Intervention Team Data Collection and Assessment:

The SJPD’s training of all officers in Crisis Intervention Training (CIT) is commendable. However, there is no process or policy to evaluate if the training is effective. At present, SJPD is not collecting or analyzing data to assess how often CIT resources are requested, if CIT officers respond to the scene, if they interact directly with the suspect/subject, and the resulting outcomes of such responses. The State of Virginia, for example, has a statewide policy which explicitly requires measurement and assessment of CIT:

The Department, and the Department of Behavioral Health and Developmental Services, shall assess and report on the impact and effectiveness of the crisis intervention team programs in meeting the program goals. The assessment shall include, but not be limited to, consideration of the number of incidents, injuries to the parties involved, successes and problems encountered, the overall operation of the crisis intervention team programs, and

recommendations for improvement of the program.²⁴

A report prepared for the Berkeley Police Department in 2010 pointed out that “data collection/program evaluation is consistently the weakest part of CIT programs.” The report recommended the following data points:

Preliminarily, the following specific data points will help us evaluate the CIT program. If the call or contact involves a mental health consumer or person in crisis add the following: 1. Location. 2. Use of force: Y or N 3. Any injuries (officer, suspect, other) 4. Disposition (arrest, cite and release, no police action, 5150) 5. Was BMC [Berkeley Mobile Crisis] used? 6. How many officers were needed? 7. How much time was spent on the call?²⁵

Identified issue:

The SJPD has a CIT training program but lacks ongoing data collection and program evaluation to measure its effectiveness.

Recommendation:

The SJPD should consult with other agencies, researchers and organizations which have expertise in CIT to develop a data collection/program evaluation process. Such collection and evaluation should be ongoing to continuously assess the effectiveness of CIT implementation.

6. Officers on School Campuses:

Working on a school campus is secondary

employment for SJPD officers. It is voluntary and in addition to an officer’s regular work schedule. As such, the Department has limited training and a non-existent selection process other than requiring the officer take a three-hour legal training class provided by the District Attorney. In 2015 and 2016, the IPA reviewed several complaints stemming from on-campus incidents. This review revealed a recurring issue: officers perceiving and reacting to behaviors by some students as defiant or threatening when the minor was actually going through an emotional crisis at the time and acting in a manner consistent with adolescent development. School administrators were also turning to the campus officer to resolve behavior issues rather than using school resources. Our review further shows that SJPD officers have not been afforded with the most up-to-date education and training on policing young people despite new developments over the past several years from the Police Foundation and other organizations.²⁶

Mr. Katz developed a series of recommendations about officers on school campuses; the IPA acknowledges that implementation would involve a substantial investment in training by the Department:

- 6A. The SJPD should identify which officers regularly work on school campuses and provide additional training for that group. The training should include these components (a) development of the adolescent brain²⁷ (b) trauma-informed approaches to interacting with students

²⁴ “Essential Elements for the Commonwealth of Virginia’s Crisis Intervention Team Programs (CIT),” Dept. of Criminal Justice Services and Dept. of Behavioral Health and Development Services. Oct. 2014. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/va-cit-essentialelements.pdf>

²⁵ Jeff Shannon, “Crisis Intervention Team, A Report with Recommendations.” June 2010. <http://www.berkeleyside.com/wp-content/uploads/2014/04/BPD-CIT-Proposal.pdf>

²⁶ “Defining the Role of School-Based Police Officers,” The Police Foundation. http://www.policefoundation.org/wp-content/uploads/2016/10/PF_IssueBriefs_Defining-the-Role-of-School-Based-Police-Officers_FINAL.pdf

Supporting Safe Schools, Community Oriented Policing Services, U.S. Dept. of Justice. <https://cops.usdoj.gov/supportingsafeschools>

²⁷ Policing and the Teen Brain provided by Strategies for Youth is highly regarded. <http://strategiesforyouth.org/for-police/training/>.

going through temporary crisis,²⁸ and (c) additional training in Crisis Intervention Training for Youth with appropriate measurement of its effectiveness.

- 6B. The SJPD and the school liaison office should collect and maintain data on contacts/detentions, actions taken and outcomes, use of force, citations issued and arrests made by school campus officers.
- 6C. IPA contact information and complaint forms should be available at each campus that has SJPD officers assigned to the school.
- 6D. Any MOU with school districts should include provisions that the receipt of any complaints by school staff about officer conduct should be forwarded to the School Liaison Officer (SLO) program supervisor. The School Liaison Officer, IA or the IPA will provide such complaints to the other two entities upon receipt.
- 6E. SJPD policy should mandate that handcuffing and arrests of students on campus should take place in a private setting if reasonably possible.
- 6F. That SJPD, relevant school districts, and the City of San José should consider creation of an expanded SLO program wherein dedicated officers are assigned to one or more school campuses as their primary responsibility rather than as secondary employment.

7. Use of Force Accountability:

The IPA appreciates that throughout 2016,

Mr. Katz participated in the Department's Use of Force Committee. The dialogue among the members revealed that the SJPD is committed to modernizing its use of force accountability process.

The IPA identified one core issue: the SJPD generally treats all use of force, regardless of severity, exactly the same. The three exceptions are when that force results in a complaint, an in-custody death or involves an officer-involved shooting. As such, the Department has little ability to analyze use of force trends, including data arising from significant use of force incidents. These recommendations have been discussed with the Use of Force Committee and are formalized here as part of the IPA's recommendations for 2016.

In making these recommendations, the IPA evaluated a variety of sources including:

- the President's Task Force on 21st Century Policing,²⁹
- the Guiding Principles on Use of Force developed by the Police Executive Research Forum (PERF),³⁰
- Department of Justice pattern or practice investigations into New Orleans,³¹ Cleveland³² and Baltimore,³³
- policies of other departments,
- IPA audits of complaints filed in 2015 and 2016 containing allegations of force, and,
- SJPD Reports on Department Initiated Investigations, including allegations filed and closed.

²⁸ Jane Meredith Adams, "Schools promoting 'trauma-informed' teaching to reach troubled youth," EdSource, December 2013. <https://edsources.org/2013/schools-focus-on-trauma-informed-to-reach-troubled-students/51619>.

²⁹ President Barack Obama created the President's Task Force on 21st Century Policing in December 2014 by executive order. The Task Force's Final Report was issued in May 2015. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

³⁰ *How PERF's Use-of-Force Guiding Principles Were Developed*. http://www.policeforum.org/index.php?option=com_content&view=article&id=99:how-perf-s-use-of-force-guiding-principles-were-developed&catid=20:site-content

³¹ The Department of Justice opened an investigation into the New Orleans Police Department in 2010; a consent decree was approved in 2013. <https://www.justice.gov/crt/consent-decree-monitor-reports>

³² The Department of Justice opened an investigation into the Cleveland Division of Police in 2013; a settlement was reached in 2015. <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-cleveland-reform-cleveland-division-police>

³³ The Department of Justice opened an investigation into the Baltimore City Police Department in 2015; a consent decree was approved April 7, 2017. <http://www.mdd.uscourts.gov/sites/mdd/files/OrderEnteringConsentDecree.pdf>

One particularly notable item in the DOJ Baltimore report raised concerns about how, and to what extent, SJPD has been reviewing the force used by its officers.

Baltimore City Police Department	San José Police Department
Years 2010-2015	Years 2010-2015
2,818 force incidents recorded ³⁴	Unknown how many force incidents occurred ³⁵
10 force incidents were investigated internally based on concerns identified through internal review ³⁶	No force allegations initiated by the department against any officer ³⁷
Investigation found one incident involved excessive force ³⁸	

It appears that of the thousands of use of force incidents that took place between 2010 and 2015, not once did a SJPD supervisor or executive believe that a use of force was questionable enough to justify opening an investigation. In 2016, one DII use of force was opened, but that incident was unique because of the presence of surveillance camera footage. Through the review of force allegation investigations that the IPA completed in 2016, we saw numerous times how a significant use of force did not come to the attention of SJPD management or IA unless a complaint was filed. That strongly suggests there are numerous uses of force where serious injuries occurred which are unknown to anyone but the involved officers, their immediate supervisor and perhaps a Lieutenant.

Recommendations:

7A. Policy should be clear that sergeants who use or direct force should not conduct a use of force investigation. Current policy is vague and some supervisors believe that if they use force, they can self-investigate. Policy should be amended that a supervisor has a duty to notify his or her supervisor of the use of force incident.

7B. Current policy allows an officer to review Body Worn Camera (BWC) footage prior to writing his or her report. Involved officers should not be allowed to view BWC or other video footage prior to providing their initial narrative or statement about the use of force. Once they have written their report or provided a statement, an officer should be allowed to view the footage and add any additional information learned through the viewing while clearly stating that the additional information was learned from the footage rather than the officer's recollection. As part of any force evaluation or complaint investigation, investigators should specifically ask if the involved officer viewed any video footage prior to providing a statement.

7C. At present, SJPD policy does not classify use of force by the weapon used or injury sustained. The recommendation is that the SJPD create three tiers of force. The least serious tier should be for force which leaves no visible injury or complaint of pain, and the use of OC spray. The second or middle tier should include use of TASER, impact weapons, and uses of force that lead to injuries or a complaint of pain, and minor bone fractures. The

³⁴ Executive Summary, Investigation of the Baltimore City Police Department, U.S. Department of Justice August 10, 2016, page 7 <https://www.justice.gov/crt/file/883371/download>.

³⁵ Since 2005, SJPD officers have been required to complete a Force Response Report form when an officer uses reportable force. In 2007 and 2008, the Department issued a report providing detailed statistics on the force used during the calendar year 2006 and 2007. Since then, the Department has not publicly issued such similar reports even though it still collects use of force data.

³⁶ Investigation of the Baltimore City Police Department.

³⁷ SJPD Department's annual Reports on Department Initiated Investigations 2010 through 2015.

³⁸ Investigation of the Baltimore City Police Department.

third tier should be for serious uses of force, such as loss consciousness, impact weapons to the head, kicks to the head, bone fractures, and hospital admissions. Force in the various tiers should be investigated and evaluated differently.

- Force in the first tier should be investigated by the officer's supervisor and evaluated by the chain of command up to the officer's captain unless a violation of the Duty Manual is suspected.
- Force in the second tier should also be evaluated by the officer's supervisor, but the evaluation of the force should occur at a higher level in the chain of command at the Bureau level.
- The IPA recommends that SJPD create a Force Investigation Team, which investigates all use of force in the third tier. Such force incidents should then be evaluated by an executive force review panel. The panel would determine if the acts appear to have been in policy. If it appears that an officer was not acting in policy, the matter should be referred to Internal Affairs for further investigation, if necessary. Such a process is practiced by other large law enforcement agencies in California, including the Oakland Police Department, the Los Angeles Police Department, and the Los Angeles Sheriff's Department.

- 7D. The evaluation of all use of force by chain of command or review panel should include an assessment of pre-force tactics, the use of de-escalation techniques, where practicable, and the presence and use of crisis intervention trained officers. Such an evaluation is not focused on whether misconduct occurred but whether best practices and tactics were applied to the situation.
- 7E. The IPA have access to and audit all third tier use of force investigations for objectivity, thoroughness, and fairness regardless of whether a complaint is filed.
- 7F. The SJPD should invest in force analysis software and other data tools so that use of force data can be evaluated by Department decision-makers down to shift, district, beat and officer level. At a minimum, such tools should allow analysis of the time, location, day of week, involved units and other similar factors.

Chapter Five: IPA Audits in 2016 – A Focus on Transparency

When we perform an audit of a complaint, we assess whether the investigation and analysis by Internal Affairs into the alleged police misconduct were conducted in a fair, thorough, and objective manner. We then close each audit in one of the following ways:

- Agreed
- Agreed After Further Action
- Closed with Concerns
- Disagreed

Internal Affairs closed 305 cases in 2016. The Office of the Independent Police Auditor audited 91%, or 277 of these cases. In 79% of our audits, we agreed with IA's initial conclusions, and did not ask IA to undertake additional actions. In another 9% of the cases, we agreed after IA took further actions that we recommended. Typical further actions included expanding IA's investigation, re-interviewing a witness about an unresolved issue, and re-examining their analyses. The result was that we closed a review as Agreed or Agreed After Further Action in 88% of our audits in 2016. In just 12% of our audits we disagreed or had concerns about IA's investigations and/or analyses.

The Agreed After Further closings are especially significant because they reveal not only the open and respectful lines of communication that exist between the Office of the IPA and IA, but also the credibility of our office that our recommendations are frequently implemented. Additionally, when IA undertakes further action on these cases, their subsequent investigations are more thorough and their analyses have

greater objectivity. In some instances, we persuaded IA to change their findings to ones more favorable to the subject officers than IA's initial findings. Conversely, there were instances where IA persuaded us that their conclusions were appropriate after we asked IA to re-examine their analyses.

Transparency is critical to maintaining the public's trust in the work of the IPA office. The better that the public understands our role in the complaint and audit processes, the more willing the public will be to seek the services of our office, should the need arise. However, the laws governing confidentiality limit our ability to be transparent. Complaints and investigations of complaints are considered part of an officer's personnel file. Disclosure of the contents of personnel files are prohibited by state law except in limited circumstances.³⁹ Thus, we are prohibited by law from revealing to the public the identities of complainants and the identities of officer investigated for alleged misconduct. We also cannot disclose the discipline, if any, imposed upon officers deemed to have engaged in misconduct. A breach of confidentiality is a serious matter that can result in criminal prosecution.

In an effort to promote transparency about our audit process, while strictly adhering to the requirements of confidentiality, this Report presents summaries of all of the cases that our office audited in 2016, in which we Agreed After Further, Closed with Concerns, and Disagreed. We have "sanitized" these summaries so that the identities of the complainants and subject officers are protected

³⁹ See California Penal Code sections 832.5 and 832.7

from public disclosure. Similarly, this Report includes summaries of a sample of cases in which we agreed with IA's investigations and conclusions without asking IA to take further action.

Our goal in providing this information about our audits is to ensure that the public understands that independence and objectivity are an integral part of the work of the Independent Police Auditor. The cases that we audited in 2016 and that are described in the following summaries, demonstrate that the IPA's civilian oversight audit process, while it can always be improved, does work.

To reiterate, our case reviews are not independent investigations of the alleged facts. The Internal Affairs Unit conducts the investigation of the alleged misconduct. The IPA audit focuses narrowly on whether *that investigation and analysis was fair, thorough, complete and objective*.

Agreed at First Review

Case #1:

Complainant filed a complaint about an incident involving his girlfriend. He believed that a male officer should not have searched his girlfriend and that a female officer should have done the search (Search). He also stated that the on-scene supervisor was discourteous and belittled him (Courtesy). His girlfriend also complained. She alleged that an officer groped her during a pat-search (Search) and that she was inappropriately handcuffed (Procedure). She also believed that the officer racially profiled her because she is Hispanic (Bias-Based Policing).

IA's Conclusion:

IA determined that the Bias-Based Policing

allegation was Unfounded because there was no evidence of racial bias. IA determined that the officers did not improperly detain the girlfriend by placing her in handcuffs because dispatch provided initial information that she may have been a wanted felon. Once dispatch confirmed that the felony warrant was for another person with the same name, the handcuffs were removed and the girlfriend was released from the scene. IA determined that the pat-down was within policy (Exonerated). Several officers who watched the search stated that it was limited to the outside of the clothing at the waistline area only (Unfounded). Lastly, IA concluded that the supervisor was not discourteous to the complainant based on the audio recording made of the conversation (Unfounded).

IPA Agreement and Rationale:

Our primary concern was the allegation of groping during pat search. The only percipient witnesses were the girlfriend and SJPD officers. However, the witness officers were charged that night to ensure the less-experienced officer, who conducted the pat-search, performed the search properly. This less-experienced officer was watched by both his Field Training Officer (FTO) and an on-scene supervisor. Given that the FTO and the supervisor had affirmative duties to ensure the search was proper, the IPA determined the finding of Unfounded was supported by the evidence. The IPA agreed that the investigation and analysis of the remaining allegations were thorough and complete.

Case #2

Complainant alleged that he was unfairly targeted by an undercover officer during a downtown undercover drug operation. He stated that, while he was in downtown

San José waiting for his girlfriend, a person (later determined to be the subject officer) approached him. The person asked, using street slang, if he could buy narcotics. Complainant said he ignored the person's request and denied selling him any drugs. He admitted that he had been drinking but denied that he was intoxicated. He was unsure why the officer targeted him; he felt he was entrapped and specifically stereotyped because of his visible tattoos or his race (Bias-Based Policing).

IA's Conclusion:

Two SJPD officers were in constant surveillance at all times during the interaction of the undercover officer and the Hispanic male. The undercover officer gave the male some cash and the male gave the officer a package wrapped in cellophane. The male was later arrested. The video showed that the undercover officer approached a number of persons, varying in both race and gender. IA determined that the Bias-Based Policing allegation was Unfounded.

IPA Agreement and Rationale:

The IPA determined that the IA investigation and analysis was thorough and complete and that the evidence supported the finding.

Case #3

Complainant filed a complaint against unknown officers. Complainant was driving his vehicle when he observed two officers detain a male bicyclist. The complainant saw an officer search the male who suddenly spun away from the officer. Allegedly, the officer grabbed the male and drove the male face-first into the ground. The officer then placed his knee on the male's neck while the second officer struck the male with his baton three to five times. Complainant began recording the incident

with his cell phone but alleged that a third officer intentionally stood in his view to block him from recording. Complainant alleged that the baton strikes were excessive (Force) and that the officer purposely blocked him from recording the event (Procedure).

IA's Conclusion:

The subject officer was patrolling when he stopped the suspect who was riding his bike without a light - a violation of the vehicle code. The suspect was wearing over-sized clothing and the area, known for gang and narcotic activity, was very dark. Another officer (witness officer) began conducting a pat-search; during this search, the witness officer yelled out that the suspect had a gun in his front pocket. The subject officer pulled the suspect to the ground. The suspect, now prone on the ground, had tucked his hands under him near his waistband. The witness officer struck the suspect several times with his hands but the suspect refused to comply with commands to give up his hands. The subject officer was fearful that the suspect was trying to arm himself with the handgun in his pocket. The subject officer then struck the suspect once on the leg with his baton and then, since the suspect was kicking at the officers, he struck him once again in the leg with his baton. The subject officer then used his body weight to hold down the suspect's legs. The suspect's resistance weakened and the officer was able to handcuff him. The suspect had a revolver in his front pocket, a knife and several pills. IA determined the Force allegation to be exonerated. IA was unable to determine the identity of the officer who allegedly blocked the complainant from video recording the event. The complainant failed to provide a copy of the video and his description of the officer did not match any of the officers who responded to the event that night.

The Procedure allegation was closed as Not Sustained against an unknown officer.

IPA Agreement and Rationale:

As IA noted, the complainant was not aware that the officers had located a firearm on the suspect and that officers were dealing with a possible deadly encounter. The IPA agreed with IA's analysis and conclusion.

Case #4

Complainant stated that he was riding his bike when the subject officer pulled him over for riding through a stop sign. As the complainant started to reach into his pocket for his cell phone, the officer saw a knife in his pocket. The officer told him to stop removing the phone and that he needed to search him. The complainant replied that the officer could not search him without getting a warrant. He then took out his cell phone and tried calling someone at his residence. Complainant said that the officer got worried about who he was calling; the officer called for back-up. When the officers tried to take his phone, the complainant pulled back and resisted. Complainant said he resisted during the whole encounter so that the officers wouldn't find the marijuana in his pockets. Complainant alleged that the officer did not have a reason to detain him (Arrest/Detention).

IA's Conclusion:

The complainant admitted to riding his bike through a stop sign, ignoring the officer's commands and resisting arrest. The officers documented complainant's conduct of running the stop sign and resisting arrest in their reports. IA determined that the Arrest/Detention allegation was Exonerated.

IPA Agreement and Rationale:

The IPA agreed with IA's analysis and finding.

The complainant admitted that he had committed the acts that formed the basis of his detention and arrest.

Case #5

Complainant stated that the subject officer arrested him in the backyard of his home on a violation of a restraining order. When he was arrested, complainant's dogs were running loose in the backyard. As he escorted the complainant from the premises, the subject officer allegedly told the complainant that his dogs had been secured in the backyard. Several days later, while he was in jail, complainant phoned his wife who informed him that one of the dogs had escaped from the backyard sometime after the arrest. Complainant alleged that the subject officer did not properly ensure that the dog was securely contained in the backyard when he was arrested and taken to jail (Procedure).

IA's Conclusion:

The complainant believed that his dog could not have escaped the backyard if the arresting officer had properly latched the gate; complainant alleged that the officer assured him that he had done so. During their interviews, the officers gave differing descriptions about the location of the dogs, and who closed and secured interior doors and backyard gates, if at all. IA closed the Procedure allegation as Not Sustained.

IPA Agreement and Rationale:

The IPA agreed that the investigation failed to disclose sufficient evidence to prove or disprove the complainant's Procedure allegation and thus Not Sustained was the appropriate finding.

Case #6

The complainant was arrested at his home for violating a court order. One officer allegedly put handcuffs on too tightly and this caused complainant's wrists to bleed (Procedure). Prior to being placed into the back seat of the patrol car, the complainant allegedly told one officer that the handcuffs were too tight. This officer allegedly replied, "It's made to hurt." Then his wrists started bleeding. Another officer temporarily removed the handcuffs and placed them back on him. This officer double-locked the handcuffs. Complainant's wrists continued to bleed but he did not inform this officer that the handcuffs were too tight. The complainant also alleged that two officers called him profane names (Courtesy).

IA's Conclusion:

The IA investigation showed that the officer who first placed handcuffs on the complainant double-locked the cuffs. After the complainant was put in the back seat of the patrol car, a second officer stood by. He noticed that complainant was moving around in the backseat; complainant told him that the handcuffs were too tight. The officer checked the handcuffs for proper fitting; he confirmed that the handcuffs were properly fitted. He did not see any blood. The complainant did not ask for medical attention. Complainant's medical records indicated a "right wrist skin tear." IA closed the Procedure allegation as Exonerated. A skin tear is normal due to handcuffing combined with the complainant's moving around in the backseat of the patrol car. The preponderance of evidence showed that the initial officer applied the cuffs properly and the second officer confirmed proper fitting. Neither subject officer nor the witness officer heard officers use profanity during the incident. The Courtesy allegation was closed as Not Sustained.

IPA Agreement and Rationale:

The IPA found that IA's investigation and analysis was fair, thorough and complete.

Case #7

Complainant filed a complaint with Internal Affairs against SJPD officers who arrested him some days earlier for assault and criminal threats. According to the complainant, his girlfriend took his car without his permission; his wallet and cell phone were inside his car. Complainant borrowed a friend's car, found his car and started following it from a gas station, onto the highway and to the police station. Allegedly he told the gas station attendant that his girlfriend had robbed him and pulled a gun on him; he asked the attendant to call 911. While following his car on the highway, complainant stated that he was honking his horn trying to get his girlfriend to stop. Upon exiting the highway, the complainant paused momentarily at a red light; he got out of his car and told someone in a truck to call the police because his girlfriend had a gun and had robbed him. The driver of the truck, the complainant and the girlfriend all proceeded through the now green light. The girlfriend pulled up in front of the police station. Complainant alleged that numerous officers approached and started yelling at him as if he was the perpetrator and not the victim. Complainant was arrested; his girlfriend was not arrested. Complainant stated that he should not have been arrested (Arrest/Detention) and that one officer was biased against him as evidenced by the officer's use of the term "boy" (Bias-Based Policing).

IA's Conclusion:

The complainant and his girlfriend had separated. On the incident day, she and complainant had a verbal argument at a

gas station. The girlfriend drove away and the complainant followed her. According to the girlfriend, the complainant attempted to ram his car into her car several times; he also threatened to kill her. The complainant followed her several miles as she drove to the police station. The subject officer stated that, while he was stopped at a red light in an unmarked car, he saw a car approach at a high rate of speed. The car stopped at the light and the driver [suspect] was shaking his fists and yelling at the female driver of another car – also stopped at the light. The suspect slapped at the windows and door of the car containing the female. Then the suspect approached the officer's car and yelled, "you're my witness." When the light turned green, the cars moved forward. The subject officer noted the suspect was driving erratically and attempted to collide with the female's car. When the cars stopped near the police station, the suspect exited his car and began yelling at the female while attempting to open her car door. The subject officer feared for the safety of the female; after calling for back-up, he approached the suspect and took enforcement action. He denied using the word "boy" while addressing the suspect. IA closed the Arrest/Detention allegation as Exonerated; the Bias-Based Policing allegation was closed as Unfounded.

IPA Agreement and Rationale:

The IA investigation revealed significant and substantial issues with complainant's credibility. The IPA found the investigation to be thorough, complete and fair.

Case #8

The complainant said that he was driving on the highway when he saw a marked patrol car following him. Complainant exited the freeway; the patrol car followed. The officers

activated their lights and pulled him over. Complainant said that when he stopped his car, he put both hands out the window and asked, "why are you pulling me over?" The officers drew their firearms. One officer allegedly walked to the passenger's side of complainant's car, pointed the gun close to the complainant's face and ordered him to turn off the car. Complainant was taken out of the car and handcuffed. Complainant stated that officers should not have drawn their weapons (Procedure). He said his car was unlawfully searched and items were taken (Search/Seizure).

IA's Conclusion:

Officers noted that the complainant's car was traveling too fast; complainant's car then abruptly cut across three lanes of traffic to an off-ramp. The officers followed and located complainant's car traveling on a city street. Complainant immediately pulled over before the officers' activated lights and siren. The complainant leaned his upper body out of the car window and started yelling at the officers. Given this unusual behavior and the fact that the officers could not see the complainant's hands, the officer treated the stop as a "high risk car stop." Officers called for back-up. Instead of approaching the car, the officers remained behind the doors of the patrol car and pointed their pistols at the complainant. Eventually the complainant complied with commands to "show his hands" and put both hands out of the window. Officers approached and ordered the complainant to turn off the car engine as the car was still running and not in gear. Complainant exited the car and was handcuffed. When asked for identification, the complainant said his ID was in the center console of the car. The officer obtained consent to retrieve the ID. The officer who opened the console found illegal mushrooms,

an open alcohol container and unlabeled prescription bottles containing medications. IA found the Procedure allegation (pointing guns) to be Exonerated given circumstances of the stop. The Search/Seizure allegation was also Exonerated given that the complainant gave consent to enter the console area of the car.

IPA Agreement and Rationale:

The IPA agreed with the investigation and findings. The officers provided sufficient reason to treat the stop as “high risk” and officers denied pointing their guns once they determined that the complainant was not armed. IA noted, and the IPA agreed, that it would be highly unlikely for an officer to lean into the passenger side of a car and point a gun at the driver while the car’s engine was running and the car was not in gear. Such conduct would be extremely dangerous.

Case #9

Complainant stated that an SJPD officer improperly arrested him (Arrest/Detention). He was charged with possession of narcotics for sale, transportation and providing false information to a peace officer. Complainant stated that he was unfairly charged with selling narcotics instead of merely possessing narcotics. Complainant said that the officer improperly documented the incident and failed to obtain a blood sample from the complainant (Procedure).

IA’s Conclusion:

The complainant admitted during his interview that he provided a false name to the officer. He admitted that he had five outstanding warrants at the time of the stop. He admitted to ownership of a backpack that contained crystal meth, several individual baggies, several glass pipes, and cash. Complainant’s statements to IA, combined with the police report, revealed

a sufficient basis for the officer arresting the complainant and documenting the contents of the backpack on the police report. Since the officer did not arrest complainant for being under the influence, it was not necessary to obtain a blood sample although the officer documented the symptoms he observed.

IPA Agreement and Rationale:

The IPA agreed with IA’s analysis and finding.

Case #10

Complainant contacted IA to complain about how she was detained during an incident the night before. That evening, she was in her parked car with two friends. They were parked in front of a laundromat. One of her friends had an argument with the owner of the laundromat. An officer arrived on scene. The officer detained complainant and her friends at gunpoint. After other officers arrived, the complainant was ordered out of the car and handcuffed. Complainant objected to being detained at gunpoint (Arrest/Detention) and being handcuffed (Procedure) because the facts of the initial report of a weapons disturbance were later proven to be unfounded.

IA’s Conclusion:

The investigation revealed that the reporting party, a person associated with the laundromat, called 911 and stated that a man was threatening her with a handgun and that she saw the handgun. The reporting party reiterated these important facts three times to dispatch. The subject officer initiated a high risk car stop based upon the information provided by dispatch. He perceived the car occupants to be uncooperative with his commands. He noted that the car was marked with bullet holes – one of which appeared to originate from inside the car where the described subject was sitting. Only after the

occupants had been removed from the car and handcuffed, did dispatch update the officers that the reporting party had backed away from her initial description and concede that she had not seen a weapon during this incident. The IA investigation showed that bullet holes in complainant's car were from a prior incident and were not related to the laundromat event – although this fact was unknown to responding officers. Once it was determined that no violation had occurred, the involved persons were released. The subject officer documented his reasons for conducting the high risk stop and IA determined that his conduct was within policy.

IPA Agreement and Rationale:

The IPA agreed that the investigation was thorough and that the analysis supported the findings.

Case #11

Complainant stated that on a recent evening, she was home with her husband, child, her sister and her sister's children. She responded to knocking at the front door. When she opened the door, she saw police officers outside. They ordered her and her child to exit. Some officers had guns drawn; the guns were pointed toward the ground. After complainant and her child went out the front door, officers entered and arrested her husband on a probation violation. One officer was discourteous to her. He asked her "do you speak English?" in a rude tone. She believed the officer made a biased assumption that she doesn't speak English because she is Asian (Bias-Based Policing). One officer used hand gestures when motioning for them to come outside. She felt that the use of the hand gesture was rude and that the officer should have used words instead of gestures (Courtesy).

IA's Conclusion:

The IA investigation showed that SJPD officers were assisting law enforcement officers from another jurisdiction on the execution of an arrest warrant. When officers contacted the homeowner, they were told that the suspect lived in a converted garage unit. Officers approached the garage with weapons drawn due to the suspect's prior criminal history. A female and child were told to exit and move to the sidewalk. When the suspect did not comply with commands to exit, officers entered and placed him in handcuffs without a struggle. The IA investigation and analysis showed that the officer's use of the phrase, "do you speak English?" and the use of the hand gesture were appropriate because the complainant was initially not responding to his commands. The Courtesy allegation was closed as Exonerated. The Bias-Based Policing allegation was closed as Unfounded.

IPA Agreement and Rationale:

The IPA agreed with the IA analysis and conclusion.

Case #12

Complainant said that the subject officer stopped him for failing to use his signal light before making a turn, the officer improperly searched him (Search/Seizure) without his consent and the officer removed his pocket knife from his front pant pocket. The officer searched complainant's car with his consent, but complainant alleged that the officer damaged an interior ceiling panel (Procedure). Complainant alleged that he was profiled as a gang member when he was not a member of a gang (Bias-Based Policing).

IA's Conclusion:

The subject officer stated that the complainant

stopped his car suddenly in the middle of the street; this caused the officer to abruptly stop his patrol car. Then the driver slowly moved his car into the driveway. Based upon possible vehicle code violations, the officer approached the driver and passenger. The officer conducted a pat down on the outside of the driver's clothing for weapons. The officer did so because the driver was wearing bulky clothing that could conceal a weapon, the driver's attire gave some indication of gang affiliation, the location was known for gang activity, and the subject officer was by himself with three other males - the driver, the passenger (who was on probation) and another male who had exited the house adjacent to the driveway. Based on this information, IA concluded that the pat search was appropriate and closed the Search/Seizure allegation as Exonerated. The subject officer stated that, after he obtained the driver's consent, he searched the interior of the car. He found an empty plastic baggy with a slight bit of residue of what appeared to be cocaine. He denied causing damage to the interior of the car. IA closed the Procedure allegation (property damage) as Not Sustained. During his intake interview, the complainant stated that he was profiled as a gang member; he specifically denied that he was stopped because of his race, nationality, color, creed, ancestry, national origin, gender or sex. This distinction is important because a Bias-Based Policing allegation is tied to being treated differently because of a protected status – generally race, color, national origin, religion, or gender. Participation in a gang, or the perception that a person is in a gang, does not qualify as a protected status. IA closed this allegation as a Non-Misconduct Concern.

IPA Agreement and Rationale:

The IPA agreed with IA's analysis and findings.

Case #13

Complainant filed a complaint on behalf of his friend. He said that an officer stopped his female friend and five other subjects in a vehicle. Three of the subjects ran; three other stayed. His friend was arrested and booked. His friend complained that an officer obtained a phone number from her cell phone and made a call from it without her consent (Search/Seizure). Complainant also said that the officer did not allow anyone to come pick up a dog in the vehicle (Procedure). The dog was taken by the Society for the Prevention of Cruelty to Animals (SPCA). Complainant did not provide any contact information for any of the percipient witnesses.

IA's Conclusion:

The subject officer stated that he conducted a traffic stop on a car that failed to stop at a red light. Several occupants fled the scene. One passenger stated the driver's name was "Andy," a person who fled. The officer asked the passenger to call Andy and ask him to come back. The passenger agreed to call him and the officer handed the passenger her cell phone. She unlocked the phone and pressed the contact number; the officer then took the phone from her. The male who answered refused to return. The officer looked at the phone screen and the name "Paul" was listed. The officer believed the passenger was not truthful about the name of the driver. The officer stated he would not have access to the phone without consent because it was password protected. Also if he were to have looked through the phone, he would have looked for the name Andy not Paul. IA closed the Search/Seizure allegations as Unfounded. Simply viewing the name "Paul" on the screen did not constitute a Search because the officer did not manipulate or unlock the phone. The

officer was told the puppy in the car belonged to someone who fled. He contacted Animal Control Services to pick up the dog because he needed to ensure the dog was safeguarded. The owner of the dog was not present, therefore the officer had to secure the animal. The Procedure allegation was Exonerated.

IPA Agreement and Rationale:

The IPA agreed with IA's analysis and findings.

Case #14

The complainant stated that he was very intoxicated when he returned home late one night after work. When he arrived home, he saw that two of his children appeared to have pink eye. When his wife confirmed the condition, the complainant became upset. His wife grabbed the younger child and ran down the hallway; the complainant chased her, but then fell down and passed out. Allegedly, when he woke up, two officers were standing above him and beating him with their batons and flashlights. The officers allegedly ordered him to his feet. When he was unable to comply, the officers allegedly put their batons and flashlights under his armpits to assist him walking. However, the officers then let go of their batons causing him fall on his face. Complainant was arrested on domestic violence charges but he denied hitting his wife. He claimed the force used on him during the encounter was excessive (Force).

IA's Conclusion:

The IA investigation revealed that the reporting party called 911 to report a domestic dispute. Dispatch informed responding officers that the suspect (complainant) was intoxicated and combative; he was inside the residence and possibly passed out. There was an outstanding arrest warrant for the complainant. Officers found the suspect in a child's bedroom; he

had a laceration on his face and bleeding near his eyebrow. There was a dresser nearby that showed blood stains; other furniture items were tipped over and clothing was strewn about the room. Officers were able to handcuff the complainant while he was still unconscious. When he awoke, he was verbally aggressive but physically cooperative until the officers reached the interior threshold of the front door. There the complainant became physically resistive – he tensed up his body and dropped to the floor. He was threatening officers and medical personnel on scene. Three officers used control holds to move complainant outside of the house. When complainant was interviewed at the hospital shortly after the incident, he did not recall that he had gone home after work or that he had an argument with his wife; he had no recollection of his encounter with the police officers. IA determined that the force used by the officers as documented in their reports was appropriate and closed the allegation as Exonerated. Apart from the complainant's description, there was no evidence that officers repeatedly hit him with flashlights or batons.

IPA Agreement and Rationale:

The IPA agreed that the investigation was complete and thorough.

Case #15

Complainant alleged he saw an SJPD officer driving a car on the highway. The complainant observed driving that he described as erratic including two moments in which the patrol car almost hit the complainant's moving car and a CHP patrol car parked on the shoulder. When the complainants' car passed the patrol car, he saw that the officer was texting. He asserted that this conduct was improper (Procedure) and dangerous.

IA's Conclusion:

IA obtained the GPS log for the patrol car and identified the subject officer. The officer stated that she was dispatched to a call for service and was lost. She was trying to locate the address on the MDT, a device mounted on the dashboard. Eventually she pulled to the side of the freeway to get a better understanding of the location to which she was dispatched. The officer denied looking at or texting on a cell phone. She denied that her driving was erratic. IA reviewed the I/Tracker playback; this record showed that the officer was driving in the location described by the complainant. It shows that the car's speed ranged between 0 mph to 65 mph; however, the I/Tracker was unable to determine if the patrol car was weaving in the lane or between lanes. IA closed the Procedure allegation as Not Sustained because there was insufficient evidence to prove or disprove the allegation.

IPA Agreement and Rationale:

The IPA agreed that the IA investigation was thorough and complete and that the finding was supported by the evidence.

Case #16

Complainant alleged an officer unlawfully detained him (Arrest/Detention), planted evidence (CUBO) and then made false statements in his police report (Procedure). He alleged these events occurred within the past year.

IA's Conclusion:

IA reviewed records about complainant's interactions with SJPD officers. The two most recent contacts between the complainant and SJPD officers occurred in 2013 – a full two years before complainant filed his complaint. IA closed his complainant as Other. According

to Duty Manual section C 1738, *"Department members will receive all allegations made by citizens; however, cases which are received after a considerable amount of time has elapsed from the date of the incident are difficult to investigate in a thorough, fair and complete manner. Allegations which are received after one year from the date of the incident are reviewed by the Chief of Police who has the discretion to decide not to accept the allegations as a complaint for investigation."*

IPA Agreement and Rationale:

The IPA agreed that this particular complaint had been filed two years after the incident in question and that it would be difficult to investigate fairly after so much time had elapsed. The IPA does review cases closed as Other to ensure that the Chief is exercising his discretion appropriately under the criteria set forth in the Duty Manual.

Case #17

Complainant alleged that some SJPD officers were working for drug cartels. About one month later, complainant went to the main lobby of police headquarters to submit an updated narrative about his claims. When he was in the lobby, an officer working at the front desk allegedly threw his papers onto the floor (Courtesy).

IA's Conclusion:

IA obtained the watch list in an attempt to identify subject officers. Main lobby surveillance video was reviewed. The video showed that complainant and the subject officer interacted at the glass partition inside the main lobby of the police station. A conversation between the two men occurred and papers and a clipboard were passed back and forth. At one point, the officer passed some papers to the complainant

as complainant was passing an orange report receipt toward the officer. The papers on the complainant's side of the glass partition fell to the ground. The complainant left the papers on the ground and walked away. He returned to the counter shortly thereafter and spoke with the officer. He then walked away. A female in the lobby area picked up the papers and placed them on a side counter near the glass partition. The complainant remained in the lobby for approximately 10 minutes before he picked up his papers from the counter. He spoke with a plainclothes employee and then returned to the glass partition and passed the papers through. Based on the lobby video, IA determined the Courtesy allegation to be Unfounded.

IPA Agreement and Rationale:

The IPA reviewed the video footage and agreed with IA. The video showed paperwork being passed back and forth at the glass partition but there was no indication that the subject officer threw complainant's papers to the ground.

Case #18

Complainant alleged that an officer would not tell him why he was pulled over and ordered him to exit his vehicle. The officer asked him if he had any concealed weapons or narcotics; the officer pat-searched him. Officers asked him a variety of questions about his parole status, past prison time served and past criminal history. The officers conducted what complainant assumed were field sobriety tests. The officers asked the complainant for his consent to search the car; he did not consent to the search and the officers refrained from entering the car. The complainant was released; he was not given any citation or told why he had been stopped. He claimed that he had committed no violation. He believed

that the officers stopped him because he was driving in one of the worst neighborhoods in San José and the officers were hoping that they might find something incriminating during their contact with him. He alleged that the SJPD officer unlawfully detained him (Arrest/ Detention).

IA's Conclusion:

The subject officer stated that he was working a two-person car. He observed a south bound vehicle moved from one turn lane to another turn lane without using his turn signal. He then observed the same vehicle, now eastbound, cross two lanes of traffic and turn into a parking lot without using turn signals. The subject officer conducted a traffic stop regarding these vehicle code violations. He released the subject at the scene with a verbal warning. The Arrest/Detention allegation was closed as Exonerated.

IPA Agreement and Rationale:

IPA agreed with the investigation and the analysis.

Case #19

At the time of the incident, complainant was working as an armed, uniformed security guard. He was the victim of a hit and run that caused him a minor injury and he called the police for help. Several officers responded. Complainant stated that the subject officer asked him to give a statement about what had occurred. The subject officer was allegedly rude, aggressive and unprofessional. The officer yelled at him for no reason, complained repeatedly about having to write a report, and was so hostile that the complainant felt intimidated (Courtesy).

IA's Conclusion:

IA concluded that the Courtesy allegation was

Not Sustained. In his interview, the subject officer denied making discourteous statements; the subject officer completed an offense report. The witness officer was on scene but was doing other tasks and did not see or hear the interaction between the complainant and the subject officer.

IPA Agreement and Rationale:

The IPA agreed that the investigation was complete and thorough. A finding of Not Sustained was appropriate for the Courtesy allegation because there was insufficient evidence to prove or disprove the allegation.

Case #20

Complainant stated that she, her husband, and their two children were in the garage and driveway of their home with music playing. Two officers arrested her intoxicated husband on a loud music complaint. Among other things, she alleged that officers used excessive force to pull her husband out of the garage (Force). She said the officers grabbed him and pushed him.

IA's Conclusion:

The IA investigation revealed that a neighbor called 911 because of loud music. When officers responded, the residents were not cooperative. In her interview, complainant described her husband as exceedingly intoxicated. The responding officers intended to issue a disturbance card, but reasonable attempts to communicate and obtain compliance failed. Complainant's husband was uncooperative, intoxicated and aggressive. Officers became concerned for their safety because the garage was dimly lit, cluttered and contained items that could be used as weapons. One officer took the man's right arm and the other grabbed the other arm; he was quickly handcuffed and moved out of the garage to the patrol car. During his interview, complainant's husband described the officers using basic protocol when handcuffing him. IA determined the Force allegation to be Exonerated; the officers used appropriate force in handcuffing complainant's husband and moving him to the patrol car.

IPA Agreement and Rationale:

The IPA agreed with IA's finding and rationale.

Agreed After Further

Case #1

Complainant contacted Internal Affairs regarding consensual sexual misconduct. The acts included the officer sending messages with sexual content while he was on-duty. The Complainant gave a timeframe of when the conduct occurred.

IA's Conclusion:

IA identified numerous allegations of misconduct. During IA's investigation, it was discovered that 15 months prior to this complaint, a person other than the complainant had reported these improper acts to a department manager. The Government Code requires that a department's investigation into an allegation of misconduct occur within one year from the date of knowledge of the allegation. Here, the department was unable to discipline the officer for most of the allegations of misconduct because the statutory time limit had expired. However, IA did identify one act of misconduct that exposed the officer to discipline. During its investigation, IA interviewed the subject officer. During that interview, the subject officer lied to IA about his conduct. This allegation of Conduct Unbecoming an Officer (CUBO) was Sustained.

IPA Disagreement:

The IPA agreed with the finding on the CUBO allegation of lying to IA. Even though the other 17 allegations were closed as Other due to the statute of limitations, we commended the investigation for being thorough and detailed. The IPA requested that allegations be added to address other aspects of the subject officer's conduct. According to the complainant, the subject officer made contact days before complainant's interview with IA. The subject officer asked complainant to: (1)

not to cooperate with the IA interview and (2) to lie to IA. The subject officer lied to IA about this phone call with the complainant. The IPA asked that two additional CUBO allegation be added to the complaint, the first to address dissuading a witness and the second to address his lying to IA about such dissuasion attempts.

Outcome:

The two additional CUBO allegations were not added against the subject officer for logistical reasons and the IPA agreed with this decision.

Case #2

Complainant was involved in a fight with her roommate. When officers arrived, complainant asked that her roommate be arrested. However, only the complainant was arrested. The complainant contacted IA and alleged that she was improperly arrested, that officers failed to arrest her roommate, and that officers were rude.

IA's Conclusion:

IA Exonerated the Arrest/Detention allegation. The Courtesy allegation was closed as Not Sustained.

IPA Disagreement:

The IPA agreed with the findings on the Arrest/Detention and Courtesy allegations. However, the complainant contacted the IPA and stated that she had concerns about the force used by the officers during the incident. The IPA reviewed the initial intake interview of the complainant. The recording revealed that complainant made a Force allegation when she stated that the officer forcefully grabbed her and yanked her out of her vehicle and into a gutter without justification. The IPA requested that a Force allegation be added and investigated.

Outcome:

A Force allegation was added and investigated. IA made a finding of Not Sustained on this allegation. The IPA agreed with the analysis and finding.

Case #3

In a written letter, the complainant alleged that he was the victim of police brutality during his arrest. The letter stated that when officers ordered him out of a vehicle, he complied and laid down on the ground. He alleged that officers then kicked, punched, and hit him with a baton. Complainant alleged officers had no reason to use force. He requested that he be interviewed about the incident so that his complaint could be formalized.

IA's Conclusion:

The investigation revealed that the officers attempted to stop the vehicle as having been involved in a carjacking at gunpoint. The driver refused to stop and officers engaged in a pursuit. Once the suspect's car was stopped, the suspect hesitantly followed commands to exit the car and lie prone next to the car. One officer recognized the suspect from a prior incident in which he was arrested for possessing a loaded firearm. The suspect was wearing baggy clothes. Based on these circumstances, the officers' safety concerns were heightened. When the suspect failed to comply with additional commands and actively resisted, four officers used force to overcome his resistance and prevent his escape. In particular, one officer kicked the suspect in the face while the other officers were struggling to control the suspect. The findings on all Force allegations were Exonerated.

IPA Disagreement:

The IPA had two concerns. First, IA investigated

the complaint based on complainant's three paragraph letter without conducting a detailed intake interview of the complainant. The IPA recommended that the complainant be interviewed. The IPA asserted that the force used by the officer who kicked the suspect in the head must be analyzed whether using deadly force was reasonable. Given that an intentional kick to the head is force of such magnitude and impact, a higher level of scrutiny was warranted to assess such conduct. The IPA recommended that IA conduct an additional analysis of the officer's force using the standard set forth in Duty Manual section L 2638 that authorizes deadly force in the following circumstances *"When deadly force is objectively reasonable to effect the capture of, or prevent the escape or rescue of, a suspect whom the officer has reasonable cause to believe has committed a felony involving the use or a threat to use deadly force, and whom an objectively reasonable officer could believe would pose an imminent danger of death or serious physical injury to other persons if he or she were to escape."*

Outcome:

IA interviewed the complainant. IA provided a re-analysis of the Force allegation (kick to the head) under the deadly force standard and made a finding of Exonerated. The IPA agreed with the analysis and finding.

Case #4

Complainant was riding his bike at night when he was stopped by an SJPD officer. When asked for identification, the complainant pulled out his wallet from his rear pants pocket. As he was going through his wallet for the ID, the officer reached over to grab the wallet. The complainant pulled back and away from the officer because he didn't believe the officer

was allowed to handle the wallet. The officer then made another effort to grab the wallet. Complainant allowed the officer to snatch the wallet from his hand. The officer then removed the ID from the wallet and kept both the wallet and the ID. The officer threw his wallet onto the police car.

The officer placed the complainant in a “wristlock” and pushed him forward to restrain him “for no reason.” The officer conducted a pat-down search. The complainant was cited for riding his bike without a front light and red reflector.

IA’s Conclusion:

The IPA took issue with IA’s analysis and findings on the Search/Seizure allegation in which complainant alleged that the officer acted improperly by taking his wallet out of his hand.

During his interview, the officer recalled conducting a pat-down search for weapons on the complainant and stated he never placed the complainant in a wristlock control hold. The officer stated that the search was for weapons only. This was accomplished by placing complainant’s hands together while the officer held them with his non-searching hand. IA concluded that the officer had the legal authority to ensure that the complainant was not holding anything in his hands that could be used as a weapon. If the officer determined it necessary to keep complainant’s hands free and then took the wallet presented to him or snatched the wallet out of the complainant’s hand, he would be fully within his rights to do so. IA thus asserted that the investigation showed that the officer’s conduct was justified, lawful and proper.

IPA Disagreement:

The IPA responded that the analysis appeared biased in favor of the officer and failed to

identify those elements required to conduct a pat-down search. Duty Manual section L 5102 indicates that for a “frisk” to be lawful, there must be clearly articulated facts which leads to a reasonable suspicion that the person being frisked poses a threat to the officer’s safety. In this case, the officer did not articulate a reasonable suspicion that the complainant was a threat to his safety or that he had a weapon. In its analysis, IA made the unsupported assertion that the officer feared for his safety and then used the assertion to support its own conclusion. This assertion was not based on an objective review of the evidence because the officer failed to articulate a reasonable suspicion justifying the search. It appeared that all doubts were improperly resolved in favor of the officer to reach a conclusion; the finding of Exonerated was not supported by the facts. The IPA requested that IA re-analyze the allegation and make a finding based on the evidence.

Outcome:

IA re-analyzed the allegation of Search/Seizure. The revised analysis reflected that the officer could not recall the incident clearly enough to make a clear determination if he “objectively” feared the complainant could have possessed a weapon. The new finding was Not Sustained. The IPA agreed that this finding was supported by the evidence.

Case #5

Complainant contacted the IPA’s office to file this complaint about an incident that occurred at a local middle school. A student reported seeing two males with a gun on campus to a teacher. The teacher informed the school office and the school was placed on lock-down. Allegedly, SJPD was called and twenty officers were dispatched and en-route. Within

minutes the adjacent school was also placed on lock-down. At the same time, efforts were made to confirm that two police officers had been at the school just prior to the lock-down. Soon thereafter, it was learned that the two men who were seen on campus were plain clothed police officers. The complainant was concerned that the officers failed to notify the school of their intended presence prior to their arrival. The complainant believed that such notification would have prevented the lock-down that was distressing to students and their parents.

IA's Conclusion:

IA interviewed one of the two subject officers. He stated that he was on-duty conducting a follow-up investigation on the campus. He and his partner parked their unmarked detective car in a parking lot. One officer was wearing a black business suit; his duty weapon and badge were concealed by his coat. The other officer was wearing a blue polo shirt and dress pants; both his duty weapon and badge were affixed to his belt and were visible. The officers entered the school office, identified themselves as officers and conducted their investigation. After leaving the school, the school office immediately and unsuccessfully tried to reach this officer and then called 9-1-1 as a precaution to make sure that the report of persons with guns were, in fact, this officer and his partner.

IA exonerated Procedure allegations against both officers. IA asserted that the officers were performing "follow-up" pursuant to the policy guidelines. IPA agreed with that assessment. However, the IA analysis also relied upon Duty Manual section S 1135.

- S 1135 Exposing Firearm when in Civilian Clothes
Officers authorized to carry a firearm when off duty or when on duty in civilian clothes,

will not wear or carry the firearm in such a manner that it is conspicuously exposed to view.

IA asserted that, although one officer's firearm was exposed, it was not *conspicuously exposed*, as it was placed adjacent to his police badge (emphasis in original). This was the officer wearing a polo shirt and dress pants. The IA analysis continued with the assertion that the officer's exposed gun was not "easily noticed" or "obvious" *because* the exposed gun was adjacent to the police badge.

IPA Disagreement:

The IPA contended that the IA analysis was flawed. The word conspicuous is defined by the Cambridge Dictionary as "easily noticed; obvious." The facts showed that the officer wearing a polo shirt and dress pants had both his badge and his gun affixed to his belt. A student saw the gun and informed a teacher. Therefore, the gun was "easily noticed" and/or "obvious." In fact, it appears that the police badge was the item that was not obvious. If the "business casual dress" policy does not require the officers to wear clothing to cover their weapons, their badges and guns will invariably be exposed.

The IPA requested that IA re-analyze the Procedure allegation and come to a finding. The IPA also recommended that the Department consider amending uniform policies requiring that when personnel wear "business casual dress," that outer garments are worn so to be consistent with S1135 of the Duty Manual.

Outcome:

IA conducted a re-analysis of the Procedure allegation and again rendered a finding of Exonerated. The analysis was more thorough and complete and the IPA agreed with this finding. IA agreed that the policy changes

proposed by the IPA should be reviewed and referred the case to SJPD Research and Development unit for their analysis.

Case #6

Complainant claimed that multiple officers used excessive force, including pushing and grasping her, during her arrest.

IA's Conclusion:

IA obtained the CAD and police report. They interviewed two civilian witnesses and three subject officers. The Force allegations were determined to be Exonerated. The IPA agreed with the Exonerated findings on Force. The IPA's concern was limited to one procedure allegation, namely whether the on-scene supervisor violated procedure by not ensuring that a Force Response Report form was completed. Duty Manual section L 2644 states:

A reportable use of force is defined as any incident in which officers, either on or off duty, exercises their police powers and uses deadly force or any force option including physical force in conformance with L 2603, Force Options Policy. The exceptions to reportable force are specified as: The use of a firm grip control which does not result in injury, the appearance of injury or complaint of pain (e.g., the use of a grip to control the suspect's hands while searching or handcuffing); or that force reasonable to overcome resistance due to physical disability or intoxication, which does not result in injury, the appearance of injury or complaint of pain (e.g., lifting an intoxicated person to a standing position).

IA determined that there was no need to complete the Force Response Report form because the officers used a firm grip to control the complainant's resistance due to intoxication which did not result in injury, the appearance of injury, or complaint of pain.

IPA Disagreement:

The IPA questioned IA's analysis and conclusion. One subject officer stated that he intended to use a takedown option, by first going hands-on with a grip. According to the officer, as he was attempting the takedown, the complainant stumbled and fell. Although the officers asserted she fell on her own, this occurred only after both officers placed hands on her. And while one civilian witness stated that the complainant may have stumbled, another civilian witness stated that an officer tripped the complainant and that officers grabbed the complainant and pulled her to the ground. There was contradictory evidence about extent of injuries, if any, the complainant had sustained before the officers used force. Thus, the IPA asserted that the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation. IA was requested to conduct a re-analysis and make a finding supported by the evidence.

Outcome:

IA identified additional investigation documents which supported the findings. The IPA agreed.

Case #7

Complainant alleged that her son was not read his *Miranda* rights when officers questioned him at school. She stated she was contacted by a school principal regarding the sharing of inappropriate material. The school had notified the police. The complainant told the principal that she wanted to be in the room when the police questioned her son. The principal responded, "O.K."

The complainant and her husband arrived at the school approximately a half hour later. The receptionist informed them that their son was with the police and they could not enter.

They ignored the receptionist and walked into the interview room. The complainant said it appeared that the two officers were done with the interview. One officer told her that they were “finishing up” and asked her to sign a form. The complainant reluctantly signed the form so that her son could be released to her.

IA’s Conclusion:

The complainant’s son said that he was contacted by two SJPD officers at his school and asked if they could talk to him. He agreed. The interview with the officers lasted about thirty to forty-five minutes. When the officers had finished questioning him, one of the officers read him his *Miranda* rights. He said that his mother entered the room just as the officer was reading him the *Miranda* rights. One subject officer told IA that he believed his partner asked the student some preliminary biographical questions before reading *Miranda* warnings. He was sure that the student was given the warnings during his interview. The other officer stated he read complainant’s son the *Miranda* warnings after preliminary questions which included his name, date of birth, address, and basic descriptors and before any incriminatory questions were asked. He said the complainant and her husband were not present during the interview and showed up after the interview was done and he was just finishing up paperwork.

The IA investigation determined the Procedure allegation to be Exonerated. The analysis relied primarily on one of the officer’s statement that he read the student his *Miranda* rights after preliminary questions and before he asked questions related to the criminal investigation.

IPA Disagreement:

The IPA asserted that the analysis failed to address significant discrepancies among the percipient witnesses about at what stage the

warnings occurred. The analysis appeared to resolve all doubts in favor of the officer. The IPA requested that IA re-analyze the allegation.

Outcome:

IA conducted a re-analysis of the Procedure allegation and again rendered a finding of Not Sustained. This analysis was more thorough and complete and the IPA agreed with this finding.

Case #8

Complainant had been driving a friend’s car when he was stopped and cited for driving on a suspended license and arrested on an outstanding warrant. The car was towed. The complainant alleged that an officer improperly delayed his and his friend’s ability to access and/or release the car from the tow yard.

IA’s Conclusion:

IA obtained the pertinent CAD and DMV records. Complainant’s friend was interviewed. IA determined that a proper 30-day hold had been placed on the vehicle. The Procedure allegation was closed as Exonerated.

IPA Disagreement:

The IPA agreed that the officer’s conduct was appropriate. The IPA concerns focused on whether another officer, the one who initially arranged for the car tow, had followed procedure. The IPA asked that this officer be identified and a Procedure allegation be added and investigated.

Outcome:

IA agreed. A Procedure allegation was added and investigated. IA made a finding of No Finding on this allegation because the officer was no longer employed by SJPD. The IPA agreed with the analysis and finding.

Case #9

Two complainants filed a joint complaint stemming from an incident. Complainant #1 alleged that an officer used excessive force while arresting him (Force). Complainant #2 alleged that handcuffs were applied on him too tightly after his arrest (Procedure).

IA's Conclusion:

The police contact was in response to a disturbance call. One of the complainants recorded part of the incident with his cell phone. Officers directed him to put his cell phone down so that the officer could detain him; his refusal resulted in the officer using force – a takedown. During his IA interview, the involved officer said that one of the complainants had made an admission to him once they were in the patrol accepting responsibility. IA concluded that the Force was Exonerated and that the Procedure allegation of the tight handcuffs was Unfounded.

IPA Disagreement:

The IPA assessed the investigation as incomplete. An officer is required to complete a Force Response Report form after a reportable use of force; but the form was not located in the materials provided for the audit. No reference was made to it in the IA investigation. In addition, the subject officer who used force said that he had recorded the conversation with the complainant in his patrol car. The IA investigator did not ask any follow up questions about the revelation of a recording or seek to obtain a copy of it from the officer.

Outcome:

IA located the Force Response Report form and added it to the investigation. IA also obtained a recording of the in-car conversation between the officer and the complainant. IPA reviewed

the recording and found it was consistent with the subject officer's statement. We closed our review as Agreed After Further.

Case #10

The complainant alleged that SJPD officers used unreasonable force (Force) during his detention. He claimed that he was not allowed to record the contact, he was left too long in a hot patrol car, handcuffs were applied too tightly, and officers refused to give their names and badge numbers (four Procedure allegations). He also alleged that he was racially profiled (Bias-Based Policing).

IA's Conclusion:

The incident began after a call for police to respond to a disturbance inside a business. The subject officer contacted the complainant about the disturbance and asked for identification. Rather than doing so, the complainant picked up his cell phone and held it about two feet from the officer's face with its light turned on to ostensibly record the incident. IA interviewed the subject officer who said that he told the complainant that he could record but that he would have to put his phone down; the person refused. The officer and the complainant had a short struggle over the phone and the subject was then detained. That was the extent of any physical incident. The complainant was arrested for a misdemeanor warrant. While he was in the back of the patrol car, he complained that he did not feel well and officers called for an ambulance. IA found that the Force and Bias-Based Policing allegations were Unfounded. Three of the Procedure allegations were Exonerated. The allegation of improperly tightened handcuffs was closed as Not Sustained.

IPA Disagreement:

The initial IPA disagreement related to the

Procedure allegation for not allowing the complainant to video record his contact. Our issue was that there was no clear indication that the complainant was detained. Bystanders have a right to record a peace officer so long as there is no interference with carrying out lawful duties. The issue here was whether the officer had detained the complainant and thus had the legal authority to order the complainant to not have anything in his hands.

Outcome:

Through dialogue with IA, a clearer understanding was developed of the factors IA took into account in deciding whether it was objectively reasonable to detain the individual in these circumstances. We closed the matter as Agreed After Further.

Case #11

The complainant alleged that two SJPD officers responded to a traffic collision and did not arrest one of the drivers for DUI even though he was obviously intoxicated (Procedure).

IA's Conclusion:

IA interviewed several witnesses who either witnessed the accident scene, the police activity or had knowledge of the driver who was allegedly intoxicated. IA interviewed the subject officer (the second officer had since left the Department). The officer said that he had extensive experience in traffic enforcement. He saw no evidence that the driver was intoxicated during his contact. He also noted that the Fire Department attended to the driver and they did not relay any information to him that he was under the influence. The Procedure allegation of not conducting a proper accident investigation was Exonerated.

IPA Disagreement:

The IPA assessment was that the investigation

was incomplete. During our review of witness interview recordings, we learned that one witness stated that another person had called 911 and reported that the driver was drunk.

Outcome:

We asked IA to examine the assertion made by the witness. IA located another previously undiscovered 911 call and provided it to the IPA. The 911 call did not corroborate the witness's assertion about the contents of the call. After the second review, we closed the complaint investigation as Agreed After Further.

Case #12

The complainant alleged that he had two negative encounters with the same officer. The first led to a search of his vehicle during which the officer found drug paraphernalia and a controlled substance. The officer arrested the complainant and impounded the vehicle. The complainant alleged that after he retrieved his car from impound, \$600 was missing (Procedure – safeguarding property). He also alleged that the officer left him in the patrol car for six hours and would not let him use a restroom (Procedure). In the second incident, the officer, this time with another partner, searched his car illegally (Search/Seizure), arrested him without probable cause (Arrest and Detention), and then improperly impounded his vehicle. During an inventory search, officers found drug paraphernalia. The officer mocked him and referred to him as an "(expletive) illegal" and tried to tear his passport (Courtesy and Bias-Based Policing). As in the first incident, the complainant alleged that money was missing after he retrieved his car from the impound yard (Procedure).

IA's Conclusion:

IA investigated the complaint and closed the

matter with the following findings: Bias-Based Policing: Unfounded; Procedure: Not Sustained; Arrest/Detention: Exonerated; Courtesy: Not Sustained; and Search/Seizure: Exonerated.

IPA Disagreement:

We had two initial concerns in our assessment. The first was IA did not address that the complainant's allegation that he was left in a patrol car for six hours. The second issue was that the evidence did not support the legal reason the subject officer gave for impounding the car in the second incident – namely that the license was suspended rather than having never been issued.

Outcome:

IA addressed the two issues we raised. IA provided a comprehensive timeline from the time of complainant's arrest to his arrival at Santa Clara County Main Jail. In fact, one hour and fifty-seven minutes elapsed, not six hours. IA also found that the officer may have relied on the incorrect subsection of the vehicle code regulating suspended driver's licenses but also found that complainant's privilege to drive was indeed suspended. With the new information supplied by IA, we re-assessed the investigation and closed it as Agreed After Further.

Case #13

The complainant alleged that officers responded to her home for a civil stand-by call. She asserted that the officers were unprofessional, unnecessarily critical and dismissive towards her (Courtesy). She also alleged that the officers did not properly investigate her allegation that one of her children was being abused (Procedure).

IA's Conclusion:

IA interviewed the appropriate civilian

witnesses and the two officers who responded to the incident. The most involved officer said that no allegation of abuse was made. The Courtesy allegation was closed as Not Sustained. The Department made a finding of Not Sustained for the Procedure allegation.

IPA Disagreement:

We reviewed the investigation and our assessment was that the analysis and finding were not objective and thorough, in part because other valuable information was not obtained and analyzed.

Outcome:

IA reviewed additional records. As a result of the issues we raised, the Department changed the finding for the Procedure allegation from Not Sustained to Sustained. We closed the matter as Agreed After Further.

Case #14

A male was arrested after a use of force. At the hospital, the man told the on-scene supervisor conducting the standard force review that he wanted to file a complaint but did not go into detail other than saying that his head and his buttocks "hurt."

IA's Conclusion:

IA was notified and began its regular investigation process. IA attempted to locate the complainant two months after the incident. IA contacted his mother who said that she would pass IA's contact information along to him whenever she saw her son. IA never made contact and the investigation was closed as No Finding.

IPA Disagreement:

We concluded that the No Finding was inappropriate in this instance.⁴⁰ First, we found that it was apparent from the complainant's

⁴⁰ A complaint is closed with "No Finding" where "The complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues."

brief statements that he was complaining about the use of force. While it is important to interview the complainant *in a timely manner*, the absence of an interview does not mean that the force allegation cannot be assessed. Per the arrest report, three officers used force, including a takedown, fifteen punches either to the face or abdomen, and two applications of a Taser to the buttocks area. We found two other issues. Three officers should have filed Force Response Reports memorializing their individual uses of force. Secondly, the author of the report we reviewed claimed that a supervisor was notified and responded to the scene but we saw no indication that the supervisor conducted a review of the force. We asked that IA, rather than close the matter as No Finding, investigate the complaint about Force, add Procedure allegations for the apparent failure to submit Force Response forms and add a Procedure allegation for a supervisor not properly conducting a review of force.

Outcome:

IA opened an investigation into the issues we raised. The use of force was Exonerated. One Procedure allegation for failure to submit a Force Response Report was Sustained. The Procedure allegation was Sustained for not properly notifying a supervisor after a use of force. We agreed with the new assessment and closed as Agreed After Further.

Case #15

The complainant stated that he was having an argument inside his ex-wife's car when she started screaming for help. The police arrived and the complainant alleged that he was ordered out of the car at gunpoint. He stated that the officers were too forceful detaining him. His feet were kicked apart before he was searched and the handcuffs were put on very

aggressively and tightly. Subject officer #1 also allegedly pulled up his cuffed hands behind his back which caused pain (Force) as he was walked to the patrol car. When he asked numerous times why he was being detained, the officers told him to shut up and derogatory words were directed towards him (Courtesy). The complainant also alleged that the officers gave the keys to the car to his ex-wife and didn't listen to him that it was his car but registered in her name (Procedure).

IA's Conclusion:

IA interviewed a witness bystander and the subject officers. The investigation was closed with findings of Exonerated for the Force and Procedure allegations. IA made a finding of Not Sustained for the Courtesy allegation.

IPA Disagreement:

Our disagreement focused on what appeared to be semantics to distinguish what the complainant described as his hands being pulled up causing pain and what Officer #2 saw as a wrist lock of complainant's handcuffed hand. Both described what occurred as happening while Officer #1 escorted the complainant to the car. Our assessment was that IA ignored what looked like an apparent contradiction between the accounts of the two officers. In our view, it was irrelevant whether the act was applying a wrist lock or pulling the complainant's handcuffed hands. Neither act was acknowledged or justified by Officer #1. Thus IA's determination that the Force allegation was Exonerated – meaning it was “justified, lawful and proper” – seemed illogical.

Outcome:

IA re-analyzed the Force allegation and came to a finding of Not Sustained regarding Officer #1. We closed the matter as Agreed After Further.

Case #16

The complainant was injured during an altercation. Police were called to the incident location. When officers arrived, the complainant requested medical attention and water. The complainant stated officers declined the request (Procedure).

IA's Conclusion:

The IA investigation found the subject officers documented the incident thoroughly and found inconsistencies and questionable statements by the complainant. On that basis, IA exonerated the Procedure allegation.

IPA Disagreement:

The IPA agreed with IA's finding on the allegation involving declined medical care. However, based on the case information, we believed a second Procedure allegation should have been added (no report).

Outcome:

After IA provided additional evidence and analysis, the IPA agreed with the investigation and findings.

Case #17

The complainant and the complainant's partner were involved in an escalating traffic dispute. The complainant called 911 and officers were dispatched. The complainant's significant other requested the incident to be documented in a report and requested a citizen's arrest. The complainant alleged that the subject officer did not document the incident (Procedure). The complainant also alleged that the subject officer dissuaded the complainant from making a citizen's arrest with the threat of towing their vehicle (Procedure).

IA's Conclusion:

IA concluded the subject officer contacted all parties involved in the incident and properly determined the nature of the offense. The subject officer provided educational information to the complainant regarding traffic and vehicle issues. The Procedure allegation regarding documentation was deemed Exonerated.

IPA Disagreement:

The complainant's statement indicated there were two allegations to consider for the investigation. The initial investigation only included one of the two allegations. IA did not examine the complainant's allegation that the subject officer dissuaded them from making a complaint.

Outcome:

IA added an additional Procedure allegation and analysis and the IPA agreed with the updated case finding.

Case #18

The complainant was inside his recently purchased used RV. The RV was parked on a city street. The complainant stated the subject officer knocked on the RV, asked for the complainant to step out, and informed the complainant that the RV would be towed for out of date registration. The officer did not listen to the complaint's explanation about the recent purchase and did not request paperwork. The complainant stated the RV was purchased the day before and the DMV had a 10-day registration period for recently purchased vehicles. The complainant stated it was a weekend and there was no opportunity to register the vehicle until the next business day (Procedure). He also alleged that the subject officer was rude and dismissive

(Courtesy). The complainant was not given a case receipt or any other documentation on how to retrieve his belongings.

IA's Conclusion:

IA concluded that the vehicle registration was expired over six months and one day and thus the subject officer could impound the vehicle based on authority found in California Vehicle Code section 22651. IA also determined that the complainant should have received documentation on how to retrieve impounded property.

IPA Disagreement:

The IPA requested further analysis to determine if the officer asked the complainant to provide the documentation showing the recent purchase of the RV which would trigger the 10-day period wherein a buyer must register with the DMV. The developed facts were insufficient to support the finding that the tow was justified, lawful, or proper.

Outcome:

IA provided additional evidence and analysis regarding documentation of the vehicle. IPA agreed with the case finding and closed the case as Agreed After Further.

Case #19

The complainant was accused of shoplifting from a local grocery store by the store's Loss Prevention Officers after they watched her steal merchandise on video surveillance. SJPD was called, and once they arrived, they cited and released the complainant for petty theft. Among other things, the complainant alleged that the officers did not provide their names/badge numbers upon request (Procedure), that SJPD officers cannot work at the grocery because it has an attached brewery (Procedure) and that the officers broke the complainant's purse (Procedure).

IA's Conclusion:

IA initially found the allegation regarding failure to provide identification was Unfounded against three officers and the allegation about the damaged purse was Not Sustained. IA's initial investigation did not address the concern about officers working at an establishment serving alcohol.

IPA Disagreement:

The IPA found that the evidence did not support a finding of Unfounded on the failure to provide identification allegation. Upon careful examination of that evidence, the IPA noted that the first and second officers did provide names and badge numbers; thus the corresponding finding should be Exonerated. The third officer claimed that he was not asked for his name and badge number, but the complainant alleged that she requested it; the IPA recommended that the finding be Not Sustained against this officer. Regarding the damaged property allegation, the IPA asserted the weight of the evidence showed the purse was likely damaged by a private security employee when he admittedly took her purse and she yanked it back. Therefore, the IPA recommended that the appropriate finding be "Unfounded" against all officers. Lastly, the IPA noted that IA did not address the concern arising from SJPD officers working secondary employment where alcoholic beverages are served.

The IPA requested that this procedure allegation be analyzed against the relevant Duty Manual section C 1532, which states that "all officers are prohibited from providing law enforcement or security related services for any employer or establishment whose major business is the sale and/or service of alcoholic beverages."

Outcome:

IA agreed with the IPA's assessment in the first two Procedure allegations listed above. Regarding the last Procedure allegation, IA determined that the store's major business is not the sale and/or service of alcoholic beverages, therefore the appropriate finding is "Unfounded." The IPA agreed.

Case #20

The complainant called SJPd after a neighbor allegedly assaulted him. As he waited for police to respond, he went to the store. On his way home, he noticed two SJPd officers. He approached them and told them that he had just been assaulted and captured the assault on video. One officer allegedly replied, "What do you want us to do?" The complainant demanded the officer's name and badge number. After he was provided with the requested information, the complainant yelled profanity at the officers. The complainant alleged that the other officer then asked the complainant if he was taking his medication and found the question demeaning and discourteous (Courtesy).

IA's Conclusion:

IA exonerated the Courtesy allegation, stating that the officer perceived the complainant to be mentally ill based on previous knowledge and therefore asked him a typical question that he would ask when he encountered people exhibiting this type of behavior.

IPA Disagreement:

The officer's question appears to have been an inflammatory reaction to the complainant's provocation and outburst. Here, the officer said he recognized the complainant from prior history he had with SJPd. The investigation's analysis did not sufficiently consider that the

officer engaged in conduct based on the officers' prior knowledge of the complainant's mental illness by asking a question that would likely incite an agitated response.

Outcome:

IA re-analyzed the allegations, but did not alter its conclusion that the comment was not discourteous; instead IA defended the asking of the question by characterizing it as an investigative tool. The comment was also not biased because the officer was asking questions relevant to the behaviors the complainant was exhibiting. The IPA agreed.

Case #21

The complainant was at a fast food restaurant and alleged that another patron assaulted him as he was waiting in line to place his order. The complainant alleged that the responding officer did not properly investigate his call for service (Procedure) and did not provide him an incident card at the end of the incident (Procedure).

IA's Conclusion:

IA came to a finding of Exonerated for the first Procedure allegation asserting that the officer completed a thorough investigation when responding to the complainant's call for service. However, IA came to a finding of Not Sustained for the Procedure allegation alleging that the officer failed to provide the complainant an incident card.

IPA Disagreement:

The officer was called to a nearby weapons call. He told the complainant he would return after the call to provide an incident card. However, when the officer returned, the complainant was no longer at the scene.

The Duty Manual clearly states that officers will supply an incident card with their identifying

information “consistent with officer safety and protection of the public.” Here, it was completely reasonable for the officer to leave the restaurant and return later to provide the incident card.

Outcome:

IA changed the finding to Exonerated for the Procedure allegation.

Case #22

The complainant had a Domestic Violence Restraining Order (DVRO) against an ex-significant other. The complainant’s “ex” allegedly contacted numerous people with whom the complainant had a professional relationship. Complainant alleged that an SJPD officer responded and took a report as “suspicious circumstances,” rather than as a violation of a DVRO (Procedure).

IA’s Conclusion:

The officer said in his IA interview that he refused to take a report about a DVRO violation because these locations are open to the public, and therefore not a violation of the restraining order.

IPA’s Disagreement:

Duty Manual section L 4104 states that “A General Offense Report...must be completed each time the officer has determined that an order is on file, or alleged to be on file, and there is a violation, or an alleged violation, even if the suspect is no longer present at the scene.” The evidence clearly established that the complainant alleged that her ex-boyfriend violated the DVRO. Therefore, the officer was compelled to complete a Violation of Domestic Violence Order Report.

Outcome:

IA re-analyzed the Procedure allegation and came to a Sustained finding.

Case #23

The complainant was in a dispute with another person over a kitten. The complainant refused to return the kitten because she was fearful for the kitten’s safety in the other person’s care. The other person called SJPD to conduct a civil standby at the complainant’s residence in order to retrieve the kitten.

Two SJPD officers arrived at complainant’s residence after 11:00 pm; the complainant asserted that conducting a civil standby at this late hour was inappropriate. The complainant also alleged that the officers’ attitude was discourteous (Courtesy).

IA’s Conclusion:

IA came to a finding of Unfounded for the Courtesy allegation. The officers denied engaging in any discourteous conduct. During the IA interview, the other party said that she was able to hear some of the conversation and did not perceive the officers to be rude or discourteous.

IPA’s Disagreement:

IA’s analysis did not adequately consider the likely bias of the other person who was not a disinterested party. Because there were no objective witnesses to confirm or refute the allegation that the officers were discourteous, a finding of Unfounded was inappropriate.

Outcome:

IA changed the finding of the Courtesy allegation to Not Sustained.

Case #24

The complainant stated in a written complaint that she was awoken in the middle of the night by a relative screaming outside of her home. She went outside and saw an officer pointing his gun at her relative who was

lying on the ground screaming for help. The complainant approached to make sure her relative was OK. An SJPD officer allegedly told her to step away, then pushed her, causing her to fall (Force). When her mother saw this, she told the officer not to touch the complainant like that. The officer allegedly replied, "I can do whatever I want to them."

IA's Conclusion:

IA exonerated the Force allegation stating that the officer's actions were objectively reasonable based on the complainant's unwillingness to cooperate with officers and obey commands.

IPA's Disagreement:

The IPA found that IA's investigation was incomplete. IA did not conduct follow-up interviews with the complainant, witnesses, subject officers or witness officers. Rather, IA based its analysis solely on officers' reports and interviews recorded at the scene. The IPA asserted that, without interviewing any of the parties, IA was unable to adequately determine whether the alleged misconduct occurred.

The complainant also explicitly outlined two more allegations in her complaint that were not addressed in the IA analysis. She stated that her arrest was unlawful, requiring the addition of an Arrest/Detention allegation, and the officers inappropriately laughed at them, requiring the addition of a Courtesy allegation.

Outcome:

After further investigation, the IPA agreed the Force was proper. IA added Arrest/Detention and Courtesy allegations, and came to appropriate findings.

Case #25

The complainant was with a friend when she got into a verbal argument with a tenant. According to the tenant, the complainant spit

in his face. The tenant admitted to punching the complainant in the face with a closed fist. The tenant then went next door and called 911. The responding officers allegedly told the complainant that this was a mutual combat situation and if one party was going to be arrested, the other party must also be arrested. The officers provided the complainant with an incident card. The officers did not write a report or take witness statements. The complainant alleged that the responding officers did not take a report, nor did they provide her medical attention (Procedure).

IA's Conclusion:

IA concluded that it was proper for the responding officers not to take a report because the complainant's injuries were not so obvious as to be clearly apparent to the responding officers, thereby requiring a report.

IPA's Disagreement:

The IPA found that the analysis of the evidence failed to support such a definitive finding. The complainant told the call taker that she was punched in the face by her neighbor and her eye was completely shut. The complainant's friend said she was surprised the other tenant was not arrested after seeing the complainant's eye swollen and bleeding.

Outcome:

IA did a follow-up investigation and concluded that the evidence failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint and changed the findings from Exonerated to Not Sustained.

Case #26

The complainant's vehicle containing tools was stolen. The theft was captured on a security camera. Complainant called SJPD to file a report. When the responding officers

asked him the vehicle's license plate number, he could not remember. The officers ran his name through records and were unable to find a match, and ultimately told him that they could not complete a report without a license plate number. The complainant went to the police station the following week to report his stolen vehicle. He spoke to another officer who also looked up his information in records, and found his vehicle right away. Later that week, another police department found his vehicle, but his tools were missing. The complainant believes that if the initial responding officers had taken a report and completed a thorough investigation, his vehicle and all of its contents may have been recovered (Procedure).

IA's Conclusion:

IA exonerated the Procedure allegation, stating that the officers and dispatch did, in fact, conduct a records check for vehicles registered to the complainant during the initial response to the incident scene, but were unable to locate the vehicle license plate.

IPA's Disagreement:

The records indicate that the complainant's van was a 1997 Ford. The CAD indicates that the complainant told dispatch that his van was a 1986 Ford. The officer resolved this discrepancy likely by telling him that the only white Ford van registered to him was a 1997. The complainant must have agreed this was the correct year if the officer completed a report. IA did not interview the responding officers to determine what investigative steps they took.

Outcome:

After conducting more investigation and listening to dispatch audio records, the complainant was insistent that the van was a 1986 or 1987 Ford and not a 1997 Ford. It is highly probable that after some time had

passed, the complainant realized that the van that was stolen was actually the 1997 Ford reflected in the system. The IPA agreed that a finding of Exonerated was appropriate.

Closed with Concerns

Case #1

While driving, complainant was stopped by two officers because his car registration had expired. Complainant alleged that the officers were discourteous. Specifically, one officer yelled, "since you are being an asshole, we're going to tow your car." This officer searched both complainant and his car. The complainant alleged that due to the officer's improper handling of his property, his cell phone's screen was cracked and the window of his vehicle was damaged.

IA's Conclusion:

IA identified two allegations (1) Courtesy – whether the officer uttered rude statements and (2) Procedure - whether the officer damaged property and failed to document the damage. The finding on Courtesy was Not Sustained; the finding on Procedure was Unfounded. The IPA believes the investigation of these two allegations was adequate and that the findings were supported by the evidence.

IPA Concerns:

The IPA's concerns focused on the allegations voiced by complainant during his intake interview that were not identified or investigated. He raised concerns that should have prompted the interviewer to ask follow-up questions; such questioning would have clarified whether additional allegations should have been attached to the complaint. The complainant's interview revealed that, in

addition to his concerns about courtesy and property damage, he also had issues with Force, Search/Seizure, Procedure (handcuffing) and Procedure (improper car tow). Without additional information, the investigation of the incident was not thorough or complete. Thus, the IPA closed this complaint with concerns.

Case #2

Multiple officers responded to a residence to investigate a drive-by shooting. The shooting resulted in damage to a car owned by one of the residents. The car owner's brother and the complainant were also at the scene. According to the complainant, as the police were conducting their investigation of the drive-by, he got into an altercation with the car owner. The police saw the altercation which the complainant described as "pushing and shoving." The complainant said that the officers "attacked" him, "grabbed him and slammed him to the ground." One officer allegedly "threw him to the ground and his face hit the ground." The complainant was arrested for violations of Penal Code sections 148 and 415.

Complainant alleged that officers used unreasonable force. He claimed to have sustained a fractured jaw, a broken nose and fractured orbital.

IA's Conclusion:

IA interviewed the car owner and his brother. They also interviewed two subject officers and one witness officer. In general, the officers stated that the complainant had hit the car owner and that, after the officers had separated the two, the complainant seemed likely to continue the fight. When the complainant lunged toward the car owner, officers intervened and used force to control his movements, handcuff him, and place him

under arrest. IA found the Force allegation to be Exonerated.

IPA Concerns:

The IPA was concerned that the IA analysis overlooked several significant points. First, the analysis did not address inconsistencies in the statements of the civilian witnesses and the sworn officers about the extent, if any, of physical contact between the complainant and the car owner. Next, the IA investigation revealed that the photographs taken by the officers to document complainant's injuries seemed inadequate given their written descriptions. The IPA recommended that documentation of involved subjects and their injuries should be done in a manner which best helps investigators later understand the officers' description of the circumstances and thus avoid speculation. Lastly, both subject officers documented that they personally witnessed the car owner punch the complainant resulting in immediate and significant injury. However, there was no misdemeanor citation or arrest of the car owner. The officers' reports did not document detail on the basis of this decision.

Case #3

A mother filed a complaint regarding the arrest of her adult son. Her knowledge of the incident was limited to those facts related to her by her son. Her son was a passenger in a vehicle whose driver allegedly was drunk and evaded officers resulting in a police pursuit. An officer arrested complainant's son and used force to take him into custody. The son lost consciousness during the arrest. The complainant provided photographs that she took of her son's injuries within 24 hours of the incident. She stated that he had an abrasion on his face and left ear. She also stated that

her son sustained wrist injuries because the handcuffs were very tight.

IA's Conclusion:

IA investigated two allegations, Force and Procedure (tight cuffing causing injury). The Procedure allegation was Unfounded; the officer applied the cuffs and loosened them upon request. The Force allegation was Exonerated. The investigation showed that police pursued suspects into a field at night. The complainant's son failed to comply with officer commands and actively resisted the subject officer's efforts to control and handcuff him. The son failed to supply his hands and the subject officer formed a reasonable belief that he may be armed with a weapon. The subject officer struck complainant's son in the back of his head twice with his elbow. The force rendered the son unconscious allowing the subject officer to apply handcuffs.

IPA Concerns:

The complainant's son was struck in such a manner that the front of his head hit the ground causing him to lose consciousness for 30 seconds to one minute after the subject officer elbowed him in the back of the head. This suggests that the level of force used was significant. The IPA contended that the analysis did not take sufficient account the proportionality of the force used against the level of resistance. The IPA closed this case with concerns because it appeared that the San José Police Department, unlike other agencies in California, does not restrict impacts to the head of this nature to those circumstances in which deadly force is warranted. Please see Policy Brief #1 at **Appendix H** for more information about the IPA recommendation regarding head strikes.

Case #4

Complainant alleged that he was unlawfully stopped and detained by officers while he was walking on a public street early in the morning. He asserted that the officers profiled him because he is African American and wears his hair in dreadlocks. He claimed that officers improperly searched him and issued a citation for possession of marijuana. He continued to walk to a friend's house. Sometime later, he was informed that officers were searching his car. The officers found a firearm in the car that was registered to him; the gun was confiscated.

IA's Conclusion:

IA identified three allegations: Arrest/ Detention, Bias-Based Policing and Search/ Seizure. IA identified two subject officers. All allegations were closed as No Finding because both officers had resigned from the force during the investigation. The IPA did not dispute this conclusion because, according to policy, if a subject officer leaves the force during the pendency of the investigation, allegations against that officer are closed as No Finding.

IPA Concerns:

There were multiple officers at this incident. IA identified just two – those that left SJPD employment. The IPA asked IA to identify the other officers who were on scene. IA failed to respond. In our view, the investigation was not thorough or complete. Interviews of officers may have shown that officers other than those who had left the department played some role – whether as a subject officer or a witness officer. The failure of IA to take this action undermined our confidence in this investigation. The IPA concluded this case as Closed with Concerns.

Case #5

A mother made a complaint against unknown officers. She filed the complaint on behalf of her son who at the time was an admitted patient at a local hospital. Although she did not know the details of the incident, she wanted to have the use of force, which necessitated his admittance into the Intensive Care Unit, investigated. The allegation was Force.

IA's Conclusion:

The investigation revealed that officers responded to a welfare check at a residence. The suspect had active warrants and was violating a restraining order which prohibited contact with his former girlfriend. Officers located the suspect (complainant's son) in the backyard of the girlfriend's house. One officer ran over to prevent the suspect from climbing over the backyard fence into the neighboring yard. The second officer ran outside and saw both the initial officer and the suspect fall to the ground. The first officer yelled, "Knife!" From this warning, the second officer now believed the suspect was armed although he could not see a knife. As the first officer was trying to control the suspect by containing his legs, the second officer used his baton and attempted to strike the struggling suspect in the shoulder area. Although the officer stated that he was aiming for the suspect's shoulder, the baton struck the suspect in the back of his head. Fearful that the presumably armed suspect would break free, the second officer again used his baton, hitting the suspect on his upper right shoulder blade. The suspect was handcuffed and arrested. He was transported to a local hospital and admitted to intensive care after he was diagnosed with a brain

hemorrhage.

The IA investigation exonerated the Force allegation. The investigation concluded that the force used by the second officer was within policy because the officer believed that the suspect was armed, believed that the suspect was attempting to escape from the first officer's hold, believed that the suspect was violent and believed that the suspect had violated a restraining order.

IPA Concerns:

The IPA expressed concerns that the analysis did not consider the appropriate application of force depending on circumstances presented to the officer at the time he used force. In this incident, the suspect was thrashing about when the officer swung his baton at the upper shoulder with such force that the resulting strike to the back of the head caused a brain hemorrhage. The analysis provided no examination or evaluation of the available force options and risks assessed by the officer. The IPA suggested that the examination of the use of force should not focus narrowly on the initiation of force but should also consider other factors to assess whether the force is appropriate. The IPA also expressed concern, in this case and others, that uses of force resulting in significant injuries, such as here, are not receiving the appropriate serious level of review unless a complaint is filed.⁴¹ Please see Policy Brief #1 at **Appendix H** for more information about the IPA recommendation regarding head strikes.

Case #6

Complainant alleged that she phoned 911 to report that a neighbor was trespassing on her porch and harassing her. An officer responded

⁴¹ See discussion of Use of Force Accountability in Chapter Four.

to the scene and watched the video that the complainant had captured. The complainant alleged that she told the officer that the neighbor should be arrested; the neighbor was not arrested. Instead the officer attempted to mediate the situation. The complainant alleged that the officer should have arrested that neighbor and that she was treated poorly during the interaction. The allegation was Procedure.

IA's Conclusion:

The IA investigation included an interview of the subject officer. He stated that when he arrived, the complainant was upset and agitated. She said that she had a video recording showing her neighbor on her porch staring through the window. During his interview, the officer stated that complainant's porch is a common area and not private property, thus no crime was committed when the neighbor came onto the complainant's porch. The Procedure allegation was Exonerated.

IPA Concerns:

The IPA was concerned about the officer's assertion that the porch area was common to the apartment complex and thus not "private" property. Given the photos of the apartment, porch and driveway, the IPA had concerns about the officer's characterization. Although IA visited the property and took photographs, IA appeared to accept the officer's characterization without making an independent analysis.

Case #7

Complainant filed his complaint the day after his former girlfriend took his vehicle without his permission and was then involved in a traffic accident with the car. The complainant gave his keys to the former girlfriend so she

could retrieve some of her property from his vehicle. He told her that she was not to drive the car. He later checked on the car and saw that it was gone. Hoping that she would return the car by the end of the work day, complainant did not immediately report the theft. Later that day, he was informed by California Highway Patrol (CHP) officers that his former girlfriend had been involved in a hit-and-run accident while driving the complainant's car.

Complainant twice attempted to file a stolen vehicle report with SJPd; on both occasions, the officers refused to take a report. On his third attempt, officers completed a report, but then informed complainant that they would be sending the report to the Bureau of Investigations for review and an officer in the Bureau would ultimately decide how to proceed.

The next morning, complainant talked with the officer in the Bureau. This officer told him that since he had consented to his former girlfriend's use of the vehicle on prior occasions, she had consent to drive his car on this occasion. The officer determined that complainant's claim was unfounded and that the vehicle had not been stolen.

IA's Conclusion:

IA interviewed the subject officer. The officer stated that the complainant told him that he didn't file a stolen vehicle report immediately because of a prior incident. On that occasion, he had reported his car stolen and when the police found the former girlfriend with the car, the police allegedly hit her. The subject officer interpreted this hesitancy to immediately file a stolen vehicle report to mean that there was an agreement between the complainant and his former girlfriend that she was allowed to drive the vehicle. The subject officer also stated that SJPd's Auto Theft Reporting Guidelines

dictate that this case did not require a stolen vehicle report or transmission to the District Attorney's Office because the parties had a domestic relationship, and therefore, any discrepancy regarding access to the vehicle was a civil matter. Based primarily on the officer's statement, IA concluded that the Procedure allegation was Exonerated.

IPA Concerns:

IPA took issue with the investigation analysis. We found that IA (1) failed to apply California Vehicle Code section 10851(c) governing vehicle theft and (2) inappropriately applied the SJPD Auto Theft Reporting Guidelines. California Vehicle Code section 10851(c) states that "...the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person." The subject officer's refusal to take a stolen vehicle report based on previous consent the complainant had given to his former girlfriend to drive his vehicle is contradicted by the Vehicle Code. The SJPD Auto Theft Reporting Guidelines apply to: 1) domestic loans, 2) test drives, and 3) rental or leased vehicles. None of these three circumstances were applicable to this incident. Lastly, IA did not apply the following provision of the guidelines: ". . . . if the vehicle was taken by force, fraud or deception, no waiting period is required and an officer will be dispatched to take a report as soon as possible." Since the girlfriend used deceit to gain access to the complainant's vehicle, an officer was required to have taken a report as soon as possible. The IPA contends the evidence did not support IA's conclusion that the officer's conduct was within policy.

Case #8

Complainant contacted Internal Affairs regarding his interaction with SJPD officers two days prior. He was particularly upset that his RV had been towed.

IA's Conclusion:

IA obtained the CAD, the incident report, audio recordings, and relevant DMV information regarding vehicle permits and tow procedures. IA focused its entire analysis on the propriety of towing complainant's RV; it found that this action was within policy. Complainant's possession of a one-day moving permit issued by the DMV was irrelevant because the permit only allows a vehicle to be moved. Complainant was not moving his RV, rather it was parked on a public street.

IPA Concerns

IPA staff listened to the IA intake interview of complainant and determined that not all of the complainant's concerns were assigned allegations and investigated. While summarizing the incident, complainant addressed several concerns that should have led to misconduct allegations, or at a minimum, more clarifying questions to determine if the complainant wanted these issues addressed in his complaint. The complainant's interview revealed that, in addition to his concerns about the RV tow, he also had issues with Search/Seizure, Arrest/Detention, Force, and Courtesy. IA conducted some additional research on those issues but did not formally add these allegations to the complaint with corresponding findings. Thus, the IPA closed this complaint with concerns.

Case #9

Complainant, who is homeless, lives in a tent in

field. One morning, he left his tent unsecured and unattended. Returning to his tent near midnight, complainant noticed the tent was open and items inside had been scattered about. A few minutes later, a homeless couple told complainant that police officers had searched their tent and ordered them to leave. The couple said that the officers then went over towards complainant's tent. The couple told the complainant that they did not know whether the police had entered his tent or not. Complainant believed that the officers improperly entered his tent. Complainant stated that he would attempt to provide IA with contact information for the couple.

IA's Conclusion:

Nine days after the complaint was filed, IA obtained a Google map of the field that complainant described. IA then completed a CAD search and identified two events in close proximity to that location. These two events did not match the circumstances described by complainant. Two months after the complaint was filed, IA checked body worn cameras in an unsuccessful attempt to further identify the incident and any involved SJPD officers. The complainant did not provide contact information for the couple who allegedly witnessed the event. The allegation of Search/Seizure was closed as No Finding because the complainant failed to disclose sufficient evidence needed to identify the officers who allegedly entered and searched his tent.

IPA Concerns:

The IPA contended that IA should have acted more quickly to try and identify the homeless couple who witnessed this event. Such information may have proved valuable in identifying the subject officers so that they could be interviewed about their conduct.

Case #10

The complainant and spouse were stopped by SJPD officers. The complaint contained numerous allegations: (1) Courtesy – an officer was threatening, (2) Arrest/Detention – the stop was unlawful and that they were improperly cited, (3) Search/Seizure – the search of their car was illegal (4) Procedure – the officers improperly displayed a firearm, and (5) Bias-Based Policing – the officers' conduct was racially motivated. The complainant alleged that one officer said, "we get calls about once [a] week about suspicious black people and we have to check it out to see what's going on. This happens a lot with black people over here."

IA's Conclusion:

The complaint was filed in November of 2014. Nine months later, in August of 2015, IA learned that the complainant filed a civil suit regarding the incident against the City of San José. Per Government Code section 3304, the filing of such a suit where officers are named as defendants, "shall toll the one-year time period" for an investigation. The investigation resumed once the litigation ended in September of 2016. The investigation was then completed and findings were made. With respect to the alleged statement about the police having to regularly check out black people, that officer had retired by the time the investigation was completed. Per SJPD policy, because the officer was no longer an employee, the allegation was closed with No Finding.

IPA Concerns:

Our concern with the investigation centered on its timing. After some preliminary work of gathering documents, the case was not assigned for formal investigation until March of 2015. No investigatory steps took place before the case was tolled the next August.

The case was not resumed until November of 2016. While the tolling was mandated by statute, the significant delay from November of 2014 to August of 2015 occurred before the filing of the civil suit. That nine-month delay allowed less than 90 days for the investigation to be completed once it was resumed in 2016. By that time, the subject officer had left the department and a thorough investigation could not take place.

Case #11

The complainant filed a complaint with the IPA. Among other things, he alleged that SJPD officers improperly arrested him (Arrest/Detention), (2) inappropriately hung up the phone when he was trying to arrange for a relative to retrieve the vehicle so it would not be towed (Procedure), and (3) initially left the keys in the vehicle (Procedure) but later retrieved the keys and gave them to a third party without the complainant's permission (Procedure). That third party started using the complainant's vehicle without his permission.

IA's Conclusion:

IA investigated the complaint. The Arrest/Detention and two of the Procedure allegations were Exonerated. One Procedure allegation was Unfounded.

IPA Concerns:

The IPA found that the evidence and analysis supported the findings, with one exception. We closed the complaint with concerns on one of the Procedure allegations – failure to secure keys. The IA analysis failed to adequately address whether the subject officer gave complainant's keys to a third party without verifying whether complainant had given that third party the permission to be in possession of his vehicle.

Case #12

The complaint alleged that a minor was detained by an officer on a school campus and inappropriately questioned about an incident. Because the case was of a sensitive nature and involved a minor, we will not disclose specific details. The complaint, however alleged that the officer did not properly advise the minor of *Miranda* rights (Procedure), that the student was told that all questions had to be answered to be free to leave (Arrest/Detention). The complaint also alleged that the officer asked the student inappropriately intimate questions during the investigation (CUBO).

IA's Conclusion:

The investigation found that the officer did not properly advise the student of his/her *Miranda* rights. The requirements for advising minors of their rights to be silent and to seek the advice of counsel are stricter than those for an adult. The Arrest/Detention and CUBO allegations were concluded as Unfounded.

IPA Concerns:

The IPA had significant concerns about this case. Ultimately, because the SJPD concluded that the officer did not properly give *Miranda* warnings and because the findings in the remaining issues were, in our view, a close call, we did not close as Disagree. However, this incident was emotionally traumatizing for this adolescent and the anxiety level was compounded by the officer who viewed this as a very clear-cut criminal issue. The officer's accusatory questioning lacked sensitivity. It is clear from the response by SJPD during our dialogue that the officer's conduct (other than the *Miranda* issue) was, in the Department's view, within their training and policy. We strongly suggest that the SJPD re-evaluate their practices and training when it comes to

incidents involving children and adolescents.⁴²

Case #13

The complaint was filed on behalf of complainant's son. The allegation was that officers used excessive force in arresting her son which led to a head injury (Force).

IA's Conclusion:

The IA investigation revealed that the use of force occurred after an officer attempted to stop a male who was riding his bicycle in violation of traffic laws. He attempted to evade the officers and then dropped the bike and ran off on foot. When officers caught up, he refused to follow their orders and, because they did not know if he was armed, one officer used two baton strikes to detain him. IA found that the force was within policy (Exonerated).

IPA Concerns:

Our initial concerns were whether an officer used his patrol car to cut off the suspect on the bike so that he collided with the car; we requested that IA provide additional investigation on this aspect of the stop. IA declined this request; IA asserted the evidence showed the suspect's bike had stopped and that the bike struck the patrol car as the suspect dropped the bike and started running. Our second concern was that IA's analysis did not take into adequate account whether the amount of force used was appropriate for the level of resistance presented by the suspect. It was Closed with Concerns rather than Disagreed because the suspect evaded officers on his bike and then ran from the officer; he appeared to be under the influence. A cell phone video showed two baton blows used on the kneeling suspect who had an outstretched hand. However, the video was taken from a

distance so that it was impossible to determine what the officer was seeing from his point of view. After the two baton strikes, the officers moved in and the suspect was handcuffed.

Case #14

Two men filed a complaint jointly following their arrest. An officer stopped them for allegedly being in a park after hours. The officer arrested one of the men for being under the influence and the other was arrested for resisting a peace officer. The allegations included unlawful arrest of both men (Arrest/ Detention), the unlawful search of one (Search/Seizure), unreasonable force against the second man (Force) and the use of tight handcuffs which resulted in swelling and scarring (Procedure).

IA's Conclusion:

The IA investigation led to the conclusion that the officer appropriately detained the two men near the park after-hours following reports of people inside the park. A cell phone video showed the start of a verbal disagreement between the officer and one of the men. IA deemed all the allegations to be Exonerated.

IPA Concerns:

The video did assist in our evaluation of the investigation. However, during our review, we learned that the under the influence charge against Complainant #1 was dismissed after a finding of factual innocence (i.e. the established facts could only lead to the conclusion that he was innocent) and that Complainant #2 was acquitted of resisting a peace officer and being in public while intoxicated. We closed this case with concerns because IA did not inquire about the outcome of criminal cases following an arrest for

⁴² See text regarding officers on school campuses in Chapter Four: IPA Policy Recommendations.

resisting a peace officer after a use of force. In this case, the fact that a local judge made a finding of factual innocence and evidence of an acquittal are elements which should inform IA's investigation and analysis. While we did not possess enough information to close as Disagreed we could not close as Agreed, as too many unanswered questions were raised by the outcome in court.

Case #15

The complainant's mother called SJPD alleging that her life was in danger. As responding officers were interviewing the mother, the complainant pulled into the driveway and tried to enter the house. Officers gave the complainant commands to stay back, but she nevertheless tried to enter. As the complainant attempted entry, an officer grabbed her by her arm and escorted her back to the cars in the driveway and released her. Complainant again tried to enter the house. The officer responded to her efforts by using control holds and a take-down maneuver to prevent her from entering the house. The complainant complained of pain at the scene. The allegation was Force.

IA's Conclusion:

During the investigation, the Department added a Procedure allegation against an officer for failing to complete a mandatory Force Response Report. The Force allegation was deemed Exonerated – a finding not disputed by the IPA. Regarding the Procedure allegation, the SJPD Duty Manual requires a Force Response Report for a takedown maneuver, which was performed on the complainant here. Although the officer stated that he did, in fact, write a Force Response Report, it could not be located in the SJPD's system. The officers were interviewed and stated they were

sure they wrote the Force Response Reports and the supervising officer was "almost certain" that he approved them. IA came to a finding of Not Sustained concluding that the investigation failed to disclose sufficient evidence to clearly prove whether or not the allegation occurred.

IPA Concerns:

IA unquestioningly relied on the officers' and the supervisor's assertion that Force Response Reports were completed and properly submitted with the police reports. However, IA did not attempt to resolve how the reports did not end up in SJPD's records management system if the reports were, in fact, completed. In the absence of an explanation accounting for the absence of the records, the IPA believed that the IA analysis was improperly biased because discrepancies were resolved in favor of the subject officers.

Case #16

The complainant was assaulted at a shop and the aggressor fled. The complainant called SJPD and two officers responded. The complainant alleged that the officers were very rude and aggressive in their interaction with him (Courtesy). The complainant also alleged that the officers did not complete a thorough investigation (Procedure).

IA's Conclusion:

IA came to a finding of Not Sustained for the Courtesy allegations, stating that the witnesses were not independent because they were the complainant's friends. IA came to a finding of Unfounded for the Procedure allegation asserting that the officers completed a thorough investigation when they took witness statements and wrote an incident report.

IPA Concerns:

The incident report revealed that the shop manager said that video surveillance was not immediately available, but would be available for pick-up the following day. The responding officer did not pick up the video. After receiving the incident report, no officer from the Bureau of Investigations picked up the video. We closed this case with concerns because there was video and the subject officer did not collect it and did not ensure it was collected. In 2013, the IPA made a policy recommendation urging the Department to establish a protocol for securing and reviewing videotapes that might capture images of thefts or suspects. In response, the Department issued a training bulletin that suggests video should be collected but does not indicate who should collect it. We are concerned that there continues to be no clear protocol in the Duty Manual addressing who will collect video surveillance.

Case #17

The complainant permitted a woman and her boyfriend to spend the night at his apartment. The complainant's friend parked his car in the neighboring commercial parking lot while at work and gave the car keys to the complainant for safe-keeping.

The woman incessantly asked the complainant to lend her his friend's car but the complainant refused. The complainant asked her to leave the apartment and walked her outside. She refused to leave and the complainant assaulted her.

SJPD officers were called and ordered the complainant to exit his apartment. He complied and the officers handcuffed the complainant and placed him in the patrol car. The complainant alleged that an officer unlawfully

entered his apartment with the woman, and exited with the complainant's key ring which included the vehicle keys (Procedure) and his apartment keys (Procedure) and other property.

IA's Conclusion:

IA analyzed the concerns about the car keys and the apartment keys under one Procedure allegation. IA stated that the subject officer acted in good faith and in agreement with the complainant to release the property, including the keys, to the woman. Further, the complainant did not notify the officer his apartment keys were on the key ring until after the complainant was taken out of the police car and walked back to his apartment.

IPA Concerns:

IA refused to add a second Procedure allegation and come to an appropriate finding even after acknowledging that there were two distinct procedure concerns raised by the complainant—the key ring given away held both apartment keys and car keys.

Case #18

The complainant was riding his motorcycle when he was stopped by an SJPD officer for speeding. The complainant alleged that the officer started following him on city streets in San José and then onto freeways, totaling a distance of nine miles, before ultimately getting stopped. Among other things, the complainant believed that following him for nine miles (Procedure) was unlawful. The complainant also stated that he was offended by the officer's conduct of spitting chewing tobacco on the street (Courtesy).

IA's Conclusion:

IA refused to add a Courtesy allegation for chewing and spitting tobacco. IA said that the complainant did not ask the officer to

refrain from chewing tobacco and did not mention to the officer that he was offended. IA also said that since it appeared that the complainant was a member of a motorcycle gang, the officer did not feel chewing tobacco would likely offend the complainant. IA also concluded that the officer acted within policy when he was outside of his assigned beat and followed the complainant nine miles before ultimately stopping him. IA asserted that during their interview of the officer's supervisor, the supervisor said that he gave the officer permission to leave the district while conducting patrol and enforcement stops if necessary. IA did not record the interview of this supervisor.

IPA Concerns:

Regarding the allegation of chewing and spitting tobacco, a Courtesy allegation should have been added. Officer conduct and whether an allegation is worthy of being investigated should not be dependent on the lifestyle of the complainant. This would undermine confidence in the objectivity of the complaint system. Regarding the issue of the officer being out of his assigned district, the interview of the supervisor should have been recorded like all other interviews. For both of these reasons, we closed this case with concerns.

Case #19

The complainant filed a complaint on behalf of her friend. The complainant's friend is deaf and her preferred form of communication is American Sign Language (ASL). When her friend reported a recent assault to SJPD, an officer was assigned to investigate the case. The officer did not know ASL, and therefore requested another officer's assistance to translate during his interview with the victim. After her interview, the victim expressed

frustration to the complainant that during the interview she realized that the officer was not fluent in ASL. Consequently, she was forced to use her voice to adequately communicate; the victim is uncomfortable speaking because she is unable to hear herself. Although the complainant described both the interviewing officer and translating officer as being professional and courteous in their interaction with the victim, she filed this complaint alleging that proper translation services were not provided to her friend, the victim of a crime, when requested (Procedure).

IA's Conclusion:

The IA investigation revealed that the translating officer was identified as "non-certified" in ASL on SJPD's bilingual report. IA concluded that the interviewing officer took reasonable steps to provide translation services by using the interviewing officer's assistance since there are no SJPD officers who are certified ASL translators. Also, IA stated that the victim knew at the time of her interview that the officer was not a certified ASL translator, but nevertheless consented to his translation assistance.

IPA Concerns:

SJPD has a specific procedure officers *must* follow when encountering limited English proficiency individuals. Section Five, Part C of the Language Access Plan (LAP) outlines the procedures for providing oral translation services during victim interviews. It requires that "every effort should be made to use a qualified interpreter identified by the City's bilingual list for any interrogation or the taking of a statement where the legal rights of a suspect or victim/witness could be adversely impacted. The Department will utilize the identified contracted interpreter services vendor at that time to assist with any interpreter services that are unable to be fulfilled by an

on-duty certified interpreter.” The reason for these rules as outlined in the LAP is that “these [interviews] potentially involve statements with evidentiary value upon which a victim/witness may be impeached in court. As such, accuracy is a priority SJPD personnel must recognize that miscommunication during interrogations or victim/witness interviews may have a substantial adverse impact on the evidence presented in any related criminal prosecution.”

Therefore, even if the victim provided her consent, the interviewing officer did not follow SJPD’s Language Access Plan protocol and obtain a certified interpreter, thereby rendering any perceived consent meaningless.

Case #20

The complainant was driving a stolen car when he was pulled over by an SJPD officer. The complainant fled on foot into the backyard of a residence. A K9 officer was called to assist. The K9 officer gave commands to the complainant to surrender with his hands up. After the announcement was made, and the complainant did not surrender, the K9 was released. The K9 found the complainant and bit him. The officer heard the complainant screaming from the pain of the dog bite. The officer commanded the suspect to come out of the bushes. The complainant alleged that he was trying to comply with commands to surrender, but his movement caused the dog to continue biting him. The complainant fell out of the bushes onto his right side. His hands were not clearly visible, so the dog continued biting him. Once the officer could see his hands, he secured the dog. The complainant filed this complaint alleging that the use of the K9 was an unreasonable use of force.

IA’s Conclusion:

IA concluded that the use of the canine was proper and the requirements were satisfied in order to deploy a police service dog, as the suspect was believed to be armed and possibly lying in wait, thus posing an immediate threat to the residents in the neighborhood.

IPA Concerns:

Although the IPA agrees that the use of force was reasonable, the IPA closed this case with concerns. The complainant was attempting to comply with commands to surrender and was exiting the bushes, but such movement caused the dog to continue biting. The officers refused to release the dog until the subject’s hands could be seen, but this might not be possible due to the K9’s continued biting.

Case #21

The complainant stated that he was homeless and sleeping in a shed. He woke up to a rattling noise, looked up, and saw lights. The door to the shed opened, he heard a dog’s growl and then a dog bit his leg. The complainant alleged that he did not receive any prior warnings before the dog was released. He also alleged that an officer stomped on his head. He was subsequently arrested for auto theft, possessing burglary tools, and resisting arrest. The complainant complained about the use of force (Force), and that he was not provided any warnings before the K9 was released (Procedure).

IA’s Conclusion:

The officer documented in his police report that he gave the following warning prior to releasing the canine: “San José Police Department Canine unit, you are ordered to surrender unarmed, we will be using a dog to search, and when the dog finds you he will bite

you.” The officer waited for a response and did not hear anything and the dog was released.

IPA Concerns:

The IPA took issue with the lack of precise warnings given to the complainant. The SJPDCanine Unit Procedures Manual enumerate these required K9 commands:

1. The suspect will be told that we are the “San José Police Canine Unit.”
2. The suspect will be ordered to surrender unarmed.
3. The suspect will be told that a dog will be used to search.
4. The suspect will be told to remain still, if found, or they will be bitten.

The officer failed to use the precise verbiage as outlined in the Manual by neglecting to advise the complainant to remain still. This increased the risk of injury to the complainant.

Case #22

The complainant stated he was the victim of a hit and run. Multiple officers approached the complainant while he was lying in the street. He was transported to the hospital and treated for multiple leg fractures. Officers did not take a report from the complainant (Procedure) at the scene and did not immediately contact him at the hospital. The complainant contacted the police department himself to file a report; he was allegedly told “we don’t really handle these cases unless someone dies.” The complainant found these statements to be insensitive, rude, and discourteous (Courtesy).

IA’s Conclusion:

IA concluded the location of the accident, lack of concrete information, and the credibility and reliability for the complainant’s statements justified the decision to not immediately take

a report. IA did not refute the discourteous statements made by the officer. IA stated during the follow-up call the complainant suggested the officer was just “being honest” when making the statement “we don’t really handle these cases unless someone dies.” IA used the complainant’s characterization of the statement as “being honest” to support a rationale that the statement was not discourteous, thereby exonerating the allegation.

IPA Concerns:

The IPA believes that the original Courtesy allegation should have been held to the standard outlined in the Duty Manual section C1308 regardless of the complainant’s later opinion about the statement. We believe the statement is not tactful and a reasonable person would likely find it discourteous.

Case #23

The complainant alleged she was stopped because she was a person of color in a high crime area (Bias-Based Policing). The officer said that her car windows were illegally tinted – a fact that complainant disputed. As the complainant was looking for the driver’s license, the subject officer allegedly stated, “Let me guess, you don’t have a driver’s license.” The complainant did have a license and provided it to the subject officer. Upon receiving a citation, the complainant suggested that officers should focus on addressing the more serious crimes rather than citing people for minor offenses. The officer allegedly replied, “My partner is in the car. We don’t have anything better to do.” When the complainant told the officer she would file a complaint about harassment, the officer responded, “I’m in training, do what you wish.” The allegations are Courtesy and Bias-Based Policing.

IA's Conclusion:

IA reviewed the on-line complaint form submitted by the complainant, interviewed the subject officer, and made a finding of Not Sustained for Courtesy and Unfounded for Bias-Based Policing without interviewing the complainant.

IPA Concerns:

The IPA was concerned that there were no documented attempts to interview the complainant. An interview could have provided additional evidence by which to assess the allegations. The complainant's on-line form provided credible details about the officer, such as the officer stated he was in "training" – a fact that the complainant would likely not know about unless being told directly by the officer and one confirmed by the IA investigation.

Case #24

The complainant was involved in a dispute with a relative. Officers arrived on scene. The complainant was not fluent in English. The complainant asked for a translator but the officer replied that the complainant spoke English well enough. The allegation is Procedure.

IA's Conclusion:

The IA analysis concluded that the complainant did request a translator and was given the opportunity to talk to a witness officer that spoke his language – however, this officer was not a certified bilingual staff member. IA deemed the allegation to be Exonerated based on protocol requiring that department members take "reasonable steps to provide language assistance services to Limited English Proficient (LEP) individuals who they encounter or whenever an LEP individual request

language assistance services in accordance with the Department's Language Access Plan." Duty Manual section C1317.

IPA Concerns:

IA's analysis of Duty Manual section C1317 was improperly applied to the facts. When translation is requested, section C1317 outlines reasonable steps to obtain translation services and requires officers in the field to have "certified" sworn and unsworn staff translate for individuals to ensure accuracy and understanding of the events. If that is not possible, officers are then to call the contracted service to provide language translation. The investigation failed to show that officers first made a reasonable attempt to obtain translation services from a certified staff member and then called the contract service to provide language translation.

Case #25

The complainant stated his employer contacted the SJPD to investigate money missing from the business. The complainant alleged the responding officer had a personal relationship with the manager creating a possible conflict of interest (Procedure). The complainant alleged that he was questioned about the missing money but never read his *Miranda* rights (Procedure). And the complainant alleged the officer failed to provide him with a number for the police report (Procedure).

IA's Conclusion:

The IA investigation concluded the subject officer followed procedure outlined in the Duty Manual and all necessary reporting of activity was documented.

IPA Concerns:

The findings focused on the alleged failure to provide a report number. The investigation

failed to thoroughly investigate the other allegations outlined in the initial complaint. When the IPA asked for further analysis, IA agreed. IPA received back the final analysis three months later with No Finding because the officer left the department. The allegations were clearly stated in the initial complaint and the IPA was concerned that each one was not addressed in the initial write-up.

Case #26

The complainant alleged while patronizing a local smoke shop she was battered by the shop owner. Two officers arrived and the complainant told them that she wanted to press charges. The complainant believed the battery was captured on the shop's video surveillance. The complainant alleged that one officer was rude and discourteous (Courtesy), that the complainant was improperly ordered to sit on the curb (Procedure), and that both officers failed to complete a thorough investigation (Procedure). The complainant contacted the officers' supervisor shortly after leaving the incident scene seeking further investigation. The complaint alleged the subject officer refused to accept "her pressing charges." (Procedure)

IA's Conclusion:

IA concluded officers documented the incident in a crime report. The allegations of Courtesy and Procedure against the officers were both closed as No Finding because the officers had left the department. IA analyzed the supervisor's role. The supervisor informed the complainant the officers did not see evidence of the battery on the store video

but would request a community service officer to collect the video for further review. A community service officer (CSO) was not immediately available and it was noted that the Department's CSO policy prohibits a CSO from collecting evidence from a possible perpetrator of a crime. The supervisor never followed up to see if the video was in fact retrieved. IA concluded the supervisor was in compliance with the Duty Manual section L 3503.

IPA Concerns:

The investigation revealed that the supervisor made a request to the CSO which was against policy. Thus, the investigation should have analyzed the improper request as part of its analysis and finding. The IPA was concerned that this was not acknowledged or addressed.

Case #27

The complainant called the police after she had a dispute at her residence and was not able to enter the home. The complainant alleged officers were not responsive to her calls (Procedure). The complainant walked to a business and again called for service. When officers arrived, she alleged they did not listen to her concerns. Instead the subject officer used his discretion to place the complainant on a Welfare and Institutions Code section 5150 hold⁴³ (Procedure). The complainant alleged that the subject officer placed handcuffs on her and tightened them when she mentioned she was going to contact IA. The complainant was released after 24 hours.

IA's Conclusion:

The IA investigation concluded the officers

⁴³ Welfare and Institutions Code § 5150(a) states in part: "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services."

followed Department policy. When the subject officer approached the complainant at the restaurant, she was making nonsensical comments about authoritative figures and not providing officers with details about the call for service. The Crisis Intervention Training (CIT) trained subject officer believed the complainant was having a mental health episode and was a danger to herself and others.

IPA Concerns:

We had concerns that the officer's assessment did not meet the strict requirement mandated by the Welfare and Institutions Code to place someone on an involuntary hold. The officer documented nonsensical comments and odd behavior. The officer did not adequately document that the complainant was a danger to herself or others.

Disagreed

Case #1

The complainant, an African-American male, stated that he was returning home from work late at night when he saw two officers detaining someone. An officer called him over saying that he wanted to talk to the complainant who did not wish to speak to the police. The officer then rushed toward him and ordered him to stop. When the complainant asked the officer why he was bothering him since he had not committed a crime, the officer replied that he just crossed the street. The complainant acknowledged that he had just crossed the street but pointed out that there was no crosswalk to designate where one had to cross. The complainant alleged that the officer then grabbed and handcuffed him. When asked if he had any weapons, he replied that he had

mace and a pocket knife. He gave the officer permission to retrieve his wallet from his pocket to obtain his identification. Although the complainant did not give permission for a search of his backpack, the officer started to search anyway. When he protested, the officer allegedly responded, "We'll just search your bag or else we're going to take you to jail." The complainant was released without a citation. He complained that his detention was unjustified (Arrest/Detention) and that there was no cause to search him (Search/Seizure). He believed the officer racially profiled him (Bias-Based Policing).

IA's Conclusion:

IA obtained electronic records and the dispatch recording. The two subject officers were interviewed. IA concluded that the officer had probable cause to stop the complainant for walking in the middle of the street of a major thoroughfare and that the investigation failed to reveal any evidence that bias motivated his actions. The Arrest/Detention and Search/Seizure allegations were Exonerated and the Bias-Based Policing allegation was concluded as Unfounded.

IPA Disagreement:

IPA lodged a concerns memo with IA that the officers' explanations were not critically examined. Rather than being a "major thoroughfare," the location was a two-lane residential street with no traffic controls or crosswalks. The Vehicle Code did not prohibit the complainant's actions and he was not cited. After we expressed our concern that the Vehicle Code was inapplicable, SJPD then relied on a Municipal Code section which prohibits a pedestrian from crossing a roadway at anything other than a right angle or by the shortest route possible to the opposite curb. We rejected this analysis as lacking objectivity and fairness in that (1) the complainant was

never interviewed about the angle by which he crossed the road or whether the presence of officers and a parked police car forced him to take an indirect path and (2) IA's analysis relied on after-the-fact reasoning to justify an officer's actions who himself never asserted the applicability of that Municipal Code section.

Case #2

A physician provided care for a minor patient and based on his observation filed a complaint. The minor told him that he allegedly ran from SJPD officers who tried to stop him when they learned he had a warrant for his arrest. The minor claimed that he stopped and held his hands up. An officer allegedly threw him to the ground and hit him several times. The officer also kned the minor in the back one time causing an injury to a lung that required surgery and hospitalization. The only allegation was Force.

IA's Conclusion:

IA interviewed the involved officer. He described seeing two underage males who appeared to be drinking in public. The minor ran away and the officer began a foot pursuit that lasted five minutes. During the pursuit, the minor shouted epithets at the officer. The officer believed that the minor was a gang member based on the area and the words he was shouting. The officer finally detained the minor. As the officer tried to apply handcuffs while the minor was lying on the ground, the minor rolled to his side. The officer said that he "dropped" his knee on the minor to control his movement. He yelled out in pain and offered no further resistance. There were no reported witnesses to the incident. Medical assistance was called because the minor had trouble breathing and he was transported to a hospital. IA concluded that the minor

was actively resisting and the officer used a department-approved technique to overcome the resistance. The Force allegation was closed as Exonerated.

IPA Disagreement:

The IPA found that the analysis of the use of force was not objective or thorough. The analysis did not address that while the officer claimed to have used relatively minor force, the injuries were significant. The officer described using his knee as a mechanism to control the minor's movement. However, there was no acknowledgment or analysis of whether the officer used his knee as an impact weapon. We also expressed our concern that despite the serious injury, the use of force did not receive a close examination by Department leadership until a complaint was filed.

Case #3

The IPA received a complaint based on a video seen on social media of SJPD officers arresting a DUI suspect. It was alleged that the officers used excessive force during the arrest (take-down and baton strikes).

IA's Conclusion:

IA reviewed electronic records, video evidence, a civilian witness, and the three involved officers. The investigation concluded that the force used by the officers was reasonable because of the threat and resistance presented by the suspect. When an officer tried to handcuff the driver, the driver pulled away and began to struggle with the officer. The force option by officers to use multiple baton strikes on the suspect was appropriate because of the threat he posed by refusing to show his hands so that officers could handcuff him as he lay on the pavement. IA closed the Force allegation as Exonerated.

IPA Disagreement:

The IPA disagreement was based on several issues in the analysis: (1) the danger supposedly posed by the suspect was not supported by the actions of the officers prior to the struggle and use of force; (2) the belief that the suspect could potentially be armed and was thus a danger was not supported by the fact that officers had already conducted a pat-down search; (3) an officer's description of the events just prior to the initiation of force did not appear to be supported by the video; (4) the analysis unfairly discounted the witness's observation; and (5) the video evidence did not support that one officer re-assessed the situation before using further baton strikes.

Case #4

IA received a complaint against SJPD officers alleging excessive force. The complainant said that he was sleeping in his parked van when he was awoken and "manhandled" by three officers. The complainant claimed that the officers hit him all over his body. He was taken to the hospital and then released from custody with no citation or pending charges. Allegations of Force were made against four officers.

IA's Conclusion:

The IA investigation consisted of reviewing records, photographs and interviewing the involved officers. It became apparent that there were two uses of force. One began while the complainant was inside the van and the second event occurred after the complainant was handcuffed. The officers stated that the complainant appeared intoxicated and refused to exit the van. Fearing that he was armed, the officers used force to extract and then restrain him. One officer said that after the complainant was handcuffed, he continued

to resist or attempt escape, so the officer struck the suspect. The Force allegations were Exonerated for the part of the incident where the complainant was pulled from the van and then handcuffed. The other Force allegation for the force after the complainant was handcuffed was Sustained.

IPA Disagreement:

Our disagreement is with the analysis in the first part of the use of force and stems from the manner in which officers removed the complainant from the van. There was an unresolved factual dispute whether the complainant was lying in the van or on his feet presenting a threat. Regardless, two officers grabbed the complainant and pulled him out of the van. They then both let go of the complainant and – with the momentum of forcibly being pulled out – he fell face-first onto the pavement. The IA analysis concluded that face-first fall was "the unintended result of the arrest attempt." We contended that there was insufficient evidence to support IA's conclusion that this force was unintended.

Case #5

A mother filed a complaint regarding her son. He was involved in an incident in which he was shot; his friends then drove him to a hospital. Once at the hospital, the friends attempted to carry him inside for treatment. However, an SJPD officer ordered the friends to put him down on the ground and stand back. Soon after, emergency room medical staff went outside to aid him but the officer prohibited professional medical staff from approaching him. The officer declared that he was already dead and said that the area was a crime scene. The E.R. doctor made another attempt to intervene, insisting that he needed to be medically evaluated inside the hospital.

The officer eventually agreed. The complainant filed this complaint because she believes it was improper for SJPD to refuse medical staff access to her son (Procedure).

IA's Conclusion:

IA concluded that SJPD acted within policy since the time between prohibiting the doctor's treatment of the victim and allowing treatment was only a matter of minutes. Further, IA asserted that the evidence tended to show that the victim died prior to arriving at the hospital. Lastly, IA asserted that the officer properly pronounced the victim dead at the scene and properly refused medical staff to access him for medical evaluation. IA asserted that the officer followed the Duty Manual which states that an officer may make an in-field death pronouncement if the person is "pulseless with total separation or obvious destruction of the heart, brain, and/or lungs."

IPA Disagreement:

IA claimed that the officer determined that the victim had no pulse and had "obvious destruction of the heart." However, this assertion was contradicted by the subject officer. He conceded to IA that he did not physically examine the victim or take his pulse. Without physically taking the victim's pulse and examining his injuries, the subject officer could only conclude that the victim was possibly still alive, although severely injured. Therefore, the subject officer violated Duty Manual section L5902 when he did not take all reasonable steps to resuscitate him and arrange for him to be treated at the nearest medical facility.

Chapter Six: Community Outreach

Effective community outreach is a core function of the Office of the Independent Police Auditor (IPA). It is our mission to educate as many members of the public as possible about the mission and services of the Office of the IPA and the complaint process. This is especially true for those populations of San José which are more likely to come into contact with the police.



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?)⁴⁴
- 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?)



IPA outreach is multi-faceted. In addition to conducting presentations, participating in community events, and initiating individual

⁴⁴ “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.

meet-and-greets, we utilize targeted advertising. The signs read, “Concerns about a San José Police Officer? Call 408.794.6226,” and were printed in English, Spanish and Vietnamese. We distributed, multi-language versions of the signage to local businesses, agencies and organizations. Finally, we created a postcard-sized version of the signage for distribution throughout the City.

In addition to the postcard, we modernized our outreach materials so that our branding is consistent. We now use the same green color

across all of our outreach materials be it our reusable shopping bags, cups or pens.

II. General Outreach Overview

We participated in 129 outreach activities and reached 7799 members of the public in 2016. IPA outreach activities include participation in community events, presentations to the public, and media appearances or interviews. You can view all of our 2016 outreach activities in Appendix G.

Illustration 6-A: Attendees at IPA Outreach Activities in 2016

Outreach Activities	Events	% of Total Events	Attendees	% of Total Attendees
IPA Presentations	40	31%	1065	15%
Community Events/Meetings	79	61%	6608	84%
Meet and Greets & Material Distribution	10	8%	126	1%
Community Outreach Totals	129	100%	7799	100%

A. Presentations by the IPA and Staff in 2016

Presentations by the IPA and staff are intended 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 40 presentations in 2016, a decrease from 2015. The total number of individuals we reached with these presentations was 1,065.

We request attendees at most IPA presentations to complete evaluation forms so that we can gauge the effectiveness of IPA presentations. Attendees consistently reported that their knowledge about the IPA office and the police misconduct complaint process increased. The overwhelming majority of the responders, 98%, rated the IPA presentations as good or excellent. Responders also have an opportunity to provide qualitative feedback about the presentation. Some comments from

our responders are listed below:

- “The most important part of the IPA presentation was...everything because I had no idea about any of this.”
- “I learned about things I can do as a citizen.”
- “The most important part of the presentation was talking about how to handle a conversation with an officer.”
- “I learned that police have rules they need to follow.”
- “I learned about the law and my rights.”
- “I learned that I can file a complaint.”
- “I now know about the process complaints go through. ”
- “The most important part of the presentation was that I learned that I

can file a complaint and my complaints matter.”

- “Knowing that there is a place where people will listen.”
- “The most important part of the presentation was... I know the location (*for the IPA Office*).”

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. Community events and meetings are opportunities for the IPA and staff to be a part of the community, understand local concerns, answer questions about the IPA office, and connect with other government agencies and community-based organizations in order to support the residents and visitors of the City of San José. The number of community events and meetings we attended in 2016 was 79 and the number of individuals reached was 6,608.

The IPA also took part in local and regional events to educate the public and law enforcement at events hosted by the Santa Clara Superior Court’s Bench, Bar, Media, Police Committee, the Black Leaders Kitchen Cabinet, and the LaRaza Roundtable.

C. Meetings with City Officials and Participation in City Events

While meetings with city officials and participation in City events are technically not community outreach, we believe that IPA communication with our government officials is very important. Throughout 2016, the IPA

met regularly with the Mayor, City Council members, City Council appointees, and San José Police Department (SJPD) Command staff. The IPA regularly attended meetings for a committee established by Chief Garcia to examine use of force policies. IPA staff also attended City meetings, including Agenda Review meetings and meetings of the Public Safety Finance Strategic Support Committee and meetings of the School City Collaborative. The IPA also participated in the City of San José’s efforts to address the *White House Police Data Initiative, a response to the Task Force on 21st Century Policing*. The Police Data Initiative effort supports improving the relationship between law enforcement and community members through the use of data to increase transparency.⁴⁵

D. National Civilian Oversight

Communities and interest groups across the United States continued serious conversations about policing and civilian oversight in 2016. Numerous government officials, community groups and nonprofit organizations reached out to the Office of the IPA for knowledge and assistance to better understand the auditor model of civilian oversight. In fact, through the longstanding efforts of the office to participate in national conversations about oversight, the auditor model is expanding across the country. Recently, Fairfax County, Virginia launched its own office called the Independent Police Auditor.

In 2016, the IPA frequently participated in the national discussion on civilian oversight and police accountability. In July, the IPA participated on a panel with Black activists and Black law enforcement leaders in the 20/20 Leaders of America 2016 Criminal Justice Forum in Philadelphia. In December, the IPA

⁴⁵ See <https://www.policedatainitiative.org/>

participated in a panel entitled *The Intersection of Technology, Oversight and Legitimacy in 21st Century Policing*; the panel was part of the Cato Institute's annual Criminal Justice Conference in Washington, D.C.

The IPA also attended the National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conference. He participated in a panel discussing building effective communication between law enforcement and oversight. The IPA was elected to the NACOLE Board of Directors in 2016. Throughout 2016, the IPA spoke and participated in over 40 meetings, conferences, and events that specifically addressed the local and national issues regarding police accountability and transparency.

III. Outreach to Impacted Populations in 2016

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 focus much of our outreach activities in these communities and to those who provide assistance and services to these populations. For example, in 2016 we provided outreach services to the Mexican Consulate, community schools, and youth organizations. The IPA staff actively took part in National Night Out by attending events in City Council Districts 2, 3, 5, 7, and 10.

A. Outreach to People of Color and Immigrants

In 2016, we participated in 68 events involving people of color, immigrants, and agencies that serve those populations. This outreach constituted 53% of IPA outreach activities that included ongoing resource tabling at the

Mexican Consulate, presentations to agencies serving immigrants, and door-to-door meet and greets. The IPA conducted several outreach activities in Spanish and Vietnamese, with translation services provided by IPA staff or volunteers.

B. Outreach to Youth

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 2016, we participated in 42 events reaching 1,232 youth, young adults and the staff who serve them. Youth outreach activities comprised 24% of the IPA's outreach activities in 2016. Our presentations to young people were made possible, in part, through the generous assistance of community agencies such as Girl Scouts of Northern California, Fresh Lifelines for Youth, the Bill Wilson Center, as well as the Santa Clara County Public Defender's Office and the Juvenile Opportunity Court held at ConXión.

The IPA's *A Student's Guide to Police Practices (Guide)* to youth, continues to be utilized and widely supported by parents, teachers and service providers. The guide is given to most youth after an IPA presentation. The *Guide* was developed by the IPA office in 2003 and its purpose is to address common concerns expressed by youth about the police; and it has been a valuable tool in IPA youth outreach. The distribution of the *Guide* to youth and their parents throughout San José remains an IPA priority. The 4th Edition was published in 2012. In late 2016, the Office of the IPA began working on an updated 5th Edition for publication in early 2017. The *Guide* is also available on-line at www.sanjoseca.gov/ipa, under "Publications."

IV. Media

Throughout 2016, the work of the IPA office was the subject of print, radio, television and online news stories. The IPA was interviewed, quoted, or mentioned in the media approximately 62 times in 2016. The IPA was contacted by local and national news forums that brought state and national attention to the IPA office. A few highlights of media mentions include:

- Lawton, Dan and Robert Salonga. "Body cameras: High-profile police beating has agencies rethinking rules for usage." Mercurynews.com. <http://www.mercurynews.com/2016/04/23/body-cameras-high-profile-police-beating-has-bay-area-agencies-rethinking-rules-for-usage/> (accessed April 24, 2016).
- Salonga, Robert. "San José Police Department makes accountability push with slew of training, data initiatives." Mercurynews.com <http://www.mercurynews.com/2016/05/08/san-jose-police-department-makes-accountability-push-with-slew-of-training-data-initiatives/> (accessed May 8, 2016).
- Meagher, Tom. "13 Important Questions About Criminal Justice We Can't Answer," The Marshall Project. <https://www.themarshallproject.org/2016/05/15/13-important-questions-about-criminal-justice-we-can-t-answer#.pejdowQQ>. (accessed May 15, 2016).
- Selby, Nick. "The 'low hanging fruit' of police reform." Washingtonpost.com. https://www.washingtonpost.com/news/the-watch/wp/2016/06/20/guest-post-the-low-hanging-fruit-of-police-reform/?utm_term=.b7ca757a39ad. (accessed June 20, 2016).

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. 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
- Information cards (wallet-sized) providing IPA contact information and a brief description of IPA services

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 Appendix F of this Report as well as on our website at www.sanjoseca.gov/ipa.

VI. IPA Website and Social Media

Available on the IPA website 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," where we also provide ongoing information to the public and we consistently provide updates on our Twitter page <https://twitter.com/sanjoseipa>.

VII. Independent Police Auditor Advisory Council

The Independent Police Auditor Advisory Council (IPAAC)⁴⁶ was established in 1999. The group has 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. In addition to attending quarterly meetings, members assisted the IPA with community outreach. IPAAC members also participated at various locations during National Night Out.

In 2016, our IPAAC had several committee members complete their commitment and cycled off, allowing for new members to begin their tenure with the IPAAC.

2016 IPA Advisory Council Members

Name	Employer/Affiliation	Occupation
Mydzung Bui	Santa Clara Unified School District	Educationally Related Mental Health Services Coordinator
Norma Callender	Self-employed	Semi-retired Independent Paralegal
B.J. Fadem	Law Offices of B.J. Fadem & Assoc., APC	Attorney
Che Hammond	Netflix, Inc.	Software Engineer
Walter Hudson	Retired	Community Advocate
Anthony King	Sacred Heart Community Services	Community Advocate
Yvonne Maxwell	Ujima Adult and Family Services	Executive Director
Michael Mouton	Bill Wilson Center	Drop in Center Supervisor
Hilbert Morales	El Observador	Publisher-Emeritus
Randi Perry	Fresh Lifelines for Youth	Law Program Manager
Yesenia Ramirez	Evergreen Valley College	Business Services Coordinator
Panteha Saban	Santa Clara County Public Defender's Office	Attorney
Kao Saechao	Asian Americans for Community Involvement (AACI)	Professor
Otis Watson	Comerica Bank	Banking/Financial Services
Sarah Webb	Law Foundation	Attorney

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 plurality of IPA outreach in 2016 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.

⁴⁶ In 2013, the Independent Police Auditor Advisory Committee changed its name to Independent Police Auditor Advisory Council.

Illustration 6-B: IPA Outreach by City Council District — 2016

District	Number of Events	%
1	1	1
2	9	7
3	46	36
4	4	3
5	21	16
6	11	8
7	21	16
8	6	5
9	4	3
10	2	2
OCL*	4	3
Total	129	100%

*Out of City Limit - Events, meetings, and presentations that did not occur in San José but involved attendees who are likely to 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 2016 such as:

- National Night Out
- Community resource fairs
- Senior walks
- Door-to-door meet and greets.

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

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04

OFFICE OF THE INDEPENDENT POLICE AUDITOR

8.04.010 Duties and responsibilities.

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

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

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

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

(Ords. 25213, 25274, 25922.)

8.04.020 Independence of the police auditor.

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

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

(Ord. 25213.)

SAN JOSÉ CITY CHARTER §809

OFFICE OF THE INDEPENDENT POLICE AUDITOR

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

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

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

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

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

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

Added at election November 5, 1996

§ 809.1. Independent Police Auditor; Power Of Appointment

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

Added at election November 5, 1996

Appendix B

California Penal Code §832.5 and §832.7

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

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

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

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

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

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

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

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

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

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

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

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

California Penal Code §832.7

§ 832.7. Confidentiality of peace officer records: Exceptions

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

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

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

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

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

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

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

Appendix C: IPA Statement of Values



Office of the Independent Police Auditor

STATEMENT OF VALUES

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

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

Adopted July, 2010 – IPA and Staff

Appendix D: IPA No-Gift Policy



Office of the Independent Police Auditor

NO-GIFT POLICY

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

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

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

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

Adopted July, 2010 – IPA and Staff

Appendix E



OFFICE OF THE INDEPENDENT POLICE AUDITOR

152 North Third Street, Suite 602
San José, CA 95112
TEL (408) 794-6226 • FAX (408) 977-1053
www.sanjoseca.gov/ipa/

SAMPLE CLOSING LETTER TO COMPLAINANT INDICATING THAT THE IPA DISAGREED WITH THE INTERNAL AFFAIR'S INVESTIGATION

[date of letter]

Complainant
Complainant's mailing address

RE: Complaint # I201x-0xxx

Dear Mr./Ms. Complainant:

The Office of the Independent Police Auditor (IPA) was created by the City of San Jose so that non-police officers would be involved in reviewing complaints filed against San Jose police officers. The IPA does not investigate complaints. Instead, the IPA monitors and tracks complaints as they go through the complaint process. Completed investigations are reviewed by the IPA to see if they are thorough, fair and objective.

The Internal Affairs Unit (IA) of the San Jose Police Department sent the completed investigation of your complaint to us for review. The investigation focused on the incident that occurred on [date of incident]. The IPA's Office reviewed relevant documents contained in the IA investigation file. The IA investigation file typically contains a summary of the evidence gathered, an analysis of the facts and applicable SJPd policies. Supporting documentation such as police reports, dispatch logs, medical records, photographs, and force response report, is typically attached. The IPA office reviewed the IA investigation and requested more investigation before the case was closed. You will receive a letter from the IA Unit Commander with the final outcome.

The case has been officially closed by the IPA. Please contact the Commander of the Internal Affairs Unit at (408) 277-4094 if you have questions about the investigation or if you have not received a letter about the final outcome. After that, if you want to discuss the process used to review your complaint, please contact our office at (408) 794-6226.

Sincerely,

Walter Katz
Independent Police Auditor

By: _____

Appendix F: Frequently Asked Questions

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 José police officers; (2) makes sure that the Department of the SJPD investigates those complaints thoroughly and fairly, and (3) recommends improvements to SJPD's policies and procedures.

The Interim IPA is Shivaun Nurre, who has a staff of four people.

Why does the Office of the IPA matter?

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

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

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

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

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

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

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

What is a Conduct Complaint?

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

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

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

Does it matter whether I file a Conduct Complaint?

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

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

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

No, you don't. While it's useful information, if

you don't have that information, you can still file your complaint.

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

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

Who can file a Conduct Complaint with the IPA?

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

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

How do I file a complaint?

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

What happens after I file a Conduct Complaint?

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

When the investigation is finished, 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 Interim 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.

Appendix G:

IPA 2016 Community Outreach Activities

Date	Name	Type	District	Location/Notes
01/08/16	Chief Esquivel's Retirement Event	Meeting/Event	3	Britannia Arms
1/13/16	Mayor's Gang Prevention Task Force	Meeting/Event	7	Conxion
1/14/16	IPAAC Meeting	Meeting/Event	3	IPA Office
1/19/16	St. James Park / Downtown Outreach	Meet & Greet	3	St. James Park
1/25/16	City of San Jose Youth Commission	Meeting/Event	3	City Hall
1/27/16	Bench Bar Media	Meeting/Event	6	3 Flames Restaurant
1/29/16	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
2/1/16	The Firehouse Community Development Center	Presentation	ocl	Santa Clara University
2/2/16	PACT: Beloved Community	Meeting/Event	4	Bible Way Christian Center
2/10/16	Mayor's Gang Prevention Task Force	Meeting/Event	3	CET Vine St. San Jose
2/17/16	Community Member Laurie/Esther	OMD	3	IPA Office
2/18/16	Opportunity Court	Meeting/Event	7	Conxion
2/22/16	Fresh Lifelines for Youth (FLY)	Presentation	3	Snell Community School
2/23/16	Fresh Lifelines for Youth (FLY)	Presentation	5	Hank Lopez Center
2/24/16	Fresh Lifelines for Youth (FLY)	Presentation	6	Peak High School
2/25/16	NAACP	Meeting/Event	3	African American Community Service Agency
2/26/16	African American Read In	Meeting/Event	3	Horace Mann Elementary School
2/26/16	Westfield Mall Senior Walk	Meeting/Event	10	Oakridge Mall
2/29/16	Mexican Consulate	Meeting/Event	2	Mexican Consulate
2/29/16	Hillview Neighborhood Association	Presentation	5	Dorsa Elem Community Center
3/1/16	Fresh Lifelines for Youth (FLY)	Presentation	2	Summit Tahoma on the Oak Grove High School Campus
3/2/16	Fresh Lifelines for Youth (FLY)	Presentation	ocl	Calaveras Hills High School
3/2/16	Calero High School (Field Trip)	Presentation	3	IPA Office
3/3/16	Black Leadership Kitchen Cabinet (BLKC)	Meeting/Event	3	African American Community Center
3/3/16	Foothill High School	Presentation	5	Foothill High School
3/5/16	State Of The City	Meeting/Event	8	Overfelt High School San Jose
3/9/16	Mayor's Gang Prevention Task Force	Meeting/Event	4	East Side Union High School District
3/10/16	Community Relations Council	Meeting/Event	3	East Hills Job Corp
3/10/16	Human Relations Council	Presentation	3	Santa Clara County Board of Supervisors Chambers
3/11/16	Women's Gathering Place	Meeting/Event	6	Merylee Shelton's Home
3/14/16	Fresh Lifelines for Youth (FLY)	Presentation	7	Andrew Hill High School
3/23/16	Bench Bar Media	Meeting/Event	6	3 Flames Restaurant
3/25/16	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers

Date	Name	Type	District	Location/Notes
4/1/16	Valley Fair Senior Walk	Meeting/Event	6	Valley Fair Mall
4/5/16	Girl Scouts: Got Choices Program	Presentation	7	Yerba Buena High School
4/8/16	Girl Scouts Got Choices	Presentation	6	Lincoln High School
4/13/16	Girl Scouts Got Choices Program	Presentation	ocl	Bill Wilson Center
4/13/16	Mayor's Gang Prevention Task Force	Meeting/Event	5	Job Corp
4/19/16	Girl Scouts: Got Choices Program	Presentation	2	Oak Grove High School
4/21/16	Beloved Community Dialogue	Meeting/Event	5	467 N. White Rd
4/21/16	Girl Scouts: Got Choices Program	Presentation	6	Willow Glen High School
4/21/16	Opportunity Court	Meeting/Event	7	Conxion
4/22/16	San Jose Police Officer Graduation	Meeting/Event	3	City Hall
4/26/16	Ace Empower Academy	Presentation	5	Sunset Ave
4/27/16	Girl Scouts: Got Choices Program	Presentation	7	Andrew Hill High School
4/28/16	Sister to Sister	Meeting/Event	5	Mexican Heritage Plaza
4/28/16	IPAAC Meeting	Meeting/Event	3	IPA Office
4/29/16	La Raza Roundtable	Meeting/Event	7	Conxion
5/2/16	Mexican Constulate	Meeting/Event	2	Mexican Consulate
5/3/16	PACT: Beloved Community	Meeting/Event	5	Emmanuel Baptist Church
5/5/16	Girl Scouts: Got Choices Program	Presentation	9	Broadway High School
5/11/16	Bill Wilson Center	Presentation	3	Bill Wilson Center
5/13/16	Presbyterian Church	Meet & Greet	3	Presbyterian Church
5/16/16	First Presbyterian Church of San Jose	Meet & Greet	3	First Presbyterian Church of San Jose
5/18/16	Office of the Public Defender	Training	3	Office of the Public Defender
5/19/16	Human Relations Council	OMD	3	City Hall
5/20/16	Youth Commission Conference	Meeting/Event	3	City Hall
5/20/16	District 8 Senior Walk/Resource	Meeting/Event	8	Eastridge Mall
5/24/16	Bill Wilson Center Drop in Center	Presentation	3	Bill Wilson Drop In Center
5/25/16	Bench Bar Media	Meeting/Event	6	3 Flames Restaurant
5/27/16	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
6/1/16	Law Foundation	Meeting/Event	3	Law Foundation
6/8/16	Mayor's Gang Prevention Task Force	Meeting/Event	4	East Side Union High School District
6/16/16	Opportunity Court	Meeting/Event	7	749 Story Rd
6/18/16	Blvd. & Bombs Foundation: Car Show	Meeting/Event	4	Berryessa Flea Market
6/23/16	First Place for Youth	Meeting/Event	3	152 N. St. James Street San Jose, CA
6/23/16	Alum Rock Library	OMD	5	Alum Rock Library
6/23/16	MLK Library	OMD	3	MLK Library
6/27/16	Boys & Girls Club	Presentation	5	Alum Rock Youth Center
7/5/16	Mexican Constulate	Meeting/Event	2	Mexican Consulate

Date	Name	Type	District	Location/Notes
7/7/16	Black Leadership Kitchen Cabinet (BLKC)	Meeting/Event	3	African Community Center
7/14/16	Cypress Community and Senior Center	Meeting/Event	1	Cypress Community and Senior Center
7/21/16	Day of Protest: Protest Against Violence	Meeting/Event	3	City Hall
7/28/16	City of San Jose	Presentation	3	IPA Office
7/29/16	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
8/2/16	National Night Out: Emma Prush	Meeting/Event	5	Emma Prush
8/2/16	Guadalupe Washington	Meeting/Event	3	Washington Community Center Area
8/2/16	Latinos United	Meeting/Event	7	Tropicana Plaza
8/2/16	Mayfair	Meeting/Event	5	Mayfair Community Center
8/2/16	Almaden Hills United Methodist Church	Meeting/Event	10	Almaden Hills United Methodist Church
8/2/16	Hayes Mansion	Meeting/Event	2	Hayes Mansion
8/2/16	St. James Park	Meeting/Event	3	St. James Park
8/4/16	Black Leadership Kitchen Cabinet (BLKC)	Meeting/Event	3	City Hall
8/5/16	Academy Training	Training	8	SJPD Academy
8/10/16	Mayor's Gang Prevention Task Force	Meeting/Event	5	Mt. Pleasant High School
8/12/16	SJPD Recruit Graduation	Meeting/Event	3	City Hall Rotunda
8/15/16	Mexican Constulate	Meeting/Event	2	Mexican Consulate
8/16/16	Beloved Community Meeting	Meeting/Event	5	Emmanuel Baptist Church
8/18/16	Opportunity Court	Meeting/Event	7	Conxion
8/18/16	Homeless Advocates	Meeting/Event	3	IPA Office
8/20/16	Work Day Resource Fair	Meeting/Event	3	70 W. Hedding
8/26/16	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
8/31/16	Santa Clara County Bar Association	Presentation	3	Santa Clara County Bar Association
9/7/16	Mexican Constulate	Meeting/Event	2	Mexican Consulate
9/7/16	Santa Clara County Oversight Panel Discussion	Meeting/Event	3	County Board Room
9/8/16	San Jose Job Corp Community Relations Council Luncheon	Meeting/Event	5	East Hills
9/14/16	Mayor's Gang Prevention Task Force	Meeting/Event	7	Conxion
9/22/16	Civic Hack Nights	Presentation	3	Tech Museum of Innovation
9/24/16	Latinos Unidos Por Una Nueva America LUNA	Presentation	7	Blanca Alvarado Middle School
9/27/16	DeBug SJ Event	Meeting/Event	5	Mexican hertiage Plaza
9/28/16	Clean Slate Program	Presentation	5	Hank Lopez Center
9/30/16	Apollo Continuation School: Group 1	Presentation	8	Overfelt High School
9/30/16	Apollo Continuation School: Group 2	Presentation	8	Overfelt High School
10/3/16	Fresh Lifelines for Youth (FLY)	Presentation	7	Andrew Hill High School
10/4/16	Fresh Lifelines for Youth (FLY)	Presentation	5	Hank Lopez Center
10/5/16	EDGE Community School	Presentation	6	EDGE Community School
10/5/16	Fresh Lifelines for Youth (FLY)	Presentation	3	Snell Community School

Date	Name	Type	District	Location/Notes
10/12/16	Mayor's Gang Prevention Task Force	Meeting/Event	9	Work 2 Future
10/15/16	African American Community Center Panel on Policing Issues	Meeting/Event	3	African American Community Center
10/15/16	Mayor's Gang Prevention Task Force Summit	Meeting/Event	6	San Jose City College
10/20/16	IPAAC Meeting	Meeting/Event	3	IPA Office
10/21/16	College Day Class 1	Presentation	5	Joseph George Middle School
10/21/16	College Day Class 2	Presentation	5	Joseph George Middle School
10/25/16	Silicon Valley Career Technical Education Center	Presentation	9	Silicon Valley Career Technical Education Center
10/25/16	Silicon Valley Career Technical Education Center	Presentation	9	Silicon Valley Career Technical Education Center
10/26/16	Bench Bar Media	Meeting/Event	6	3 Flames Restaurant
10/28/16	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
11/2/16	Downtown Street Team	Presentation	3	Grace Baptist Church
11/5/16	CommUniverCity	Meeting/Event	3	San Jose State
11/9/16	Mayor's Gang Prevention Task Force	Meeting/Event	3	CET Vine St. San Jose
11/10/16	San Jose Job Corp	Presentation	7	East Hills Drive
11/17/16	Alexian Homeless Clinic	OMD	3	IPA Office
11/25/16	La Raza Roundtable	Meeting/Event	7	Center for Training & Careers
12/2/16	SJPD Academy Graduation	Meeting/Event	2	Family Community Church
12/2/16	Vice Mayor Community Reception	Meeting/Event	8	Evergreen Community Center
12/3/16	100 Black Men	Meeting/Event	oc	Santa Clara University Vari Hall
12/7/16	Year Up Bay Area	Meeting/Event	3	Year Up
12/14/16	Clean Slate Program	Presentation	5	Hank Lopez Center
12/18/16	San Jose State University Justice Studies Convocation	Meeting/Event	3	San Jose State University

Appendix H: Policy Brief 1

Policy Recommendations Regarding Head Strikes with Impact Weapons and Other Potential Serious Head Injuries

Current SJPD policy does not restrict use of impact weapon head strikes to deadly force. In addition, there are no policies in place that require an extensive Department review of impact weapon head strikes and other uses of force which can cause serious head injuries or hospital admissions. A review of other law enforcement agencies in California revealed policies in place that restrict the use of impact weapons to the head and have protocols requiring investigations equivalent to officer-involved shooting investigations. An absence of such policy puts the public, officers and the City of San José at significant risk. Policy recommendations include the restriction of head strikes with impact weapons to only circumstances where deadly force is justified, the requirement that such use of force be investigated by the Internal Affairs Unit, and mandatory notification up the chain of command to at least the Deputy Chief level.

Background

A recent audit of a conduct complaint investigation following a use of force revealed a significant gap in San José Police Department policy. In the incident, two officers were struggling with a suspect. One officer believed that he saw the suspect in possession of a knife while he lay on the ground in a prone position and resisted handcuffing. The officer alerted his partner about the knife. The partner officer feared that the suspect could assault the officers even though he did not see the

knife. The partner officer saw that the suspect was “violently” twisting his body and would not allow his hands to be cuffed. Therefore, the partner officer swung his baton in order to strike the suspect in the back shoulder area. Rather than hitting the suspect in the back, the officer struck him in the back of his head leaving a large gash. The suspect, however, did not submit and kept struggling, so the officer swung a second time and hit the suspect in the back. The suspect then stopped struggling and allowed himself to be handcuffed. According to the general offense report, officers found a knife laying on the ground near where the suspect had been resisting the officers. No officer, however, reported seeing the knife in the suspect’s hands. Following his arrest, the suspect was transported to hospital and admitted to the Intensive Care Unit for a reported brain hemorrhage. The initial use of force investigation was handled by the involved officers’ immediate sergeant even though he was a witness to the use of force. No formal investigation of whether reasonable force was used was initiated until the complaint was submitted by a relative of the suspect. Internal Affairs investigators did not locate the suspect. Investigators did not interview the involved officers until five months after the incident. The use of force incident was not forwarded to the Officer Involved Incident panel for review. After conducting the conduct complaint investigation, the Internal Affairs Unit investigation, recommended that the officer who struck the suspect be exonerated from an allegation of unreasonable force. In doing so, the Internal Affairs Unit concluded - based on the officer’s statement - that the head strike

with the baton was unintentional and caused by the suspect's actions and was a reasonable use of force. The investigator opined, however, *that even had the impact to the head with the baton been intentional, that action would still have been within policy.*

In another use of force incident recently audited by the IPA, the report described a foot pursuit that occurred at the conclusion of a vehicle pursuit. The suspect was brought to the ground and was apparently still struggling. The officer struck his elbow to the back of the head of the suspect to end the resistance. As a result, the suspect was rendered unconscious for 30 seconds to one minute, according to the officer.

Current SJPD Policy

The Office of the IPA reviewed the San José Police Department duty manual and found no language which addressed strikes to the head with batons. This brief highlights the current state of the law and surveys the head strikes policies of other large law enforcement agencies in California.

Duty Manual section L 2621 describes the use of impact weapons:

Impact weapons the Chief of Police authorizes for use in DM Section S 1124 include the straight baton, expandable baton, side handle baton, Kendo sticks and Yawara stick. In addition to the authorized impact weapons, impact objects may be used as objectively reasonable under the circumstances.

The Duty Manual describes a process for review of serious uses of force (Officer-Involved Incidents) called the Post-Incident Review Procedure in section L 2646. Following an OII, a command staff briefing occurs within seven days of the incident which is followed within 90 days of the incident with the

convening of an Officer-Involved Incident Training Review Panel. That panel can make training recommendations to the Chief of Police. The panel's analysis "will identify issues and needs regarding training and tactics, equipment, communication, and officer safety, as well as identifying Departmental policies and procedures that may require review and revision." Other than officer-involved shootings, though, the incidents which are within the jurisdiction of such a review is very ambiguous as the policy includes, "any act by an officer, including but not limited to any use of any other deadly or dangerous weapon by an officer, which proximately causes an injury like to produce death to another."

The OII Training Review Panel does not review whether the force or tactics were reasonable or in policy. Moreover, there is no requirement in SJPD policy that impact weapon head strikes are investigated or reviewed by the Internal Affairs Unit.

Policies of Other Law Enforcement Agencies

The IPA reviewed the policies of other larger law enforcement agencies in the State of California. Unlike these other agencies, the San José Police Department Duty Manual is silent regarding the use of impact weapons to the head.

Los Angeles Police Department (LAPD)

The LAPD categorizes use of force as non-categorical (NCUOF) or categorical. Categorical Use of Force (CUOF) is considered serious force which merits the use of the department's most sophisticated force investigations and in-depth review process. CUOF includes deadly force, such as discharge of a firearm, in-custody deaths, a use of force resulting in death or injury requiring hospitalization and "all intentional head strikes with an impact

weapon or device (e.g., baton, flashlight, etc.) and all unintentional (inadvertent or accidental) head strikes that results in serious bodily injury, hospitalization or death.” (LAPD Manual § 792.05.) All other unintentional head strikes will be investigated as a “Level I NCUOF.”

The LAPD Duty Manual further requires that “upon responding to a use of force incident involving a head strike, the investigating supervisor shall presume that a CUOF has occurred. The Investigating supervisor shall follow all CUOF protocols, until the Commanding Officer, FID (Force Investigation Division), determines if the incident will be handled as a CUOF or a Level I NCUOF.” (LAPD Manual § 794.12.) Upon completion of the investigation by FID, the conduct is reviewed by the Use of Force Review Board which submits its recommendations to the Chief of Police. The Chief, in turn, submits all CUOF recommended administrative findings to the Board of Police Commissioners. In other words, intentional head strikes or unintentional head strikes with serious injury undergo extensive review at multiple levels.

Los Angeles Sheriff’s Department (LASD)

The LASD manual prohibits head strikes with an impact weapon “unless circumstances justify the use of deadly force.” (LASD Use of Force Policy, section 3-10/040.00 Prohibited Force.) Policy is specific that “Department members may use deadly force in self-defense or in the defense of others, only when they reasonably believe that death or serious physical injury is about to be inflicted upon themselves or others.” (LASD Manual § 3-10/200.00.)

Unlike the LAPD, the LASD does not distinguish between reported intentional and unintentional head strikes with impact weapons. Such uses of force require a roll-out and administrative review conducted

by the Internal Affairs Bureau (IAB) Force/Shooting Response Team. Knee strikes to the head also require notification to Internal IAB, and rendering a suspect unconscious for the length of time as in the incident described above would more than likely lead to IAB conducting the review rather than the involved deputy’s unit. If at any time during the review the response team IAB Lieutenant determines that an administrative investigation is warranted, an investigation is commenced with the concurrence of the Division Commander. (LASD Use of Force Manual § 3-10/130.00.)

Upon completion of the IAB review, the use of force review is submitted to the Executive Force Review Committee (EFRC) for evaluation and submits its recommendations of its findings and discipline, if any, to the involved deputy’s unit commander for disposition. (LASD Use of Force Manual § 3-10/140.00.)

Oakland Police Department (OPD)

The OPD general orders specifically state that an intentional weapon strike to the head is considered lethal force. (Oakland Police Department, DGO K-3, Use of Force.)

The OPD also uses a categorization system to classify use of force, however, Level 1 is considered the most serious force. Level 1 specifically includes intentional discharge of firearms, force which creates a substantial risk of causing death and which causes serious bodily injury, “to include: any use of force resulting in the loss of consciousness” and “any intentional impact weapon strike to the head.” Unintentional weapon strikes are treated as a Level 2 use of force. Level 1 incidents “require concurrent investigations conducted by the Homicide Section and the Internal Affairs Division.” (Oakland Police Department, Revised DGO K-4, October 16, 2014.) Such uses of force are reviewed by the Executive Force Review Board.

Broader Implications

The California appellate courts have found that baton strikes to the head can cause serious injuries:

Young's evidence shows that California law enforcement officers are taught that a baton is a deadly weapon that can cause deep bruising as well as blood clots capable of precipitating deadly strokes, and that batons should therefore be used "only as a response to aggressive or combative acts." (Young vs. County of Los Angeles (2011) 655 F.3d 1156, 1162.)

Current policy does not provide guidance to officers that impact head strikes are considered deadly force and should be restricted to the limited circumstances where an officer reasonably fears that deadly force is appropriate. That lack of guidance can have serious implications on civilians upon whom force is used, officers who use force as well as the City of San José.

Policy Recommendations

1. Amend the Duty Manual prohibiting head strikes with impact weapons and kicks unless the use of deadly force is justified, so that such a such impact weapon head strikes or kicks to the head may only be used as an option when objectively reasonable in order to protect the officer or others from an imminent threat of death or serious bodily injury.
2. Modify the Department's training protocol so that officers are informed and educated that impact weapon head strikes and kicks to the head are considered deadly force.
3. The SJPD should modify the Duty Manual so to require that use of force investigations of all intentional head strikes with impact weapons, unintentional head strikes leading to

serious injury, kicks to head, as well as any use of force which results in hospital admission or loss of consciousness of the subject, are conducted by the Internal Affairs Unit.

4. The SJPD should modify the Duty Manual requiring that the unit commander, division commander and the Bureau Deputy Chief are promptly notified of all head strikes with impact weapons, as well as uses of force which result in hospital admission or loss of consciousness of the subject.

Appendix I: Policy Brief 2

Policy Recommendations Regarding Prolonged Prone Restraint and Excited Delirium Risks

The San José Police Department Duty Manual is largely silent regarding the risk of cardiac arrest, sudden cardiac death, or other medical complications that arise from the prolonged restraint of suspects in a prone position. Such risk is heightened in certain positions, such as when legs are bent upwards while the suspect is lying prone. Medical and police literature have identified a further risk from the phenomenon of “excited delirium,” wherein a person is in a state of agitation, aggression, or acute distress followed by sudden death, typically from cardiopulmonary arrest. While the interrelationship between these factors, as well as intoxication, is not fully understood in the medical field, our review of other law enforcement agency policies shows a recognition that explicit policies are necessary so that officers are under a clear mandate that suspects should be moved out of a restrained prone position as quickly as reasonable and that suspects must be continuously monitored in certain situations until professional medical providers take over care. Because the risk of severe injury or death is high, the IPA recommends *urgent* action by the SJPD.¹

Background

The Office of the IPA reviewed a conduct complaint investigation in 2016 following a use of force that occurred in 2015. While not the focus of the complaint, we noted that records indicated that the arrested civilian was

restrained in a prone position for about three minutes after what was reported as about two seconds of resistance. We questioned SJPD management staff about policies regarding restraint of the civilian and learned that the SJPD Duty Manual does not have language that restricts or discourages prone restraint of arrested civilians for lengthy durations.

We examined another incident which showed a similar pattern: that after an incident where force was used, an agitated handcuffed civilian was restrained in a prone position for several minutes while the weight of an officer pressed down on his back while other officers held his ankles. We were concerned that this position was maintained for several minutes and that officers did not continuously monitor the civilian for signs of respiratory distress during the restraint.

Because of concerns raised during the two incidents the Office of the IPA reviewed, we consulted medical, legal and law enforcement literature. We also reviewed the policies of other law enforcement agencies both in California as well as other states. The result of our review is reflected in the policy recommendations below.

Risk of In-Custody Deaths During Conditions of Excited Delirium

Excited delirium is not a thoroughly understood phenomenon even though it has been noted in the medical literature since the 1850s:

Over the past decade, the excited delirium syndrome (ExDS) has raised continued controversy regarding the cause and

¹ The Office of the Independent Police Auditor derives its authority “to make recommendations with regard to Police Department policies and procedures” through the City Charter (sec. 809). The Office of the IPA, however, is not a policy maker and exercises no operational control over the SJPD.

manner of death of some highly agitated persons held in police custody, restrained or incapacitated by electrical devices. At autopsy, medical examiners have difficulty in identifying an anatomic cause of death, but frequently cite psychostimulant intoxication as a contributing factor. The characteristic symptoms of ExDS include bizarre and aggressive behavior, shouting, paranoia, panic, violence toward others, unexpected physical strength, and hyperthermia. Throughout the United States and Canada, these cases are most frequently associated with cocaine, methamphetamine, and designer cathinone abuse. Acute exhaustive mania and sudden death presents with behavioral symptoms that are identical to what is described for ExDS in psychostimulant abusers. Bell's mania or acute exhaustive mania was first described in the 1850's by American psychiatrist Luther Bell in institutionalized psychiatric patients. This rare disorder of violent mania, elevated body temperature and autonomic collapse continued to be described by others in the psychiatric literature, but with different names until the first cases of ExDS were seen at the beginning of the cocaine epidemic by medical examiners.²

Excited delirium is often associated with drug intoxication, especially cocaine, methamphetamine and the designer drug, cathinone. It has also been present in people who are not intoxicated but who are in a state of manic excitement.

Because the police are called to contact and often arrest individuals who are in an aggressive intoxicated or manic state, force and restraint is a frequent option that officers must exercise to contain the civilian. "Since the

victims frequently die while being restrained or in the custody of law enforcement, there has been speculation over the years of police brutality being the underlying cause. However, it is important to note that the vast majority of deaths occur suddenly prior to capture, in the emergency department (ED), or unwitnessed at home."³ It is because of the risk of cardiac arrest and death is present but not well understood that recognition of the symptoms is critical:

Although more research is needed to elucidate cause and effect, it is important to note that a lack of recognition of the condition in the context of law enforcement activities does not negate the significance of the behavioral and physical signs referred to as EXD. For instance, one important study found that only 18 of 214 individuals identified as having EXD died while being restrained or taken into custody. If anything, the possible association with other life-threatening syndromes only gives impetus to the need for critical emergency medical intervention when encountering a person thought to be in a state of excited delirium.⁴

This area of medicine is complex and we only cite these articles as a point of reference and encourage further investigation into the condition of excited delirium.

The Risks of Prolonged Prone Positioning While Restrained

In 1995, the Department of Justice, National Law Enforcement Technology Center issued a bulletin, "Positional Asphyxia – Sudden Death." The bulletin described "positional asphyxia" as "insufficient intake of oxygen as a result of body position that interferes with

2 C. Mash, "Excited Delirium and Sudden Death: A Syndromal Disorder at the Extreme End of the Neuropsychiatric Continuum," *Frontiers in Physiology*, 2016.

3 A. Takeuchi, T. Ahem, S. Henderson, "Excited Delirium," *Western Journal of Emergency Medicine*, 2011.

4 Ibid.

one's ability to breathe."

"Restraint asphyxia is a form of positional that occurs during the process of subduing and restraining an individual in a manner causing ventilation compromise. As a consequence of the restraint application, respiration is compromised causing insufficient oxygen in the blood to meet the body's oxygen needs or demands (hypoxia) which then results in a disturbed heart rhythm (cardiac arrhythmia)."⁵

"Compressional asphyxia is caused by kneeling, sitting or standing on a person's chest or back while attempting to restrain him, or after the person is secured."⁶

The DOJ bulletin recognized that sudden in-custody death may occur because of a number of variables, including cocaine-induced bizarre or frenzied behavior, other drug or alcohol intoxication which reduces respiratory drive, and a person who is in an extreme violent struggle. Unfortunately, per the DOJ bulletin, it is the very struggle which can set off a cycle that increases the risk of respiratory failure:

- The person is restrained in a face-down position, and breathing may become labored;
- Weight is applied to the person's back – the more weight, the more severe the degree of compression;
- The individual experiences increased difficulty breathing;
- The natural reaction to oxygen deficiency occurs – the person struggles more violently;
- The officer applies more compression to subdue the individual.

The bulletin goes on to warn, "the risk of positional asphyxia is compounded when an

individual with predisposing factors becomes involved in a violent struggle with an officer or officers, *particularly when physical restraint includes use of behind-the-back-handcuffing combined with placing the suspect in a stomach-down position.*"

The DOJ issued advisory guidelines for care of subdued subjects which includes getting the suspect off his stomach as soon as he is handcuffed; asking the subject if he has used drugs or suffers from any cardiac or respiratory disease, carefully monitor the subject and obtain medical care if needed, train officers to recognize breathing difficulties or loss of consciousness.

Current SJPD Policy

The Office of the IPA reviewed the San José Police Department Duty Manual and found no direct language which addresses prone restraint and one reference to excited delirium.

Duty Manual Section L 2614 describes the conducted energy weapons (CEW), commonly known as a TASER. Within the policy there is language which refers to a 2007 Training Bulletin regarding excited delirium. Section 2614 describes excited delirium only within the context of use of a CEW and that such a weapon "be the preferred method of quickly subduing an agitated and aggressive individual and minimize the subject's physical exertion."

We reviewed the 2007 training bulletin. It provided helpful information about excited delirium and tells officers that "breathing shall be monitored at all times" and officers should avoid having the person lie on their stomach and/or exert downward pressure on the upper torso:

5 Disability Rights California (formerly Protection & Advocacy, Inc. (PAI), "The Lethal Hazard of Prone Restraint: Positional Asphyxiation," 2002.

6 AELE Monthly Law Journal, "Restraint and Asphyxia," 2008.

Once the subject is in custody and the scene is safe, EMS personnel are to be called to the scene. Some individuals believed to be in an excited delirium state have gone into cardiac arrest shortly *after* a struggle ended. As a result, the person's breathing shall be monitored at all times and the person's position adjusted so as to maximize the person's ability to breathe (e.g., avoid lying on stomach and/or exerting excessive downward pressure on the upper torso). The person is to be transported by ambulance to an emergency medical facility for evaluation and treatment.

It is not clear whether the SJPD currently refers to the bulletin during either Academy or continuing training of officers.

Policies of Other Law Enforcement Agencies

The IPA reviewed the policies of other larger enforcement agencies in the State of California and elsewhere. We found a number of policies which place an affirmative duty on officers to avoid leaving subjects in a prone position once restrained and mandating the continuous monitoring of subjects.

Riverside Police Department (LAPD)

The Riverside Police Department directly addresses the risk of prone restraint and compression asphyxiation:

If it is necessary to control and restrain a suspect by the use of two or more officers transferring their body weight onto the suspect while the suspect is positioned face down on the ground, *officers shall immediately, upon restraining the suspect, reposition the suspect into a sitting or face-up position. Officers shall continually monitor the suspect for signs of Cocaine Psychosis (Cocaine Overdose) or Excited Delirium ("Other" Drugs Overdose). If in doubt, officers should arrange to have the suspect transported to the hospital prior to booking. (Emphasis added.)*

Los Angeles Sheriff's Department (LASD)

The LASD manual addresses monitoring of restrained subjects in more than one instance. For example, when a Total Appendage Restraint Procedure (TARP) is used, policy states

"every effort shall be made to ensure that a TARPed person either remains on their side (the left side is preferable) or is seated upright and monitored in order to prevent cardiac arrest."

In the context of custodial settings when four-point restraints are medically necessary, LASD policy states:

The application of pressure upon the neck, throat, chest, diaphragm, or abdomen of the inmate, or any control technique that impairs the inmate's ability to breathe, shall be avoided in all but the most compelling of circumstances. *The sergeant shall ensure that the inmate has unrestricted breathing during and after the application of restraints.* The sergeant shall diligently monitor personnel to assure that the control techniques being used comply with this section. Any person involved with the application of restraints, especially the sergeant and the medical services clinician, have the duty to terminate the procedure immediately if they detect any action that puts the personnel or the inmate in unreasonable danger of a life threatening situation, injury, or medical distress.

Tulsa Police Department

The Tulsa Police Department policy provides somewhat more leeway than Riverside, but is also very clear about the duty to closely monitor the subject:

Officers will not leave or hold a detainee face down after being placed under control/restraint unless that detainee is closely monitored for signs of respiratory distress. Officers will seek immediate

medical attention for detainees who exhibit signs of acute distress.

New Orleans Police Department

The New Orleans Police Department officers very clear policy about positional asphyxia:

DANGERS OF RESTRAINTS

15. Officers are reminded of the danger of “positional asphyxia,” and will follow the guidelines for care of restrained subjects listed below:

- (a) Follow training guidelines for physical restraint of subjects.
- (b) If a subject has been placed on his or her stomach, turn him or her on the side or in a seated position as soon as handcuffs are properly applied.
- (c) If the subject continues to struggle, do not sit, lie or kneel on the subject’s back. Hold the subject’s legs down and secure their ankles with leg restraints (leg shackles, Hobble leg restraints, or flex ankle cuffs). The use of these restraints may require specialized training.
- (d) Never attach the handcuffs to leg or ankle restraints. The use of any “hogtying” technique is strictly prohibited.
- (e) Ask the subject if he or she has used drugs recently or suffers from a cardiac, respiratory disease or condition such as asthma, bronchitis, or emphysema.
- (f) Monitor the subject carefully, looking for breathing difficulties or loss of consciousness. Immediately transport to a medical facility or call for EMS.
- (g) If the subject is transferred to a detention facility, inform the facility’s custodians of any preexisting conditions, treatment received or requested because of respiratory difficulty or loss of consciousness.

16. Officers are reminded of the danger of “agitated delirium” and will follow the guidelines for care of restrained subjects listed below. Subjects in the state of agitated delirium have easily identifiable symptoms and behavioral patterns. For the safety of both officers and subjects, recognition of these signs is important. This is especially true in cases when more than two or three of the symptoms are exhibited at the same time by the same person. Once a subject suspected of agitated delirium is in custody, EMS should be immediately contacted to evaluate the subject. Some of the symptoms include:

- (a) Bizarre and/or aggressive behavior such as self-inflicted injuries; jumping into water; shouting (frequently irrationally); hiding behind cars, trees, and bushes; public disrobing (due to high body temperature or hyperthermia);
- (b) Irrational or incoherent speech;
- (c) Dilated pupils; shivering; high body temperatures (as high as 106 - 108 degrees Fahrenheit +); or profuse sweating (due to high body temperature);
- (d) Fear, paranoia, or panic;
- (e) Violence toward others; violence toward objects, especially glass; or violence in general;
- (f) High resistance to pain (standard defensive tactics and OC spray may be ineffective); and
- (g) Unexpected physical strength;
 - 1. For officer safety, NEVER engage a subject displaying symptoms of agitated delirium one-on-one.
 - 2. Subjects who display these symptoms and initially resist arrest violently may become extremely tranquil, appearing to

have given up and accepted their fate. They may seem to be sleepy and resting. This is termed “sudden tranquility” and usually occurs just prior to death.

3. When faced with a subject displaying these symptoms, officers will follow the guidelines for “positional asphyxia” listed above.

Because of the high risk of death or serious bodily injury, the Office of the IPA recommends that the SJPD take urgent action in addressing the recommendations.

Policy Recommendations

1. The SJPD should amend the Duty Manual to limit to the minimum the amount of time that officers allow a handcuffed subject to lie prone (on his or her stomach) and that officers move the subject onto his or her left side or in a seated position as soon as handcuffs are applied.
2. The SJPD should consider amending the Duty Manual that limits circumstances when officers can apply body weight or knees to a subject’s torso.
3. The SJPD should amend the Duty Manual to expressly require that officers closely monitor restrained subjects for signs for loss of consciousness or respiratory or cardiac distress.
4. The SJPD should consider training that emphasizes restraining combative subjects by holding ankles down with hands and the use of leg restraints or ankle flex cuffs rather than using body weight on the subject’s torso.
5. The SJPD should mandate training that all officers are made aware of:
 - a. Symptoms of excited delirium (such as hyperthermia),
 - b. Symptoms of respiratory and cardiac distress,
 - c. The risks of positional and compression asphyxia.



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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