



CITY OF SAN JOSÉ, CALIFORNIA

Office of the Independent Police Auditor
4 North Second Street, Suite 650
San José, California 95113
Telephone (408) 977-0652
FAX (408) 977-1053

TERESA GUERRERO-DALEY
Independent Police Auditor

March 23, 2000

Honorable Mayor and
Members of the City Council
801 North First Street, Suite 600
San José, CA 95110

Enclosed is the 1999 Year End Report submitted for your review and approval. This report covers the period from January 1 to December 31, 1999. In addition to comprehensive statistics, this report presents several new issues.

The 1999 Year End Report will be presented at the April 18, 2000 City Council Meeting. If you have any questions or would like an explanation of any portion of this report prior to the city council presentation, please feel free to call me. I welcome your comments and suggestions regarding the improvement of this report.

I would like to thank and acknowledge the IPA support staff and the IPA Advisory Committee for their commitment to the development of this report.

Respectfully submitted,

Teresa Guerrero-Daley
Independent Police Auditor

TABLE OF CONTENTS

CHAPTER 1	Introduction	1
	Establishing the IPA	1
	The IPA Model	1
	Characteristics of the IPA	1
	Functions of the Office	2
	Six Years of Policy Recommendations	2
CHAPTER 2	New Issues & Recommendations.....	5
	Strengthening the complaint process to meet the public's expectations.....	5
	Proposed Voluntary Mediation Program	7
	Improving Police Communication Skills	9
CHAPTER 3	Community Outreach	13
	Community Presentation	14
	Community Surveys	16
	Making a Difference in the Neighborhoods	17
	Referral Sites	18
	Media	20
	The Model to Model	21
	The IPA Networks with Other Police Oversight Agencies	22
	Community Forum	22
	The Independent Police Auditor Advisory Committee	24
	Publications	24
	Website	24
CHAPTER 4	Updates on Prior Issues & Recommendations	25
	Officer-Involved Shooting Incident Training Review Panel	25
	Blood Samples Taken by Force	25
	Citizen Request for Officer Identification	26
	On Scene Investigations Following A Use of Force	27

Timeliness	28
Vehicle Stop Demographic Study	28
CHAPTER 5 Year End Statistics	33
CHAPTER 6 Complaints & Allegations by Council District	39
CHAPTER 7 Sustained Rate and Discipline Imposed	47
CHAPTER 8 Intervention Counseling	51
CHAPTER 9 Statistical Background of Subject Officers	53
Unit of the Subject Officer	53
Gender of the Subject Officer	54
Ethnicity of the Subject Officer	54
Years of Experience of the Subject Officer	55
Subject Officers with One or More Complaint(s)	56
CHAPTER 10 Background of Complainants by Council District	57
Gender of the Complainants	57
Ethnicity of the Complainants	58
Age of the Complainants	59
Educational Level of the Complainants	60
Complainant's Occupation	60
Subject Officers Receiving Complaints from Complainants by Ethnicity	61
CHAPTER 11 Analysis of the Audited Complaints	63
Audit Criteria	63
Formal Complaints	63
Disagreed Cases by IPA	65
Procedural Complaints	66
Special Audit of Unnecessary Force Class I Cases	68

CHAPTER 12	Case Audit Summaries	69
	IPA Confers with the PSCU	69
	IPA Requests Audio Tape Recording of the PSCU's Complainant Interview	69
	IPA Interviews Complainant at their Residence	70
	Investigation is Reopened at the request of the IPA	70
	IPA Attends Officer Interview	71
	IPA Requested Court Preliminary Hearing Transcript.....	71
	IPA Confers with SJPd to Effect Change	71
CHAPTER 13	Conclusion	73
APPENDIX A	Classification of Complaints	75
APPENDIX B	Boland Admonishment.....	77
APPENDIX C	San José City Council Districts.....	78
APPENDIX D	Misconduct Allegations.....	79
APPENDIX E	Use of Force	80
APPENDIX F	Definition of Findings	83
APPENDIX G	Definition of Disciplines Imposed.....	84
APPENDIX H	San José City Organization.....	86
APPENDIX I	Office of the Independent Police Auditor.....	87
APPENDIX J	Independent Police Auditor's Recommendations	88

INDEPENDENT POLICE AUDITOR & STAFF



Teresa Guerrero-Daley, Police Auditor - Mrs. Guerrero-Daley is the Independent Police Auditor for the City of San José. She has experience as a lawyer specializing in criminal law. Prior to becoming a lawyer, Mrs. Guerrero-Daley was a Private Investigator for ten years. She worked major cases including Death Penalty cases. Mrs. Guerrero-Daley's prior experience also includes working as a Drug Enforcement Agent for the U.S. Department of Justice. She became the first female agent at the San José Drug Enforcement Administration Office. Mrs. Guerrero-Daley has a strong commitment to the community, and has received numerous honors for her involvement. Recently, she was honored with the Woman of Achievement Award from the Women's Fund and the Exemplary Leadership Award from the Hispanic Development Corporation. Mrs. Guerrero-Daley serves on several committees of the

Santa Clara County Bar Association. She was also appointed to the California State Bar Discipline Audit Panel by the Board of Governors. Other professional active memberships include the Institute of Internal Auditors, the Bay Area Police Oversight Network and the National Association of Civilian Oversight of Law Enforcement.

Gil Candelaria, Assistant Auditor - Mr. Candelaria comes to the City of San José, after more than twenty five years of public service with the County of Santa Clara Sheriff's Department and the City of Sunnyvale, Department of Public Safety. As an administrator for six years with the City of Sunnyvale, Mr. Candelaria was responsible for one of three divisions that make up the Department of Public Safety. Mr. Candelaria's service to the community includes being a past member of the Sunnyvale Rotary, a past board member for the Non-Profit Development Center and a past coach for Evergreen Little League. Mr. Candelaria is a graduate of the FBI National Academy, the Santa Clara County Leadership Course and holds a bachelors of science degree in business administration from the University of Phoenix. Mr. Candelaria is a long time resident of San José, having attended local schools, from grade school through college.

Vilcia N. Reyes, Complaint Analyst and Public & Community Relations Director - Ms. Reyes comes to the IPA with extensive experience in television and community outreach. Prior to joining the City of San José, Ms. Reyes worked in the news department at KSTS Channel 48-Telemundo in San José. In addition, Ms. Reyes works closely with the community. She volunteers for the Santa Clara Domestic Violence Task Force. Ms. Reyes is also a member of Adelante Mujer Hispana and the Hispanic Charity Ball. Ms. Reyes holds a bachelor's degree in Spanish with an emphasis in news production from Pepperdine University.

Leanne Wang, Complaint Analyst - Ms. Wang worked as a Customer Service Representative in the banking industry prior to joining the IPA. Ms. Wang's native language is Cantonese, additionally, she speaks Mandarin and Vietnamese. Ms. Wang works actively with the Asian community. A graduate from U. C. Santa Cruz, Ms. Wang majored in business economics and psychology. Ms. Wang is a long time resident of San José.

ACKNOWLEDGMENT

On behalf of all the members of the Independent Police Auditor Advisory Committee (IPAAC), we want to acknowledge the excellent and very important work that has been done by the Office of the Independent Police Auditor (IPA). This report contains some very important recommendations that we strongly support and urge the San José City Council to adopt. In particular, we support empowering the Professional Standards and Conduct Unit and the IPA with subpoena power and allocating funds to increase the IPA staff in order to conduct more follow-up investigations.

One only has to look at what is happening with the LAPD scandal to recognize that strengthening the IPA in its role of providing civilian oversight of the San José Police Department, is the best investment the citizens of San José can make in preventing police misconduct.

The members of the IPAAC have been working closely with the IPA to bring forward those concerns that we in our individual communities come across. The IPA is the catalyst by which problem areas are identified, solutions are proposed, and corrective action is recommended to the San José Police Department. Together we can make a significant difference in keeping our city safe and free of police misconduct.

Craig Mann

Vice President, Board of Trustees, East Side Union High School District

Victor Garza

Chair, La Raza Roundtable

Yoyi Aglipay

Executive Director, Filipino American Heritage Appreciation Project (FAHAP)

Tony Alexander

President, Silicon Valley African American Democratic Coalition

Abdussalam Chouia

Executive Director, Council on Islamic American Relations (CAIR)

Bob Dhillon

Berryessa Advisory Council

Minh Steven Dovan

Attorney, Former Appointee by Chief Justice to the California Judicial Council Advisory Committee on Racial and Ethnic Bias

Aminah Ayoola Jahi

President, National Association for the Advancement of Colored People (NAACP)

Ed Davila

Past President, Santa Clara County Bar Association

Kenneth D. Lee

Attorney

Sofiá Mendoza

Program Assistant, Adult and Child Guidance

Keith Rendone

Program Director, Billy DeFrank Gay & Lesbian Community Center

Merylee Shelton

Past Chair, Humans Right Commission, Community Arts & Lectures, San José City College

Wiggys Siversten

Director of Counseling Services and Sociology Professor, San José State University

Sam Som

Community Coordinator, County of Santa Clara Probation Department

Gertrude Welch

Chair, Santa Clara Human Relations Commission

EXECUTIVE SUMMARY

The focus of this report is two fold. The first is to report the work and accomplishments of the Independent Police Auditor's office (IPA) and the second is to make recommendations for changes that will better align the IPA with the public's expectations.

CHAPTER ONE - Introduction

The first chapter chronicles the recommendations made over a span of six years since the establishment of the IPA office. The following are some of the recommendations that were adopted and implemented by the San José Police Department (SJPD).

- The entire citizen complaint process was overhauled to standardize the manner in which complaints are received, classified, documented and tracked.
- Changes were also made to improve communications with complainants and to make the intake process more user-friendly.
- Adopted policies included an "Onlooker Policy" which outlines a citizen's right to observe from a safe distance a police action.
- Use of Force Investigations require that supervisors immediately investigate the reason for the need to use force.
- A policy was drafted that requires that supervisors approve strip searches before being conducted.
- A new unit was created to provide oversight of officers working off-duty.
- The IPA started gathering and reporting complaints by the ethnicity of the complainant and subject officer.
- A policy now requires that police officers provide their name or badge number in writing to a citizen upon request,
- Changes in practice were implemented whenever an officer requests that blood be forcibly drawn for evidence.
- The IPA requested that its jurisdiction be expanded to include a review of all officer involved shootings.

CHAPTER TWO - New Issues

In Chapter Two of the IPA's 1999 Year End Report, three new issues are introduced, Strengthening the Complaint Process to meet the public's expectations, Voluntary Mediation, and Improving Officer Communication Skills.

A. STRENGTHENING THE COMPLAINT PROCESS TO MEET THE PUBLIC'S EXPECTATIONS

1. Personalizing IPA Communications with the Complainants

The IPA was designed to broadly impact the citizen complaint process through policy changes that deter the reoccurrence of similar misconduct rather than focusing on the outcome of individual complaints. While it is important to address policy changes because it has a broader impact, it is also important to meet the specific needs of the individual citizen who is filing a complaint. Currently, the IPA communicates with complainants whenever they initiate contact or through form letters. More time needs to be spent informing and updating complainants and making them feel a part of the citizen complaint process. In order to accomplish this, added staff needs to be allocated to communicate and interface with individual complainants. Two often heard criticisms of this office by complainants are that the IPA has no subpoena or investigative powers.

2. Subpoenas for Civilian Witness

A recurring problem that is encountered in the investigation of citizen complaints is the problem of how can an investigator compel a witness to divulge much needed information. Subpoenas and subpoenas duces tecum are used in the judicial system to summon witnesses and/or documents respectively. There are two types of witnesses in the citizen complaint investigation process to whom subpoenas would apply, police officers and citizens. Under current practice, police officers must attend when summoned by the Professional Standards and Conduct Unit (PSCU) to an interview concerning the investigation of a citizen complaint. Subject and witness officers must respond to all questions not in violation of the Police Officers Bill of Rights or they may be subject to discipline for insubordination, up to and including termination.

Currently, neither the PSCU nor the IPA has the authority to compel a citizen witness to be interviewed or release and/or provide physical evidence such as medical records that may be an integral part of an investigation. Because of this, subpoenas are needed for citizen witnesses. It would be counterproductive to compel complainants to make a statement if they don't desire to follow through with their complaint.

However, subpoenas would be very useful in cases where a witness is reluctant to get involved for whatever reason, but may be more inclined to cooperate if they are summoned. In addition, subpoenas duces tecum, which are used to subpoena records are very necessary and often provide the most reliable evidence.

The City Council could grant the PSCU the authority to issue subpoenas similar to the Civil Service Commission and the City Attorney. Because the PSCU has the responsibility for conducting complaint investigations, it is appropriate that they be given the authorization to issue subpoenas. Providing the PSCU with subpoena power would enhance the investigative process and provide another tool for increasing public confidence in the complaint process. Additionally, the IPA could benefit by working with PSCU to compel reluctant witnesses to divulge information or by securing physical evidence that may be discovered during the audit or follow-up investigation process. Having this capability could be a win-win for both the PSCU and the IPA.

RECOMMENDATION

Have the City Council grant the PSCU subpoena power to compel the attendance of civilian witnesses, to compel the production of documentary or physical evidence and to administer oaths and affirmations.

3. Follow-up Investigations

The other criticism of the Independent Police Auditor is that it has no investigative power. While it is true that the primary investigative unit is the Professional Standards & Conduct Unit, the IPA nevertheless conducts follow-up investigations as part of the audit. These investigations are done once the investigation has been completed by the PSCU and forwarded to the IPA for auditing. Follow-up investigations include such steps as interviewing witnesses to compare their statements to the statements contained in the PSCU investigation, inspecting the scene, reviewing all the police reports and examining all the physical evidence. The only restriction imposed by the Municipal Code is that questioning of police officers be done through a PSCU investigator. This restriction does not preclude the Auditor from questioning the officers; it only adds an intermediary to repeat the questions from the Auditor to the officer.

There is a lack of familiarity by the general public with the work and responsibility of the IPA. The IPA monitors ongoing investigations and audits completed investigations. People assume that an audit is strictly the examination of documents. To address this concern, the IPA needs to invest in informing the public through various marketing mediums. The IPA should identify and utilize terms that have wider

recognition and understanding in the community. The IPA should use general terms such as “follow-up investigation” to describe what an audit of an investigation of a citizen complaint entails. This is not currently done because the term investigation is not expressly mentioned in the IPA’s policies and procedures. Therefore, it is recommended that the City Council amend the Municipal Code to define a citizen complaint audit and clarify that a follow-up investigation is an integral component of an audit.

RECOMMENDATION

Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes a follow-up investigation.

B. PROPOSED VOLUNTARY MEDIATION PROGRAM

Over the past several years the IPA and the Chief of Police have discussed the benefits of providing an alternative process for mitigating minor complaints against officers. The voluntary mediation program as proposed by the IPA, could be an alternative to the formal investigation process and could provide an opportunity to facilitate meaningful dialog between the complainant and the officer.

The process begins when a citizen has a concern with the actions of an officer and chooses to file a complaint. The complaint is reviewed and if it is determined to be minor in nature, such as a question of policy, discourtesy, or procedure, the complaint may be considered for resolution through mediation. If the complaint meets the criteria for mediation, the complainant and the officer are then asked if they would be interested in resolving the complaint through the mediation process. If both parties agree, the complaint is forwarded to a neutral third party mediator. Once the complaint has been mediated, the mediator submits a confidential report to the Chief of Police. This report is retained by the PSCU for statistical purposes only. Once the complaint has been mediated, the complaint allegation is removed from the officer’s record of complaints.

RECOMMENDATION

It is recommended that the SJPd explore the feasibility of implementing a voluntary mediation program within the next six months.

C. IMPROVING POLICE COMMUNICATION SKILLS

In analyzing many complaints filed in 1999, the IPA identified a pattern indicating that in a significant number of police to citizen contacts, it appears that the officers did not communicate effectively and that this failure to communicate may have led to a physical confrontation, the filing of a citizen complaint or a negative opinion of the police department. Several of the complaints reviewed in preparation of this report had a common theme; citizens alleged that the officer did not explain, respond to questions or listen to them. The majority of the cases involved traffic stops and searches of homes and/or cars. The majority of the cases were a one on one resulting in a stalemate. Some of the conduct, while inappropriate, did not rise to the level of misconduct.

Failing to communicate effectively can be costly. It increases the cost of police services and waste human resources. When an officer terminates a call for service and leaves the citizen uninformed, it leads to frustrated citizens seeking redress from different agencies or at different levels of the same agency, resulting in duplicate effort and compounding costs. People will sometimes complain to the IPA, PSCU, Chief of Police, a City Council Member or the Mayor about the same incident.

A review of the current training offered at the Police Academy and the ongoing police in-house training found that communication skills is an area that is incorporated into several courses but there is no training that specifically addresses day to day communications or proper etiquette in addressing the public.

RECOMMENDATIONS

1. The SJPD should design a training course focused specifically on improving day to day verbal communications when dealing with the public.
2. In cases where the police erred, i.e. the wrong home was searched, an explanation and/or apology should be given as soon as possible, preferably at the onset.
3. Motorists should be told the reason for the enforcement action such as a stop, search, and detention as soon as possible and preferably at the onset.
4. The SJPD should formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody in an effort to assist the family and/or provide them with necessary but non-confidential information.

CHAPTER 3 - Community Outreach

A. Community Presentations

The IPA did presentations in nine of ten council districts, but overall, districts 3, 5 and 6 requested the most presentations. The Professional Standards and Conduct Unit (PSCU) and beat officers assigned to the district are also invited by the IPA to take part in the presentations. The benefit of having the beat officers present is that it provides community members with an opportunity to meet the officers, share concerns and talk about problems in their neighborhood. In 1999 the IPA addressed hundreds of people through community presentations.

B. Referral Sites

One of the goals for the IPA in 1999 was to establish at least one referral site per council district. Currently, there are 17 referral sites located in five different council districts and one that serves the Islamic community which operates out of the office of the Council on American Islamic Relations located in the city of Santa Clara. The main function of a referral site is to serve as an information center for residents who may be seeking information on how to file a citizen complaint. It is the opinion of the IPA that a person will feel more comfortable filing a complaint, if they first make contact at a local community organization where they can talk with someone familiar and who can refer them to the IPA.

The IPA has provided the staff at each referral site with an orientation session as well as a binder that contains detailed information about the IPA office, the complaint process, a list of phone numbers for social and legal services. The IPA has also provided the referral centers with copies of our "Commonly Asked Questions" brochure, which has been translated into five different languages (Spanish, Tagalog, Samoan, Vietnamese, and Korean).

Through these information centers, the IPA has increased its visibility and accessibility to the public in their own neighborhood. The referral sites have been very successful in referring complaints to the IPA and informing the IPA of any concerns or problems in their neighborhood.

C. Media Relations

The Auditor was busy this year participating in television and radio interviews. The Auditor was a guest on "The Filipino American Journal," a monthly television program produced by KTSF Channel 26 that addresses issues and concerns in the Filipino/Asian community. The IPA also participated on the radio show

“In the Public Eye,” on KBAY; in “Youth Today and Tomorrow” on KVVN 1430 AM, a Vietnamese language radio talk show geared towards parents and young adults; and on KLOK-RadioTri-Color, a Spanish-speaking radio station that addresses issues and concerns in the Hispanic/Latino community.

The Auditor gave on camera interviews to Channel 14-Univision, KPIX-Channel 5, KTVU-Channel 2, KRON-Channel 4, KNTV-Channel 11, and Channel 48-Telemundo. In addition, KBCI-Boise, Idaho, and News 12-Connecticut traveled to San José to interview the Auditor.

D. Inquiries about the IPA

The success and reputation of the IPA has caught the eye of many national and international organizations. Organizations, such as Amnesty International, London, and the Criminal Justice Commission, Australia, have requested materials and information about the IPA.

In October 1999, the Auditor was invited by officials from the City of Riverside, California, to meet with them and provide them with information about the IPA. The City of Riverside is in the process of implementing a model of police oversight similar to the IPA.

In December, the Police Oversight Focus Group from the City of Austin, Texas, met with the IPA. The IPA conducted a half-day presentation for the focus group on the history, background, responsibilities, and structure of the IPA. In addition, the IPA scheduled meetings with community leaders and city officials for the focus group.

Also, in December, the City of Oakland Citizen Police Review Board (CPRB) Task Force requested the IPA to make a presentation about the structure and functions of the office.

The IPA model has been adopted by cities throughout the country. Most recently the city of Sacramento, California; Boise, Idaho; and Tucson, Arizona established police oversight offices modeled after the IPA.

E. Community Forum

In 1999, officer-involved shootings and cases alleging racial profiling raised questions and concerns.

Therefore, on December 13, 1999, the IPA held a town hall and panel discussion meeting at the Mexican Heritage Plaza to discuss police misconduct issues. The goal of the meeting was to provide the residents with an opportunity to voice their concerns and to hear from different agencies working in the field of Civil

Rights violations, police accountability and police misconduct. The following professionals took part in the panel discussion: Honorable Frank Fiscalini, Vice Mayor; William Lansdowne, San José Police Chief; Teresa Guerrero-Daley, Independent Police Auditor; Karyn Sinunu, Assistant District Attorney; John Tennant, General Counsel, Police Officers' Association; Carol Russo, United States Department of Justice, Community Relations Services; Merylee Shelton, Chair, Human Rights Commission. The panel discussion was broadcasted live on KGO Newstalk AM 810 and moderated by radio talk show host Gene Burns.

CHAPTER 4 - Updates on Prior Issues and Recommendations

A. Officer-Involved Shooting Incident Training Review Panel

In the IPA's 1998 Year End Report, the IPA recommended that all officer-involved shootings resulting in injury or death be subjected to review whether or not a complaint is filed with the IPA or the PSCU. In July of 1999, the Chief of Police advised that in response to the IPA's recommendation he was establishing an officer involved shooting review process. The purpose of this review process would be to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure.

During the past year SJPd officers were involved in eight shootings, seven of which resulted in fatal injuries to the suspects. Although the review panel has only been empanelled since August of 1999, the review panel was able to review seven of the eight officer-involved shootings. One shooting incident is still pending a Grand Jury review therefore, it has not been sent to the review panel for evaluation. As a member of the review panel the Independent Police Auditor participated in all seven shooting reviews and provided input as necessary. Because the Chief of Police has indicated that he will be issuing a summary report to the city council on the issue of officer-involved shootings, the Independent Police Auditor will defer reporting on the actions of the panel until the Chief's report has been submitted to the city council.

B. Blood Samples Taken By Force

In the IPA's 1997 and 1998 Year End Reports, the IPA reported on the status of the policy change for drawing blood samples from uncooperative and/or combative suspects. The current procedure calls for putting a combative suspect in a body restraint called a WRAP, before taking the suspect to the pre-processing center for booking.

A close review of the SJPd policy and guideline for processing combative or disruptive suspects at the

preprocessing center appears to have had a positive impact in decreasing the number of complaints filed. As reported last year, the members of the department have positively received the duty manual changes that address the taking of blood samples. The IPA strongly encourages the department to continue its efforts to make the preprocessing center a safe and sterile environment. The IPA is pleased to report that only one complaint has been filed alleging the forcible extraction of blood outside of the preprocessing center.

C. Citizen Request for Officer Identification

The SJPd Duty Manual now directs officers to identify themselves when the public makes a request. Officers are required to provide the requesting person with an incident card that contains the officer's name and badge number. During the past year the IPA audited seven cases where the complainant alleged officers refused to identify themselves. Even though the IPA has raised this issue for several years, and SJPd has made strong efforts to minimize this type of procedural complaints, it remains troubling that on seven occasions this type of procedural violation was alleged. The IPA will continue to monitor this issue.

D. On scene investigations following a use of force

As reported in the 1998 Year End Report, the IPA expressed concern with what appeared to be a significant number of cases that were being resolved based solely on the information provided by the officer and/or the complainant without the benefit of other witnesses or physical evidence.

Because complaint information generally comes from a complainant who is unhappy with a police contact, without the benefit of an independent witness, the issue becomes a matter of credibility, who are you going to believe? This type of conflict usually casts an eye of suspicion on unfavorable findings because the public for the most part believes police misconduct investigations have always been biased towards the officer.

By policy, a supervisor must respond to an incident which results in serious injury to a suspect or officer. The supervisor is responsible for assuring that physical evidence is collected and preserved and if witnesses are available, that they be interviewed. In all cases, the supervisor is responsible for approving the Crime Report and/or other appropriate investigative reports prepared by the officer(s) documenting the use of force. Therefore, the supervisor should immediately investigate the circumstances and document in a supplemental report, the facts and his/her supervisory actions.

In 1999, the IPA again conducted a special audit of cases investigated after the new procedure was set in place to determine whether physical evidence is being collected adequately and how closely the new procedures are followed by officers and supervisors. A study of all the serious Use of Force complaints audited during 1999 revealed that supervisors were required to respond to the scene and/or collect evidence eight times. The IPA audit found that of the eight cases, only one appeared to not have a written report by the supervisor. In the case without an apparent written report, the PSCU investigation indicated that the supervisor responded to the hospital and taped an interview with the complainant, but evidence of a separate written report could not be verified. The compliance rate for supervisor intervention at use of force calls in 1999 was outstanding, especially considering that in 1998, compliance was found only in approximately 50% of the required use of force incidents.

E. Timeliness

This has been an area that has required ongoing revision and monitoring in the past years. Although the IPA has been tracking the time taken to complete an investigation since its inception, it has only been two years that SJPD has been working with a protocol for completing cases in departments outside the PSCU. In 1998, there were 250 Formal complaints audited, of which 63 or 25% were not completed within the required goal of 365 days. In 1999, there was a marked improvement, of the 117 Formal cases audited, there was 100% completion rate within the stated goal. All the cases were investigated within the required time, even though the goal was reduced to 300 days. The staff at the PSCU should be commended for this effort.

F. Vehicle Stop Demographic Study

On December 17, 1999, San José Chief of Police, William M. Lansdowne, released data from a study that was developed to address the issue of alleged racial profiling by members of the San José Police Department (SJPD). The study, which was initiated by the SJPD, on June 1, 1999, covers a three-month period, from July 1, 1999 through September 31, 1999. It should be noted that the SJPD was the first police department in California to implement this type of study and provide data regarding vehicle stop activity by its officers. The SJPD should be applauded and recognized for this effort.

The IPA agrees with the SJPD that statistical data should be gathered for a minimum of one year. In addition, the type of enforcement action should also be documented to reflect whether a citation, arrest or search was conducted. Lastly, the SJPD should use census information to determine the ethnicity of the population of each police district.

CHAPTER 5 - Year End Statistics

There was an increase in overall citizen contacts at the IPA and PSCU. These contacts were classified accordingly depending on the nature of the call. The more serious allegations were classified as Formal Complaints. There were 199 Formal Complaints filed by a citizen in 1999. This is 25% higher than in 1998, which recorded a total of 149 Formal Complaints. The total number of contacts in 1999, which were classified as either Formal, Informal, Procedural, Policy Complaints, No Boland and Inquiry was 819 up from 717 in 1998. For a complete breakdown see Chapter 5.

CHAPTER 6 - Complaints and Allegations by Council District

In 1999 the highest number of complaints originated in District 3 followed by District 5 and District 7. These same Districts also had the highest number of Unnecessary Force allegations in similar order. The total number of Unnecessary Force allegations went up this year from 159 in 1998 to 183 in 1999 for a 13% increase. However, the type of force used in 1999 involved primarily force inflicted by hands while force using a baton went down in 1999. There was also an increase in most other type of allegations except for Unofficerlike Conduct which recorded a drop of 35%.

CHAPTER 7 – Sustain Rate and Discipline Imposed

There were 54 total disciplines imposed in 1999 ranging from Training or Counseling to Termination. Most significant is that for the first time in six years, 3 allegations filed by a citizen involving Unnecessary Force were sustained, one resulting in termination.

CHAPTER 8 – Intervention Counseling

The Intervention Counseling Program is used as an “early warning system” to track police officers with multiple complaints for the purpose of identifying potential problems and providing guidance. Officers receiving 3 formal complaints or a combination of five of any type of complaint within a year are referred to Intervention Counseling. In 1999, fifteen (15) different officers received Intervention Counseling. In the last five years, 81 officers have received intervention counseling.

CHAPTER 9 – Background of Subject Officers

Officers assigned to patrol receive the majority of complaints, which is natural since they also have the highest number of police to citizen contacts. The second group with the highest number of complaints is the Narcotic Enforcement Team.

Male officers receive complaints (96%) in proportion to the number of male officers in the police department (92%); while female officers receive only half as many complaints (4%) as the number of females (8%) in the SJPd.

There is very little difference in the ethnicity of officers in the SJPd in proportion to the number of complaints they receive. African American, Hispanic Latino, Native American and Filipino American have one percent or less in deviation between the number of complaints they receive and the number of officers in the police department. European American officers make up 62% of the SJPd force but receive only 59% of the complaints while Asian American officers make up 7% of the police force and receive 11% of the complaints.

Officers with two to four years of experience have consistently received the majority of complaints (41%) even though they make up only 19% of the police force. This same group received the majority of Unnecessary Force allegations.

Of the 1379 officers in the SJPd in 1999, 268 different officers received complaints. However, only 67 different officers received two or more complaints. Therefore, 20% of the SJPd received at least one complaint while only .05% received multiple complaints.

CHAPTER 10 – Background of Complainants

In 1999, 67% of complaints were filed by males. The largest age group filing complaints was between the age of 31 to 59 years. The ethnic group filing the most complaints was the Hispanic Latino. They filed 32% of the complaints and make up approximately 31% of the San Jose population. Hispanic Latino complainants filed just as many complaints against European American officers (57) as they did against minority officers (55), collectively.

Twenty nine percent (29%) of the complainants self reported having a High School Diploma or below education while 33% reported having a college or Graduate degree. The majority of the complainants declined to state their occupation.

CHAPTERS 11 & 12 – Complaint Audits

All complaints received some level of review. The review in some types of complaints looked at the intake process to examine not only the information but also the manner in which the information was taken. After auditing the initial contact with the complainant, the classification of that complaint is reviewed to insure that serious complaints are fully investigated.

The Formal Complaints, which are the most serious, receive a higher level of scrutiny. In 1999, 118 Formal Complaints were audited. Of the 118 complaints, the IPA disagreed on the finding in 6 cases or 5% even after further investigation and after conferring with the Chief of Police. In 1998, out of the 250 audited complaints, the IPA disagreed with the finding in 45 or 18% of the cases. This is a reduction in the number of cases where the IPA and the Chief of Police disagreed.

Chapter 12 provides seven case audit summaries to give examples of how the IPA conducts the audits, the different actions taken and examples of the options available to the IPA.

CHAPTER 13 - Conclusion

As in previous years, 1999 recorded significant number of accomplishments. Pending recommendations were adopted and implemented such as the Officer-Involved Shooting Review Panel. The review panel as developed by the Chief of Police, includes the IPA as a member.

In the 1998 Year End Report, the IPA made a commitment to increase community outreach during 1999. The IPA was successful in establishing alternative sites where the IPA can maintain direct contact with the community and distribute office literature. With the development of seventeen referral sites that are spread throughout the city, the IPA has developed a network of resources that can address the growing needs of the community. The IPA will continue to expand its use of referral sites and provide staff training at these sites to enhance the mission of the IPA.

The IPA also went on-line with its web site during the past year. The web site provides information regarding the functions of the IPA and has a site for accessing prior Year End Reports. Citizens can also file complaints through electronic mail.

The IPA will continue to work on achieving its objectives in furtherance of its mission. One of the goals for the 2000 year is to focus community outreach to the youth in the City of San José. The IPA will report on its progress and challenges in the 2000 Year End Report.

INTRODUCTION

CHAPTER 1

ESTABLISHING THE IPA

Six years ago, the San José City Council passed an ordinance to establish the Office of the Independent Police Auditor (hereafter referred to as the "IPA"). The IPA was created to provide civilian oversight of the investigation of citizen complaints by the San José Police Department (hereafter referred to as "SJPD"). Unlike in some cities, civilian police oversight was not created in the aftermath of a police crisis. Initially, the IPA consisted of one full time intake coordinator and a part-time Police Auditor. On November 4, 1996, San José residents voted to amend the City Charter making the IPA a permanent city office. The IPA is currently comprised of one full time police auditor and three full time staff members.

THE IPA MODEL

When the IPA was established in 1993, the concept of a police

auditor was relatively unknown. People were more familiar with civilian review boards which have been in existence for thirty years. The major difference on how the two models function is that civilian review boards are usually investigative bodies which focus a major portion of their resources on a case by case approach versus an auditor model which focus on identifying and changing the underlying causation factor that give rise to complaints. Today, more and more cities are looking at the San José IPA model as the form of civilian oversight for their cities. Cities like Tucson, Arizona; Boise, Idaho and Sacramento, California have used the San José IPA as a model to built on.

CHARACTERISTICS OF THE IPA

The IPA does not conduct investigations, but rather reviews the investigations conducted by the San José Police Department's Professional

MISSION

The Independent Police Auditor's mission is to provide an independent review and to promote public awareness of the citizen complaint process; thereby, increasing greater police accountability by the San José Police Department.

Standards & Conduct Unit (hereafter referred to as "PSCU") for thoroughness, fairness, and to insure that the findings are supported by the evidence. This review may include requesting added investigation, talking to witnesses, examining the physical evidence, attending the officer interviews and continues until the investigation is completed to the satisfaction of the IPA. After all investigative steps are exhausted, and the IPA still disagrees with the finding of an investigation, the IPA will meet with the Chief and the City Manager to discuss the specifics of the case. The IPA also reports to the Mayor and the City Council, the frequency and/or patterns resulting from cases in which the IPA disagreed with the findings reached by the Chief of Police.

FUNCTIONS OF THE OFFICE

The IPA has three primary functions: (1) it serves as an alternate office where people

may file a complaint, (2) it reviews the investigations of citizen¹ complaints conducted by the SJPd; and (3) it promotes public awareness of a person's right to file a complaint. Every aspect of this process is closely examined from the initial interaction between the PSCU and the complainant to the conclusion of the investigation. The finding is examined to insure that the finding is supported by the evidence and finally an examination of the process used to communicate the results of the investigation to the complainant by the PSCU is conducted. The IPA's primary objective is to provide an independent civilian review of the citizen complaint process.

SIX YEARS OF POLICY RECOMMENDATIONS

An analysis of the data extracted from citizen complaints form the basis of the recommendations made by the IPA in public reports. These recommendations include

the creation, modification or elimination of policies, procedures or department guidelines. Since its inception, many recommendations have been made. All but three have been adopted and implemented by the San José Police Department. In the past six years, the IPA has published ten public reports. These reports chronicle the work of the IPA and the response by the SJPd to the recommendations.

FIRST REPORT

The first report covered the first three months of the existence of the IPA office and focused on the following recommendations:

- the creation of a new system for the classification of complaints;
- the establishment of procedures to address bias within the PSCU;
- the enactment of policies to improve service to people filing complaints at the PSCU; and
- the implementation of an "early

¹ A citizen is denoted as an individual, not reflective of U.S. citizenship. Any member of the public may file a complaint. The complaint, however, must be one that is directly affected by the wrongdoing of the officer involved or one who witnessed the incident.

warning system” to detect those officers receiving multiple complaints.

SECOND REPORT

The second report covered the implementation of the recommendations made in the first report and an audit of 60 randomly selected complaints. This audit consisted of personal contacts with the complainants to verify the nature of their complaints and assess the level of satisfaction with the service provided by the PSCU.

THIRD REPORT

In the third report recommendations were made to expedite the investigation of citizen complaints by setting specific timeliness. An “Onlooker Policy,” which describes a citizen’s right to observe a police action, was made and immediately implemented by the San José Police Department. In addition, it was recommended that training be provided to officers in the area of “Drunk in Public” cases. The first recommendation that was not adopted required chemical testing for

“Drunk in Public” arrests. Cost and lack of a facility in which to provide the testing was cited.

FOURTH REPORT

The fourth report was a one year comprehensive report which covered the first year of operation for the IPA and the final quarter of 1994. Recommendations to improve communication between the PSCU and the complainant were made and adopted. A very significant recommendation involved the creation of a process by which supervisors would immediately investigate the need to use force on those cases which resulted in serious injuries to a complainant. The on scene investigation focuses not on the crime at hand but on the need to use force. By requiring that supervisors conduct an investigation following a use of force by one of their officers, it forces the supervisors to provide closer supervision, which results in greater accountability to the public.

A recommendation that was not adopted was to mandate that

searches of homes based on consent require that the consent be in writing. Even though this recommendation was not adopted, it nevertheless focused attention on this issue. Allegations of unlawful searches dropped from 47 in 1995 to 7 in 1998.

FIFTH REPORT

The fifth report tracked prior recommendations and introduced four new areas needing change such as :

- documenting all contacts from the public to insure that people were not dissuaded from filing a complaint;
- providing a friendlier and more private setting for conducting complainant interviews;
- requiring police personnel to offer the IPA as an alternative venue for filing complaints and
- setting guidelines for the interviews of subject and witness officers.

SIXTH REPORT

The IPA’s independence was seriously tested following the release of the sixth public report

covering the 1995 year. Several recommendations were made in the report including mandatory updates and closing letters to complainants; procedural changes involving strip searches; tracking the ethnicity of complainants and subject officers and an overhaul of the practice of officers working off-duty. Over 50% of the SJPd police force was engaged in off-duty employment with inadequate record keeping or accountability. Members of the San José Police Officers' Association held a press conference in front of city hall objecting to issues in this report. Nevertheless, the city council unanimously approved the report. Ultimately, better working conditions, supervision and pay for officers working off-duty resulted from this recommendation.

SEVENTH REPORT

The seventh report focused on the implementation of the previous recommendations and also introduced the idea of creating a database that would electronically link the IPA with the PSCU. This database would automate

the input and retrieval of information in one central database for both offices. In addition, the IPA designed and installed a web site giving access to the IPA's public reports and making the filing of complaints via the internet possible.

EIGHTH REPORT

In 1996, the city council voted to reduce the number of required reports from the IPA to one per year. The year end report for 1996 contained a detailed statistical analysis of the background of complainants and subject officers. It also reported on the previous recommendations and recommended that police officers identify themselves in writing to people asking for a name or badge number.

NINTH REPORT

The 1997 Year End Report covered the transition of the IPA office into a permanent city office following the passage of Measure E in the November 1996 election. Measure E amended the City Charter to require a vote of the residents of San José before the

IPA office can be abolished and provided insulation to the Police Auditor by requiring a super majority vote of the city council before removal midterm. Statistics specific to each council district were reported. A new recommendation requested that the SJPd change the manner and location in which blood was forcibly extracted from suspects.

TENTH REPORT

The most significant recommendation in the 1998 Year End Report dealt with officer involved shootings. The IPA requested that its jurisdiction be expanded to include review of police shootings whether or not a complaint was filed. The city council passed an emergency legislation that enabled the IPA to be part of the police shooting review panel created by the Chief of Police. This prompt action by the Chief was very timely, given that in 1999 there were 8 police shootings resulting in 7 deaths.

NEW ISSUES & RECOMMENDATIONS

CHAPTER 2

In Chapter Two of the IPA 1999 Year End Report, three new issues are introduced. In addition to discussing and analyzing the new issues, recommendations are included. The following is a synopsis of the issues presented in this chapter:

I. Strengthening the complaint process to meet the public's expectation

- The Office of the Independent Police Auditor (IPA) has been effective in recommending policy changes to the San José Police Department (SJPD). However, in order to address the specific needs of citizens filing complaints, a restructuring of the IPA office needs to take place.

II. Voluntary Mediation Program

- The feasibility of implementing a voluntary mediation program at the San José Police Department (SJPD) is recommended. An example of how the program could be implemented and how it could work is included.

III. Improving police communications

- This issue offers examples of citizen complaints, which allege poor communication skills by San José Police Officers, and provides recommendations for improvement.

I. STRENGTHENING THE COMPLAINT PROCESS TO MEET THE PUBLIC'S EXPECTATIONS

Throughout the six years of operation of the Independent Police Auditor, (IPA) many adjustments to the policies and procedures that govern the duties of this office have been made. The need for these changes arose as the policies were put into practice, as new responsibilities for the IPA were created and in response to public expectations of this office. Under the current city administration, headed by Mayor Ron Gonzales, a new approach to delivering services has been introduced. This new approach provides

services to the public as viewed from a citizen's perspective. To accomplish this, the IPA office must undergo the following changes.

Personalizing communications with citizens and complainants

The IPA was designed to broadly impact the citizen complaint process through policy changes that deter the reoccurrence of similar misconduct rather than focusing on the outcome of individual complaints. While it is important to address policy changes because it has a broader impact, it is also important to meet the specific needs of the individual citizen filing a complaint. Therefore, more time should be spent informing and updating complainants and making them feel a part of the process. The IPA needs to be adequately staffed to communicate and interface with individual complainants. Currently, the IPA communicates with complainants when a complaint is initiated at

the IPA or a specific request is made by the complainant to have the IPA track his/her complaint. In any event, most communication by the IPA is done through form letters or phone calls. Without the benefit of personalized interaction with the complainant, the IPA will continue to have a problem building confidence with the community. Especially when one considers that two often heard criticisms by complainants is that the IPA has no subpoena or investigative powers.

Subpoenas for civilian witnesses

A recurring problem that is encountered in the investigation of citizen complaints is the problem of how can an investigator compel a witness to divulge much needed information. Subpoenas and subpoenas duces tecum are used in the judicial system to summon witnesses and/or documents, respectively. There are two types of witnesses in the citizen complaint investigation process to whom subpoenas would apply,

police officers and citizens. Under current practice, police officers must attend when summoned by the Professional Standards and Conduct Unit (PSCU) to an interview concerning the investigation of a citizen complaint. Subject and witness officers must respond to all questions not in violation of the Police Officers Bill of Rights or they may be subject to discipline for insubordination, up to and including termination.

Currently, neither the PSCU nor the IPA has the authority to compel a citizen witness to be interviewed or release and/or provide physical evidence such as medical records that may be an integral part of an investigation. Because of this, subpoenas are needed for citizen witnesses. It would be counterproductive to compel complainants to make a statement if they don't desire to follow through with their complaint. However, subpoenas would be very useful in cases where a witness is reluctant to get involved for whatever reason, but may be more inclined to

cooperate if they are summoned. In addition, subpoenas duces tecum, which are used to subpoena records are very necessary and often provide the most reliable evidence.

The City Council could grant the PSCU the authority to issue subpoenas similar to the Civil Service Commission and the City Attorney. Because the PSCU has the responsibility for conducting complaint investigations, it is appropriate that they be given the authorization to issue subpoenas. Providing the PSCU with subpoena power would enhance the investigative process and provide another tool for increasing public confidence in the complaint process. Additionally, the IPA could benefit by working with the PSCU to compel reluctant witnesses to divulge information or by securing physical evidence that may be discovered during the audit or the follow-up investigation process. Having this capability could be a win-win for both the PSCU and the IPA.

Recommendation

1. Have the City Council grant the PSCU subpoena power to compel the attendance of civilian witnesses, to compel the production of documentary or physical evidence and to administer oaths and affirmations.

Follow-up Investigations

Another criticism of the Independent Police Auditor is that it has no investigative power.

Currently, the IPA has the authority to conduct what is commonly known as a follow-up investigation of a citizen complaint. This process is done once the investigation has been completed by the PSCU and forwarded to the IPA for auditing. Follow-up investigations include such steps as interviewing witnesses to compare their statements to the statements contained in the PSCU investigation; inspecting the scene; reviewing all the police reports; and examining all the physical evidence. The only restriction imposed by the Municipal Code is that questioning of police officers be done through a PSCU investigator.

This restriction does not preclude the Auditor from questioning the officers; it only adds an intermediary to repeat the questions from the Auditor to the officer.

There is a lack of familiarity by the general public with the work and process involved in conducting an audit. People assume that an audit is strictly the examination of documents. To address this concern, the IPA needs to invest in informing the public through various marketing mediums. The IPA should identify and utilize terms that have a wider recognition and understanding in the community. The IPA should use general terms such as "follow-up investigation" to describe what is involved in an audit of a citizen's complaint. This is not currently done because the term investigation is not expressly mentioned in the IPA's policies and procedures. Therefore, it is recommended that the City Council amend the Municipal Code to define an audit of a citizen's complaint and to clarify that a follow-up investigation is an

integral component of an audit.

Recommendation

1. Amend the Municipal Code to define an audit and to clarify that an audit includes a follow-up investigation.

II. PROPOSED VOLUNTARY MEDIATION PROGRAM

Over the past several years the IPA and the Chief of Police have discussed the benefits of providing an alternative process for mitigating minor complaints against officers. The IPA researched the mediation process and determined that a voluntary process of mediation that brings the complainant and the officer together to discuss the issue at hand can lead to a better understanding of the reason for a person's demeanor and the effect it may have on others.

The voluntary mediation program as proposed by the IPA could be an alternative to the formal investigation process and could provide an opportunity to facilitate meaningful dialog between the

complainant and the officer. The following is a brief description of how the program could be implemented.

How Complaint Mediation

Works

The process begins when a citizen has a concern with the actions of an officer and chooses to file a complaint with the IPA or the PSCU. The complaint is first reviewed and if it is determined to be minor in nature, such as a disagreement with a policy, courtesy, or procedure, the complaint may be considered for resolution through mediation. If the complaint meets the criteria for mediation, the complainant and the officer are then asked if they would be interested in resolving the complaint through the mediation process. If both parties agree, the complaint is forwarded to a neutral third party mediator. Once the complaint has been mediated, the mediator submits a confidential report with findings to the Chief of Police. The findings are retained by the PSCU for statistical purposes only. Once the complaint has

been mediated, the complaint allegation is removed from the officer's record of complaints.

HOW MEDIATION WORKS

Let's say it's a late summer evening and a person is walking through downtown Saint James Park, when a patrol car drives by slowly and after passing, stops and backs up. An officer quickly jumps out and begins to question the person and requests identification. Before the person can give the officer his identification card, the officer's radio sounds and the officer without saying a word, jumps in his car and quickly drives away.

COMPLAINT

The person is outraged by the stop, and the following day goes to the IPA and files a complaint for harassment and discrimination. The complaint is forwarded to the SJPD Professional Standards and Conduct Unit (PSCU) for investigation. The PSCU reviews the complaint and feels it is a less serious transgression, and may warrant disposition through the mediation process.

CASE REFERRED

With the approval of the police officer and the complainant, the case is referred for disposition through the Mediation Program. The mediator is called and a date is set for mediation. At the mediation hearing, the complainant and the officer come face-to-face in an informal, confidential session.

After learning that the officer was looking for a suspect that fit the description of the complainant, the complainant is satisfied that he wasn't targeted and apologizes for the misunderstanding. The officer on the other hand apologizes for not taking the time to communicate the reason for the stop and for leaving without bringing closure to the detention.

SUGGESTIONS

The mediator issues non-binding suggestions that both sides try to see one another's position.

FURTHER ACTION

Prior to the mediation process, the complainant signs a form agreeing that if he/she is not satisfied with the mediation process, he/she is precluded from filing a new complaint on the same incident. This prohibition does not prevent the complainant's ability to seek legal remedies.

Why Mediation?

In a significant number of police misconduct complaints the true facts are difficult to ascertain, especially in those cases that are one on one such as, discourtesy or attitude based complaints. The majority of these types of complaints result in a finding of “not sustained.” This is because there is no independent witness to corroborate or dispute the allegation. The complainant feels that his/her side of the story was not heard or believed and that the process for the most part favors the officer and did not work for him/her. In an investigation that is based on facts and uses a standard of preponderance as a measure to sustain allegations, there will continue to be dissatisfaction because this type of allegation (one on one) is difficult to prove.

With a mediation process, the officer and complainant can gain an understanding as to why they acted or did what the other felt was unreasonable. When parties are given a forum for expressing their side of the story, often a

different perspective is gained and sometimes the actions or words that led to the complaint become understandable and make sense. If successful, mediation can lead to a better understanding of one's actions and create a process that can bring parties together to discuss the conduct specific to a given case.

The goal in police misconduct investigations is to determine and correct errant behavior. While traditional discipline is an important and necessary part of the complaint process, mediation is also a powerful tool that can bring about real change. In a process of successful mediation there is no winner or loser and both parties come away with a better perspective and understanding of the other person's feelings and actions.

Recommendation

1. It is recommended that the SJPD explore the feasibility of implementing a voluntary mediation program within the next six months.

III. IMPROVING POLICE COMMUNICATION SKILLS

Every year, members of the San José Police Department (SJPD) come in contact with the public in excess of 500,000 times. It is difficult to assess how many people were satisfied or dissatisfied with the services they received from the SJPD, and did not follow through with filing a commendation or a complaint. The author of Complaints and Angry Customers believes that, “most people, more than 90 percent, don't tell you when they are disappointed with the service they received; but they do tell family, friends, acquaintances and even strangers.” The person, who does tell, offers a diamond - in the rough. The key is in turning that roughness into an asset for the organization and the citizen.

Complaints handled by the Chain of Command, by the Chief, at the information center, or by other means, are not reported nor tracked by the Office of the

Independent Police Auditor (IPA). The IPA tracks all those public contacts where a person either called the IPA office or the Professional Standards and Conduct Unit (PSCU) to lodge a service related complaint. Citizen complaints, while few in comparison to the number of citizen-to-police contacts, form the basis of the IPA's analysis and subsequent recommendations. Experts in customer relations have found complaints to be the most accurate source of identifying those areas that need improvement.

According to Mike Griffin's book, Tell Me Where It Hurts, the public gives feedback about the quality of services through the filing of a complaint. The complaint process is like a doctor for people who are sick. The goal is to prevent "illness" and take care of what hurts by listening, analyzing and interpreting "symptoms," then diagnosing and prescribing a remedy. This goal is reached by looking for trends and identifying "epidemics," conferring with experts to find a cure, and

preventing others from contracting the same illness.

In analyzing many complaints filed in 1999, the IPA identified a pattern indicating that in a significant number of police to citizen contacts, it appears that the officers did not communicate effectively and that this failure to communicate may have led to a physical confrontation, the filing of a citizen complaint, or a negative opinion of the police department. Several of the complaints reviewed in preparation of this report had a common theme, citizens alleged that the officer did not explain, respond to questions or listen to them. The majority of the cases involved traffic stops and searches of homes and cars. The majority of the cases were a one on one resulting in a stalemate. Some of the conduct, while inappropriate, does not meet the criteria to sustain a Rude Conduct allegation.

Examples of allegations in complaints reviewed

The examples below were allegations found in complaints.

1. The complainant and her employee left her business to get something to eat. An officer pulled them over and proceeded to search her car, glove box and trunk. The complainant alleged she was never provided with the reason for the stop or for the search.
2. The complainant alleged her son was stopped, ordered to exit his car at gunpoint, made to crawl on the ground in the dirt and mud and then sent on his way without explaining why or offering an apology.
3. The complainant alleged that the police entered his house without permission. It was later determined that the police entered the wrong address. The police left without explaining what was going on or offering an apology.

- | | | |
|---|---|--|
| <p>4. The complainant's relative was killed in an officer-involved-shooting. The complainant alleged that the police failed to explain to the family what had happened. The family felt they were detained and questioned like suspects without showing compassion to their loss. The family alleged that they were not told why the police shot and killed their loved one and instead had to read the details in the newspaper.</p> | <p>answer questions. Other cases reviewed showed a pattern of conflict arising when a citizen questioned the officer's actions and the officer appeared to react defensively over his/her authority being questioned. Still in other cases, complainant's alleged that officers refused to identify themselves or failed to provide basic information, which the police should anticipate people would want to know. In 1999, there were 84 complaints that were traffic related. In some of these complaints, better communication with the motorist may have prevented the complaint.</p> | <p>Sir. Do you know why I stopped you? Or, I stopped you because you were exceeding the posted speed limit. May I see your driver license?" The officer then offers a friendly greeting as an ice-breaker, thus setting the tone for the interaction with the citizen. The officer explains why he/she stopped the person. The officer doesn't accuse the motorist of speeding, instead uses a phrase that is less judgmental or accusatory. Then the officer requests to see the motorist's driver's license.</p> |
| <p>5. Family members of a person who died in the custody of the SJPd complained that they were given the run-around when attempting to find out when the body would be released in order to make funeral arrangements.</p> | <p>In researching what other agencies do to minimize conflict, the IPA contacted the California Highway Patrol (CHP). Consideration should be given to adopting a practice similar to that used by the CHP. When a CHP officer conducts a traffic stop he/she is trained to first greet the motorist, then tell them why they were stopped using non-accusatory phrases and then asking for their driver's license. The officer may say, "Hello, good afternoon</p> | <p>In contrast, SJPd officers are alleged to first ask for a driver's license before offering an explanation for the traffic stop. It is foreseeable that the average motorist would want to know why he/she was stopped. If the officer is intent on first obtaining a driver's license and the motorist on finding out why he/she was stopped, communication is likely to fail and conflict arise.</p> |
| <p>Some of the examples cited above may have been isolated incidents. Other cases may be examples where for good reason, the officers were not able to initially inform the citizen of their enforcement action or may not have had time afterwards to</p> | <p>Failing to communicate effectively can be costly. It increases the cost of police services and it</p> | |

waste human resources. When an officer terminates a call for service and leaves the citizen uninformed, it leads to frustrated citizens seeking redress from different agencies or at different levels of the same agency, resulting in duplicate effort and compounding costs. People will sometimes complain to the IPA, the PSCU, the Chief of Police, a City Council Member or the Mayor about the same incident.

A review of the current training offered at the Police Academy and the ongoing police in-house training found that communication skills is an area that is incorporated into several courses but there is no training that specifically addresses day to day communications or proper etiquette in addressing the public.

2. In cases where the police erred, i.e. the wrong home was searched, an explanation and/or apology should be given as soon as possible, preferably at the onset.
3. Motorists should be told the reason for the enforcement action such as a stop, a search, and a detention as soon as possible and preferably at the onset.

4. The SJPD should formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody in an effort to assist the family and/or provide them with necessary but non-confidential information.

Recommendations

1. The SJPD should design a training course focused specifically on improving day to day verbal communications when dealing with the public.

COMMUNITY OUTREACH

CHAPTER 3

The Independent Police Auditor (IPA) is committed to reaching out to the community. For the past six years, the IPA has gained recognition in civilian police oversight from other cities. However, in 1998, the IPA's own surveys at community gatherings reported that about 75% of those attending had never heard of the IPA. For this reason, in 1999, the IPA focused one of its staff members to increase public awareness about the office. The IPA redefined the job duties of one of the data analysts and focus on community outreach, thus significantly increasing the visibility of the office .

In order to reach the different communities, the IPA contacted numerous community centers, organizations, and agencies and invited them to learn more about the functions of the IPA . The response was overwhelming. For the last eight months of 1999, the IPA was extremely busy conducting community presenta-



The Auditor and Chief of Police attend a community meeting at the Alma Community Center.

tions and attending community events. These community presentations and events are opportunities to hear, document and resolve group complaints. While some people are reluctant to file complaints individually; they may be willing to voice a group complaint during these meetings.

The IPA created PowerPoint presentations in English and Spanish. Each PowerPoint presentation contained information and data that directly pertained to that council district as well as general information about the history and functions of the

IPA. The audience varied from business owners to non-English speaking residents. Presentations were also done in Vietnamese.

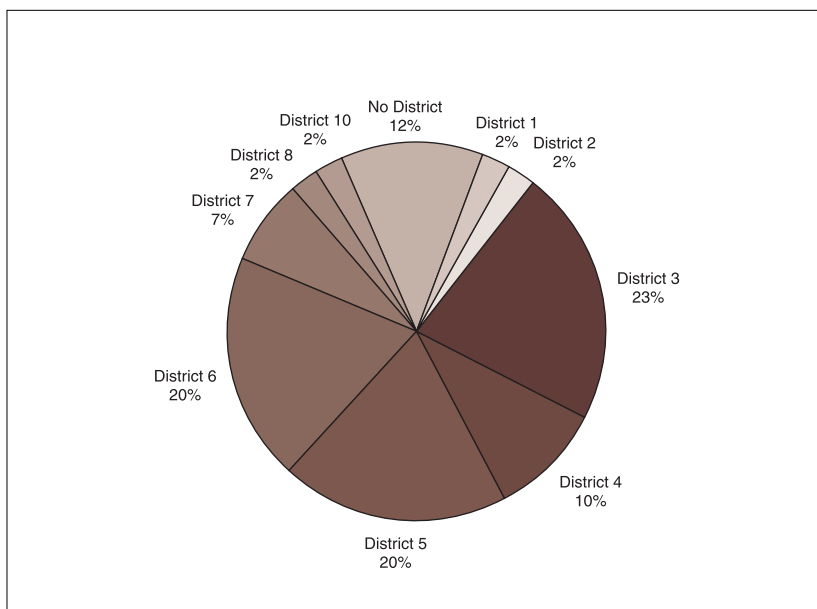
The IPA did presentations in nine of ten council districts, but overall, districts 3, 5 and 6 requested the most presentations. As a practice, the IPA notifies the council members of all presentations scheduled in their district. In addition, subsequent to the presentations, the council members are informed in writing of the issues and concerns expressed at the presentations.

The Professional Standards and Conduct Unit (PSCU) and beat officers assigned to the district are also invited to take part in the presentations. The benefit of having the beat officers present is that it provides community members with an opportunity to meet the officers, share concerns and talk about problems in their neighborhood.

The presentations and events gave the IPA the opportunity to learn more about the needs and concerns of the community. As a result, there was an increase in residents utilizing the services of the IPA. Because of these outreach efforts, the IPA noticed that residents appear more comfortable and willing to talk after each presentation. The office was successful in addressing concerns and problems that otherwise would not have been expressed.

The following is a list of organizations where the IPA made a presentation or participated in a community event:

Illustration 3A: Presentations by Council District



May

- Mexican Consulate (Dist. 3)
- MACSA (Dist. 5)
- Catholic Charities YES (Dist. 3)
- Community Center Supervisors Meeting

June

- Filipino American Heritage Appreciation Project (FAHAP)
- Bay Area Islamic Association (Dist. 3)
- Alma Community Center (Dist. 7)
- Santa Teresa Neighborhood Association (Dist. 10)
- Council Member Diaz' "Community BBQ" (Dist. 5)
- East San José Community Law Center (Dist. 5)

**Town & Country Mobile Home Village
Homeowner's Association**

Dear Mrs. Teresa Guerrero-Daley

On behalf of the residents of Town & Country Mobile Home Village, please accept my sincere thanks for taking the time and that of your Community Outreach Coordinator, Vilcia Reyes, to meet with us this past Tuesday evening. I hope that you enjoyed the meeting as much as we did.

Sometimes we take for granted community agencies and/or accept media accounts as fact instead of being informed. Your presentation should ease our concerns regarding complaints and questions regarding the job being done every day on our behalf by the law enforcement sector of our city.

Additionally, having the officers assigned to the immediate area as well as the Internal Affairs sergeants helped personalize your remarks.

Again, thank you and good luck in your task on our behalf.

*Sincerely,
Herman Osorio
President*



Letter from the Town & Country Mobile Home Village sent to the IPA after a July presentation.

July

- West San Carlos Business Association (Dist. 6)
- Story Road Business Association (Dist. 5)
- Iola Williams Senior Center (Dist. 7)
- Town & Country Mobile Homes (Dist. 2)
- Mt. Pleasant Neighborhood Association (Dist. 5)
- Park McKee Homeowners Association (Dist. 5)
- Westside Community Action Team (Dist.1)

September

- Sherman Oaks Community Center (Dist. 6)
- City Team Ministries (Dist. 4)
- Japanese American Community Senior Service (YU-AI KAI) (Dist. 3)
- Korean American Community Services (Dist. 6)
- Catholic Charities YES (Dist. 3)
- Mayfair Initiative (Dist.5)

August

- Shasta Hanchett Park Neighborhood Association (Dist. 6)
- College Park Neighborhood Association (Dist. 6)
- Project Crackdown (Dist. 3)
- Alum Rock Neighborhood Coalition (Dist. 5)
- Council Member Alice Woody's "Day in the Park" (Dist. 8)

October

- City Team Ministries-Youth Outreach (Dist.4)
- Council on American Islamic Relations (CAIR), City of Santa Clara
- Alameda Business Association (Dist.6)
- The Salvation Army (Dist. 3)
- Project Crackdown (District 3)
- Billy DeFrank Gay & Lesbian Community Center (District 6)

-NAACP Town Hall Meeting
-Catholic Charities YES Community Forum

November

-Berryessa Citizens Advisory Council (District 4)
-Sherman Oaks Advisory Council and Neighborhood Association (District 6)
-City Team Ministries, Youth Outreach "Urban Youth Conference" (Dist. 4)
-Northside Neighborhood Association (Dist. 3)

December

-IPA Self Sponsored Community Forum

COMMUNITY SURVEYS

The IPA conducts voluntary surveys at the community presentations. These surveys assist the IPA in identifying the neighborhoods where the IPA needs to increase community outreach and each neighborhood's issues and concerns.

In 1999, two hundred and thirty-five surveys were collected and

analyzed. As previously mentioned, because a great percentage of the presentations were done in districts 3, 5 and 6; the majority of the surveys reflect the concerns pertaining to these districts. In addition, some surveys were not answered completely; therefore, the numbers do not equal a sum total. Below are the questions contained in the survey and responses.

1. Do you feel comfortable filing a complaint against a San José police officer?

Yes	71
No	45
Somewhat	52

2. Did you ever want to file a complaint against a SJPD officer but did not?

Yes	34
No	143

2a. If yes, why?

Fear of police retaliation.	14
Felt the complaint would not be taken seriously.	19
Did not know how to file a complaint.	14
Did not want to take the time to file a complaint.	2
Other reason.	5

3. Have you had the need to call for police services within the last three years?

Yes	79
No	97

3a. If yes, was the response time satisfactory to you?

Yes	53
No	20

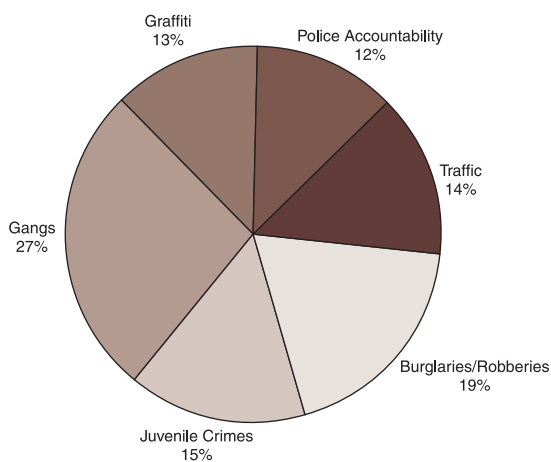
4. Have you ever requested information from the police department or officer regarding any issue?

Yes	81
No	93

4a. If yes, were you satisfied with the response to your request for information?

Yes	59
No	16

5. Major police concerns.



6. Do you feel there should be more police patrol, less police patrol or do you feel it is adequate?

More	54
Adequate	29
Less	1

MAKING A DIFFERENCE IN THE NEIGHBORHOODS

As previously mentioned, in 1999, the IPA was busy making presentations and attending community events. The IPA sees this as an opportunity to learn more about the needs and concerns of the different neighborhoods and ways the IPA can better serve the community. Here are two examples of how the IPA has successfully made a difference in the neighborhoods by listening to their concerns and working with the SJPd to resolve the problem.

Success Story #1

In May of 1999, after doing a presentation at the Alma Community Center, the IPA received a letter from an anonymous resident detailing a drug and

prostitution problem at a specific house in the neighborhood. The resident did not feel comfortable going to the police or anyone else for fear of retaliation. The IPA forwarded the resident's information to the appropriate police unit, maintained contact with the commander and staff and requested that the matter be investigated.

The SJPd opened an investigation and with surveillance and other evidence, officers were able to execute a search warrant. Within weeks, two suspects were arrested and drugs and cash were seized.

Through collaboration between the SJPd and the residents, the quality of life in the neighborhood significantly improved.

Success Story #2

During a presentation at a College Park Neighborhood Association meeting, residents complained about Bellarmine College Preparatory students parking illegally on the streets and blocking driveways.

They also expressed concern with motorist speeding in the area of Stockton to The Alameda and Hedding to Taylor. The IPA committed itself to contacting the appropriate unit and getting back to the residents.

In response to the parking issue, at the beginning of the school year, the police Captain met with Bellarmine students and staff to address and resolve the problem. Thanks to the cooperation of all those involved, no additional complaints have been reported.

To address the speeding problem, radar trailers were used to capture the speed at the identified area. The radar results and the results of two traffic studies conducted by the City of San José showed that the speeding problem is not as serious and in fact has diminished.

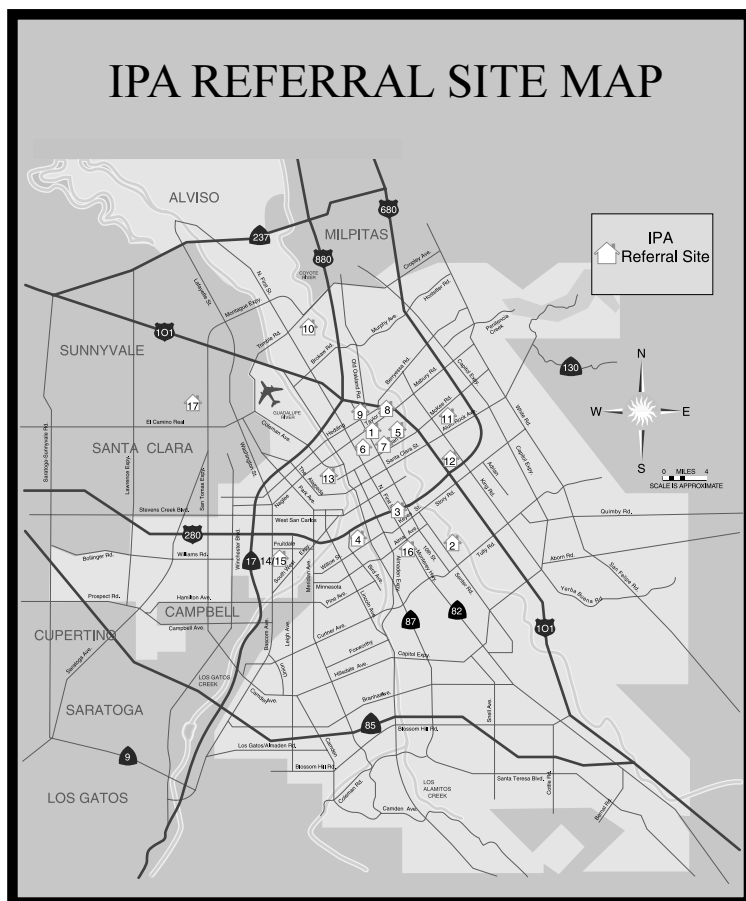
As a result of these efforts, residents have expressed their appreciation to the Traffic Unit for the enforcement of traffic violations in their neighborhood.

REFERRAL SITES

One of the goals for the IPA in 1999 was to establish at least one referral sites per council district. Preferred sites are community centers or other locations frequently visited by the public.

The main function of a referral site is to serve as an information center for residents who may be seeking information on how to file a citizen complaint. It is the opinion of the IPA that a person will feel more comfortable filing a complaint, if he/she first makes contact at a local community organization where they can talk with someone who refers them to the IPA.

The IPA has provided the staff at each referral site with an orientation session as well as a binder that contains detailed information about the IPA office, the complaint process, a list of phone numbers for social and legal services. The IPA has also provided the referral centers with copies of our "Commonly Asked Questions" brochure, which has been translated into five different languages (Spanish, Tagalog,



Samoan, Vietnamese, and Korean).

At the referral sites, staff does not intake complaints, but explain the process of filing a complaint. The staff also provides the complainant with the IPA phone number and literature.

Below is the list of existing referral sites. The IPA is in the process of identifying more referral sites in other council districts.

5 Japanese American Community Center
588 North Fourth Street

6 Mexican Consulate
540 North First Street

7 South Bay Islamic Association
325 North Third Street

8 The Salvation Army
405 North Fourth Street

District 4

9 City Team Ministries Men's Recovery – Rescue Mission and Family Outreach
1297 North 13th. Street

10 City Team Ministries- Youth Outreach
2302 Zanker Road

District 5

11 East San José Community Law Center
1765 Alum Rock Avenue

12 MACSA
130 North Jackson Avenue

District 3

1 Asian Law Alliance
184 East Jackson Street

2 Catholic Charities YES
645 Wool Creek Drive

3 Catholic Charities YES
817 South First Street

4 Gardner Community Center
520 West Virginia Street

District 6**Billy DeFrank Center**

175 Stockton Avenue

**Korean American Community Services**

1800 Fruitdale Ave.

**Sherman Oaks Community Center**

1800 A Fruitdale Avenue

District 7**Alma Community Center**

136 West Alma Avenue

City of Santa Clara**Council on American Islamic Relations**3000 Scott Blvd., #104
Santa Clara**MEDIA**

The Auditor was busy this year participating in television

and radio interviews. The Auditor was a guest on "The Filipino American Journal," a monthly television program produced by KTSF Channel 26 that addresses issues and concerns in the Filipino/Asian community. The IPA also participated on the radio show "In the Public Eye," on KBAY; in "Youth Today and Tomorrow" on KVVN 1430 AM, a Vietnamese language radio talk show geared towards parents and young adults; and on KLOK-RadioTri-Color, a Spanish-speaking radio station that addresses issues and concerns in the Hispanic/Latino community.

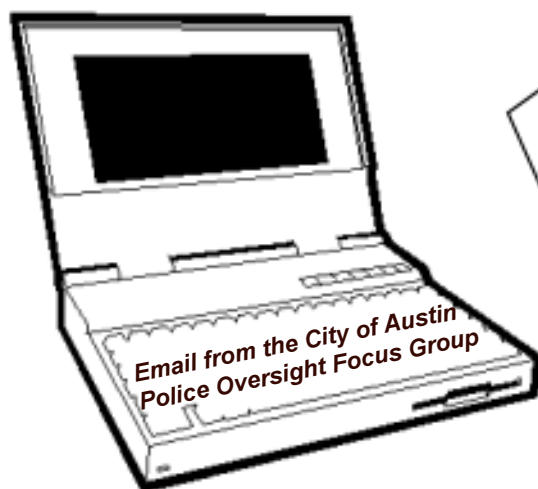
The Auditor gave on camera interviews to Channel 14-Univision, KPIX-Channel 5, KTVU-Channel 2, KRON-Channel 4, KNTV-Channel 11, and Channel 48-Telemundo. In addition, KBCI-Boise, Idaho, and News 12-Connecticut traveled to San José to interview the Auditor.

At the time of the airing of the stories, the City of Boise was in the process of implementing its own civilian oversight. The State of Connecticut was looking at the racial profiling issue.

The IPA also met with reporters from the print media: the San José Mercury News Newspaper; the East Neighborhood Voice Newspaper; Nuevo Mundo; the Sacramento Bee and the Press Enterprise Newspaper in Riverside, California.

The media has supported the IPA by producing and airing public service announcements. KTSF Channel 26 aired public service announcements in Mandarin, Cantonese, Vietnamese, Japanese, Tagalog and English. The IPA had success in reaching the Asian community through these public service announcements. As a result of these airings, complaints were received. KSOL Estereo Sol (98.9 FM), Channel 14 and Channel 48 also aired information about the IPA in Spanish.

Through these information centers, the IPA can increase its visibility and accessibility to the public in their own neighborhood. The referral sites have been very successful in referring complaints to the IPA and informing the IPA of any concerns or problems in their neighborhood.



Teresa:

I can not thank you and your staff enough for all the hard work and planning you did in preparation for our focus groups' visit in San Jose last week. We were all tremendously impressed with the professionalism that "oozed" from your office. In addition, we learned a great deal from the other contacts and meetings we had with citizens and police in the San Jose area.

Overall, our trip to the Bay Area was most productive! We will be sharing our thoughts and findings from the trip with our other members who were not able to accompany us and with the citizens of Austin as well (all meetings of our focus group are on local access channel).

Again, we greatly appreciate your time and assistance. If you are ever near the Austin area, do not hesitate to call.

Cheers,

Michael Supancic, Ph.D.
Police Oversight Focus Group-Austin, TX

THE MODEL TO MODEL

The success and reputation of the IPA has caught the eye of many national and international organizations. Organizations, such as Amnesty International, London, and the Criminal Justice Commission, Australia, have requested materials and information about the IPA.

In October, the Auditor was invited by officials from the City of Riverside, California, to meet with them and provide them with information about the IPA. The City of Riverside is in the process

of establishing a police oversight office.

In December, the Police Oversight Focus Group from the City of Austin, Texas, met with the IPA. The IPA conducted a half-day presentation for the focus group on the history, background, responsibilities, and structure of the IPA. In addition, the IPA scheduled meetings with community leaders and city officials for the focus group.

Also, in December, the City of Oakland Citizen Police Review Board (CPRB) Task Force

requested the IPA to make a presentation about the structure and functions of the office.

Presentations were also made by the civilian oversight bodies from San Francisco, Sacramento and Berkeley.

The IPA model has been adopted by cities throughout the country. Most recently the city of Sacramento, California; Boise, Idaho; and Tucson, Arizona established police oversight offices modeled after the IPA.

THE IPA NETWORKS WITH OTHER POLICE OVERSIGHT AGENCIES

In March, the IPA hosted the Bay Area Police Oversight Network (BAPON) meeting. BAPON is an association that is represented by eight cities in Northern California who have some form of police oversight. BAPON includes the Berkeley Police Review Board, the Novato Police Department Review Board, the San José Office of the Independent Police Auditor, the San Francisco Office of Citizen Complaints, the Richmond Police Commission, the Oakland Citizen's Police Review Board, the Sacramento Office of Police Accountability and the Santa Cruz Citizen's Police Review Board. Among the issues discussed at this meeting were the "Driving While Black/Brown" legislation and training for BAPON members.

In September, the Auditor and Assistant Auditor attended a second BAPON meeting in Richmond. Issues such as the accountability and practice of racial profiling, using BAPON as



The IPA meets with BAPON members and community leaders.

a training source for civilian oversight staff, and retaliation by police against civilians for filing complaints were discussed.

In October, the Auditor also attended the National Association for Civilian Oversight of Law Enforcement (NACOLE) Fifth Annual Conference in Kansas City, Missouri. NACOLE is a national organization that provides continuing education for practitioners of civilian oversight. The Auditor was asked to moderate the discussion on "Monitoring Police Integrity" and the "Monitoring and Review of Complaints, A Practitioner's Case Study."

COMMUNITY FORUM

In 1999, officer-involved shootings and cases alleging

racial profiling raised questions and concerns.

Therefore, on December 13, 1999, the IPA held a town hall meeting and panel discussion to address police misconduct issues at the Mexican Heritage Plaza. The goal of the meeting was to provide the residents with an opportunity to voice their concerns and to hear from different agencies working in the field of Civil Rights violations, police accountability and police misconduct. The following professionals took part in the panel discussion: Honorable Frank Fiscalini, Vice Mayor; William Lansdowne, San José Police Chief; Teresa Guerrero-Daley, Independent Police Auditor; Karyn Sinunu, Assistant

District Attorney; John Tennant, General Counsel, Police Officers' Association; Carol Russo, United States Department of Justice, Community Relations Services; Merylee Shelton, Chair, Human Rights Commission. The panel discussion was broadcasted live on KGO NEWSTALK AM 810 and moderated by radio talk show host Gene Burns.



IPA Community Forum Panel (left to right) Gene Burns, Carol Russo, John Tennant, Teresa Guerrero-Daley, Vice Mayor Frank Fiscalini, Chief Bill Lansdowne, Merylee Shelton, and Karyn Sinunu.

The forum was cosponsored by the Asian Law Alliance, the Billy DeFrank Gay & Lesbian Community Center, Catholic Charities YES, the Council on American Islamic Relations (CAIR), the Santa Clara County Office of Human Relations, the San José Chapter of the NAACP, the East San José Community Law Center, La Raza Roundtable, the Santa Clara Human Rights Commission, and the Santa Clara County Legal Aid Society.

In an effort to publicize the forum, the IPA worked extensively and actively with the referral sites, public libraries, grass roots organizations, churches, members of the Independent Police



IPA Community Forum on "Police Misconduct" issues at the Mexican Heritage Plaza

Auditor Advisory Committee, community centers, agencies, and organizations. Over 2500 flyers were copied and distributed. Information about the event was also disseminated through public service announcements and media coverage.

The IPA believes the event was

successful in bringing about discussion about the community's concerns and questions on the issue of police misconduct. The event provided the IPA with an opportunity to inform the public about its role in the complaint process.

THE INDEPENDENT POLICE AUDITOR ADVISORY COMMIT- TEE

In 1999, the IPA formed an advisory committee called the Independent Police Auditor Advisory Committee (IPAAC), which comprised of 16 culturally diverse community leaders.

The purpose of the IPAAC is to give input on police related concerns and issues brought to its attention by the community and to provide feedback on past IPA recommendations. The first IPAAC meeting was held in March at the IPA office.

The IPAAC members serve at the pleasure of the Auditor and are required to attend a minimum of two meetings a year.

Because this was the first year of the IPAAC, three meetings were held to develop the framework for the committee, its goals and objectives. Members of the IPAAC requested to meet with the IPA in July and October to discuss their concerns with the

officer-involved shootings and the relocation of the IPA.

PUBLICATIONS

Aside from publishing annual reports, the IPA also publishes midyear and year end newsletters that update the public and the city council on issues and IPA recommendations.

Copies of the newsletters are mailed to community centers, referral sites, police oversight agencies, neighborhood and business associations. In 1999, 700 newsletters and 300 reports were distributed.

The newsletters and year end reports are also available on-line through the IPA website.

WEBSITE

In 1998, the IPA created a website on the City of San José's homepage where the public can obtain information about the IPA, the citizen complaint process and /or file a citizen complaint via electronic mail (e-mail).

The website has proven success-

ful in making information available to anyone who has access to a computer and the internet.

The IPA has received citizen complaints and inquiries not just from San José residents, but also from other cities and countries.

The IPA year end reports, newsletters, calendar of events and general information are available at <http://www.ci.sanjose.ca.us/ipa/home.html>

UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

CHAPTER 4

OFFICER-INVOLVED SHOOTING INCIDENT TRAINING REVIEW PANEL

Background: In the IPA's 1998 Year End Report, the IPA recommended that all officer-involved shootings resulting in injury or death be subjected to review whether or not a complaint is filed with the IPA or the PSCU. In July of 1999, the Chief of Police advised that in response to the IPA's recommendation he was establishing an officer involved shooting review process. The purpose of this review process would be to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure. The Chief advised that this review process would be called the San José Police Department Officer-Involved Shooting Incident Training Review Panel.

The Chief of Police also advised

that the panel would consist of the Chief of Police, the Deputy Chief for the Bureau of Field Operations, the Independent Police Auditor, the Training Unit Commander, and a representative from the City attorney's Office. Once the panel is empaneled, the SJPd Homicide Unit that is responsible for investigating all officer-involved shootings that result in injury or death, provides the review panel with an oral and PowerPoint presentation. The review panel then considers all the information provided, and makes recommendations that can lead to the adoption of a new training plan or a change/development of a policy or procedure.

Update: During the past year SJPd officers were involved in eight shootings, seven of which resulted in a fatal wound to the suspect. Although the review panel has only been empaneled since August of 1999, the review

panel was able to review seven of the eight officer-involved shootings and provided recommendations for consideration. One shooting incident is still pending Grand Jury review, therefore has not been sent to the review panel for consideration. As a member of the review panel the Independent Police Auditor participated in all seven shooting reviews and provided input as necessary. Because the Chief of Police has indicated that he will be issuing a summary report to the city council on the issue of officer-involved shootings, the Independent Police Auditor will defer reporting on the actions of the panel until the Chief's report has been submitted to the city council.

BLOOD SAMPLES TAKEN BY FORCE

Update: In the IPA's 1997 and 1998 Year End Reports, the IPA reported on the status of the policy change for drawing blood

samples from uncooperative and/or combative suspects. The current procedure calls for putting a combative suspect in a body restraint called a WRAP, before taking the suspect to the preprocessing center for booking.



The WRAP consists of nylon with

Velcro straps and belts that wrap the person from the waist to their feet, thereby preventing the suspect from bending at the knee. Once the suspect has been placed into a designated holding cell at the preprocessing center, the lower straps of the WRAP can be loosened to allow the suspect to slightly bend at the knees and sit, while they await for the drawing of blood by the technician.

A close review of the SJPD policy and guideline for processing combative or disruptive suspects at the preprocessing center appears to have had a positive impact in decreasing the number

of complaints filed. As reported last year, the members of the department have positively received the duty manual changes that address the taking of blood samples. The IPA strongly encourages the department to continue its efforts to make the preprocessing center a safe and sterile environment. Although the IPA will continue to monitor activity at the preprocessing center, it is pleased that only one complaint has been filed alleging the forcible extraction of blood outside of the preprocessing center.



Blood extraction of combative suspects now takes place while suspects are handcuffed to the table.

CITIZEN REQUEST FOR OFFICER IDENTIFICATION

Update: The SJPD Duty Manual now directs officers to identify themselves when the public makes a request. Officers are required to provide the request-

SAN JOSE POLICE DEPARTMENT - INCIDENT CARD	
Records Division, 201 W. Mission St., San José, CA 95110	
CASE NUMBER: _____	DATE: _____
TYPE OF INCIDENT: _____	
OFFICER/BADGE #: _____	REPORT TAKEN: <input type="checkbox"/> YES <input type="checkbox"/> NO
ADDITIONAL TEL. NO(S): _____	
<p>INSTRUCTIONS: Retain this report receipt! You will need this information for your contact with the San José Police Department, your Insurance report, and tax purposes. For three or more additional stolen items, please report by mail using the above case number. To supply additional information concerning suspects, witnesses or victims, phone the San José Police Department Non-Emergency Line (277-8900). Under the joint powers agreement between the City of San José and the County of Santa Clara, for the purposes of Investigation and victim assistance, Information from your report may be entered into the Records Index System (R.I.S.). A fee will be charged for a copy of this report.</p> <p>INSTRUCCIONES: Guarde este recibo del reporte! Usted necesitará esta información para cuando se comunique con el Departamento de Policía de San José, para el reporte de su seguro, y para el reporte de sus impuestos. Para reportar tres o más adicionales artículos robados, favor de usar el correo y referirse al número del caso. Para dar más información con respecto a sospechosos, testigos, o víctimas, llame a la línea sin emergencia del Departamento de Policía de San José (277-8900). Bajo el acuerdo conjunto entre la Ciudad de San José y el Condado de Santa Clara, para propósitos de investigación y asistencia a las víctimas, información de su reporte puede ser incorporada al <i>Records Index System (R.I.S.)</i>. Se cobrará por una copia de este reporte.</p> <p>20Q-45A (7/98)</p>	
CHIEF OF POLICE	

SJPD Incident Card used for identification purpose.

ing person with an incident card that contains the officer's name and badge number. During the past year the IPA audited seven cases where the complainant alleged officers refused to identify themselves. Even though the IPA has raised this issue for several years, and the SJPD has made strong efforts to minimize this type of procedural complaint, it remains troubling that on seven occasions this type of procedural violation may have occurred once again. The IPA will continue to monitor this issue and will attempt to better use its database to track emerging or changing trends in the future.

ON SCENE INVESTIGATIONS FOLLOWING A USE OF FORCE

Background: As reported in the 1998 Year End Report, the IPA expressed concern with what appeared to be a significant number of cases that were being

evaluated and resolved based solely on the information provided by the officer and/or the complainant.

Although there has been some marked improvement in the collection of independent witness information, it appears a significant number of cases are still being resolved based on the available facts. Because complaint information generally comes from a complainant who is unhappy with a police contact, without the benefit of an independent witness, the issue becomes a matter of credibility, who are you going to believe? This type of conflict usually casts an eye of suspicion on unfavorable findings because the public for the most part believes police misconduct investigations have always been biased towards the officer.

By policy a supervisor must respond to an incident which

results in injury to a suspect or officer. The supervisor is responsible for assuring that physical evidence is collected and preserved and if witnesses are available, they are interviewed. In all cases, the supervisor is responsible for approving the Crime Report and/or other appropriate investigative reports prepared by the officer(s) documenting the use of force. The supervisor should investigate the circumstances and document in a supplemental report, the facts and his/her supervisory actions.

Update: Again this year, the IPA conducted a special audit of cases investigated after the new procedure was set in place to determine whether physical evidence is being collected adequately and how closely the new procedures are followed by officers and supervisors. A study of all the Unnecessary Force, Class I complaints² audited

2 In the 1996 Year End Report, the IPA implemented new goals for alleged use of force complaints. The uses of force complaints are divided into two categories: Class I and Class II. Class I use of force cases will involve those complaints in which the complainant required medical assistance for their injuries. It is anticipated that prioritizing these cases will expedite the investigative process while ensuring that evidence is preserved and witnesses are contacted in a more timely manner. The intent of this classification is to resolve serious use of force cases within 180 days. Class II cases will include those complaints in which the complainant did not require medical care. These Class II cases and all other cases will be expected to close within 365 days.

during 1999 revealed that supervisors were required to respond to the scene and/or collect evidence eight times. The IPA audit found that of the eight cases, only one appeared to not have a written report by the supervisor. In the case without an apparent written report, the PSCU investigation indicated that the supervisor responded to the hospital and taped an interview with the complainant, but evidence of a separate written report could not be verified. The compliance rate for supervisor intervention at use of force calls this year is outstanding, especially considering that in 1998, compliance was found only in approximately 50% of the required use of force incidents.

TIMELINESS

Update: This has been an area that has been revised in the past several years. Although the IPA has been tracking the time taken to complete an investigation since its inception, it has only been two years that the SJPD has been working with a protocol for completing cases in depart-

ments outside the PSCU. In 1998, there were 250 Formal complaints audited, of which 63 or 25% were not completed within the required goal of 365 days. In 1999, there was a marked improvement, of the 118 Formal cases audited, there was zero late case or 100% completion rate. All the cases were closed within the required goal of 300 days.

VEHICLE STOP DEMOGRAPHIC STUDY

On December 17, 1999, San José Chief of Police, William M. Lansdowne, released data from a study that was developed to address the issue of alleged racial profiling by members of the San José Police Department (SJPD). The study, which was initiated by the SJPD on June 1, 1999, covers a three-month period, from July 1, 1999 through September 31, 1999. It should be noted that the SJPD was the first police department in California to implement this type of study and provide data regarding vehicle stop activity by its officers. The SJPD should be

applauded and recognized for this effort.

The issue of racial profiling has long been a sensitive issue for citizens of color throughout the nation. Racial profiling occurs when a police officer initiates a vehicle traffic stop based primarily on the race of the driver and/or passengers. Although the term racial profiling has been used to describe unwarranted stops on minority citizens, the terms "Driving While Black" or "Driving While Brown" (DWB) have been used by the general public to describe how minorities believe they are characterized by law enforcement throughout the country. See illustration 4A for race/ethnicity comparison by United States, California and local percentages.

While statistics currently exists that suggests that racial profiling has been shown to have manifested itself in other parts of the country, reported data has been primarily anecdotal and in most cases reported findings have been based on perceptions,

theory and intuition. Even though the issue of racial profiling has been widely recognized as a major concern for the minority community, national efforts to address the issue have been slow in forthcoming.

Illustration 4A: Racial/Ethnicity

Racial/Ethnicity	San Jose ³	California ⁴	United States ⁵
African American	4.5%	7%	12.1%
Asian	21%	11%	4%
Hispanic	31%	30%	11.6%
European American	43%	51%	71.8%
Other	0.5%	1%	0.7%

*Chart developed by SJPD

On March 24, 1999, the SJPD announced its intention to conduct an in-depth study and analysis of vehicle stops conducted by its officers. The study was designed to gather statistical data about the race, gender, and age of each motorist stopped in San José. The statistical data was also intended to show the reason for the stop and the outcome of the encounter such as whether a citation was issued, or an arrest made. On December 17, 1999, the SJPD made the initial findings and data used to support assertions for the vehicle stops made by the officers. See illustration 4B for

Illustration 4B: SJPD Vehicle Stop Demographic

Racial/Ethnicity	Estimated % of San Jose Population	% of Total Number of Vehicle Stops Made	% Variation Between the Group's Representation in the Population and the Number of Vehicle Stops Made
African American	4.5%	7%	+2.5
Asian	21%	16%	-5
Hispanic	31%	43%	+12
American Indian	less than 1%	less than 1%	-
Other	less than 1%	1%	-
Pacific Islander	less than 1%	1%	-
Middle Eastern	less than 1%	3%	+2
European American	43%	29	-14
TOTAL	100%	100%	-

*Chart developed by SJPD

population percentage by ethnicity.

The report chronicles the process that was used to develop criteria

for data collection. New alpha codes were developed for use by officers once they clear a traffic stop to indicate the nature of the stop, and the gender and age of

3 SJPD estimate based upon 1990 U.S. Census statistics, and the 1995 California Department of Finance estimates. SJPD Vehicle Stop Demographic Study, December 17, 1999, page 4.2.

4 Based upon the 1995 California Department of Finance race/ethnicity estimates, with an estimated increase for the period of 1995 to 1999 made by the SJPD using the same projection ratios for the second half of the decade that the State used for the first half. SJPD Vehicle Stop Demographic Study, December 17, 1999, page 4.2.

5 October 1999, U.S. Census Bureau estimates. SJPD Vehicle Stop Demographic Study, December 17, 1999, page 4.2.

the driver. During the three-month period, 27,961 vehicle stops were made, of those, 4,449 stops were cleared with invalid disposition, leaving 23,462 to be used for analytical purposes in this study.⁶ However, of the 23,462 stops used in the study, 7,166 stops were listed as occurring in an unknown district. By eliminating the unknowns, it appears the study used 16,296 stops for analytical purposes.

In an attempt to facilitate an analysis of the racial/ethnic makeup of the more than 900,000 residents who live in the City of San José, data from the last national census was used to drive this study. Current census data has been viewed as problematic and growing concern and criticism has been expressed that racial/ethnicity categories do not reflect today's ever changing diverse society. Because of the importance of the study, and the fact that the SJPD was not in a position to wait for year 2000 census data, a statistical model

was developed to determine demographic racial/minority estimates within the City of San José. While the methodology used to develop demographic figures was not scientific, considerable weight was given to

providing figures that were more on the conservative side of the scale.

Once the model for determining the racial/ethnicity makeup for the City of San José was devel-

Illustration 4C: Vehicle Stops by Districts

Police Districts	No. of Stops for All Ethnicities	Hispanic Stops		Black Stops	
		No.	%	No.	%
A	601	96	16%	24	4%
C	1155	739	64%	69	6%
E	1123	472	42%	90	8%
F	891	312	35%	71	8%
K	1559	889	57%	109	7%
L	1711	856	50%	103	6%
M	1049	661	63%	73	7%
N	843	177	21%	42	5%
P	1248	412	33%	112	9%
R	723	202	28%	43	6%
S	1000	510	51%	70	7%
T	1043	209	20%	52	5%
V	1056	560	53%	63	6%
W	571	183	32%	40	7%
X	780	304	39%	78	10%
Y	934	205	22%	56	6%
DD	9	4	44%	0	0%
All Districts	16,296	7,007	43%	1,141	7%
Unknown	7,166	3,368	47%	502	7%

* District "DD" is the airport.

6 SJPD Vehicle Stop Demographic Study, December 17, 1999, page 3.1.

oped, statistical data on drivers stopped was now ready to be analyzed. A comparison between the different racial/ethnic drivers stopped in San José concluded that Hispanics and Blacks are stopped at a rate higher than their corresponding percentage of the total population. Illustration 4C reflects the percentages of people stopped by racial/ethnicity.⁷

IPA ANALYSIS

The SJPD study attributes the increased number of stops on minorities to socio-demographic realities of the city and the necessity by the SJPD to deploy more officers accordingly. The hypothesis raised in the study, is that because more officers are assigned to higher crime sectors/precincts; therefore, minorities who live in these neighborhoods in greater numbers are more likely to get stopped.

The location of 31% or 7,166 of

the 23,462 stops made could not be identified, and one cannot assume that the 31% of missing data was equally distributed. This high percentage for unknown stop locations make it difficult to draw conclusions.

RECOMMENDATIONS

1. The current report covers only a three-month period, the IPA concurs with the SJPD that statistical data should be gathered for a minimum of one year.
2. Develop a process for determining how the individual stopped was treated, i.e., was there a search. This would provide evidence of unequal treatment if such is occurring.
3. Demographic figures for the number of licensed drivers within each racial/ethnic group should be identified within each police district i.e., of the 31% Hispanic population in

San José, what percentage is of driving age? Currently, Hispanics are stopped 12% more often than the number of Hispanics living in San José. However, over 30% of Hispanics nationwide are under 15 years of age⁸. Therefore, the percentage of Hispanics stopped is more likely to be higher than 12% since a great percentage of Hispanics are too young to drive. Those Hispanics too young or not driving are factored into the population totals used in the SJPD study.

⁷ SJPD Vehicle Stop Demographic Study, December 17, 1999, page 5.1.

⁸ U.S. Census Bureau, March 1993, Current Population Survey, "The Hispanic Population."

YEAR END STATISTICS

CHAPTER 5

Illustration 5A: Complaints by Different Classifications

Type of Complaints	IPA Intake	PSCU Intake	Total Cases
Formal: Citizen-Initiated (CI)	77	122	199
Formal: Department-Initiated (DI)	0	30	30
Informal (IN)	16	45	61
Policy (PO)	6	12	18
Procedural (PR)	12	29	41
Subtotal	111	238	349
No Boland (NB)	15	19	34
Inquiry (IQ)	103	333	436
Total Cases in 1999	229	590	819

Please note a No Boland is a withdrawn complaint or a case in which the complainant decided not to sign the Boland Admonishment, which is a state required form. An inquiry is a contact that doesn't rise to the level of a complaint or a citizen contact logging inquiries of an event that is unrelated with the San José Police Department.

The Office of the Independent Police Auditor (IPA) and the San José Police Department's Professional Standards and Conduct Unit (PSCU) are separate offices available for the public to file complaints against members of the San José Police Department (SJPd).

This chapter will discuss the complaints received from January 1 through December 31, 1999. The subsequent chapters will discuss the allegations in these complaints, the findings,

and the discipline imposed. The IPA reports the year end statistics of complaints in various ways that may be of interest to the public, the Mayor, and members of the City Council. The IPA's analysis are only statistical and not interpretive. There are too many factors to conclusively deduce specific results from the data.

As of January 1, 1999, all data is stored in an Oracle Software database. This database system was recommended in the 1996

IPA Midyear Report. The objective is to view all information on a real time basis and to track all incoming calls accurately. Additionally, the Oracle database is protected to keep the files confidential.

Illustration 5A shows a breakdown of the total number (819) of cases received from January 1 through December 31, 1999 by the type of complaint and by the office the complaint was filed at.

A complaint is an allegation by a member of the public that accuses the SJPd or one of its members of wrongdoing. The allegation must involve a violation of law or a SJPd policy or procedure. A complaint involves an administrative process where discipline may be imposed by the SJPd and must not be confused with criminal charges which are filed by the District Attorney's office.

There are six classifications of

complaints⁹: Formal, Informal, Policy, Procedural, No Boland, and Inquiry. A **Formal** complaint may be citizen-initiated (CI) or department-initiated (DI), which is a complaint initiated by the Chief of Police. An **Informal** complaint involves allegations of minor transgressions. An Informal complaint is handled by bringing the matter to the attention of the subject officer's supervisor. A **Policy** complaint relates to an established policy, properly employed by the officer, which the complainant believes to be inappropriate or invalid. A

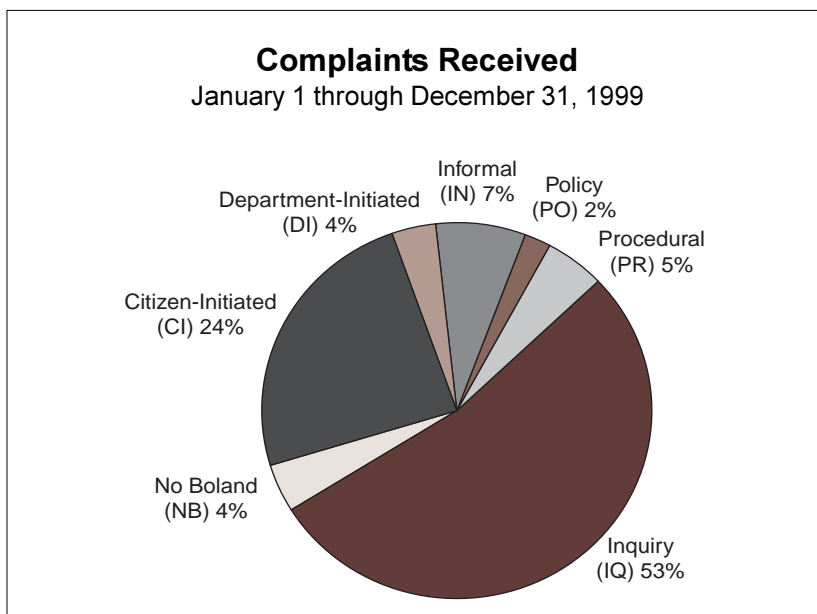
Procedural complaint is a complaint lacking a factual basis to support the allegation of misconduct. A **No Boland** complaint is a complaint that is closed within 30 days from the date the complaint was received due to the complainant failing to sign the Boland Admonishment¹⁰. State law requires that the complainant sign a Boland Admonishment form in order to have the complaint fully investi-

gated. An **Inquiry** refers to any contact with a citizen in reference to any issue of concern that is immediately resolved to the satisfaction of the citizen, which does not give rise to a complaint. Any concern that is not immediately resolved to their satisfaction, can become a complaint.

The reasons for classifying the complaints into different types are: (1) to streamline the investigation process so that the cases that do not require a full investigation are resolved sooner while

the cases requiring more time are given appropriate time to investigate; (2) to track Formal, Informal, and Procedural complaints by officers' names as part of an "Early Warning" system that identifies those officers qualifying for Intervention Counseling and to comply with motions for discovery in criminal and civil proceedings; and (3) to identify patterns or trends so that recommendations can be made to change the existing policy or procedure in the department.

Illustration 5B: Percentage of Complaints Received by Classification



⁹ See Appedix A (Classification of Complaints).

¹⁰ See Appendix B (Boland Admonishment).

Illustration 5C: Five Year Analysis of the IPA Intake

Intake Received	Time Period				
	1995	1996	1997	1998	1999
IPA Cases	95	154	127	249	229
PSCU Cases	361	453	319	500	590
Total Cases Received *	456	607	446	749	819
Percentage of IPA Received **	25%	29%	34%	37%	29%

* Note: The total cases received for the year 1998 and 1999 include the Inquiry cases.

** Note: The percentage of the intake conducted by the IPA is calculated by dividing the IPA cases to the total cases received in 1999, excluding the Formal DI cases, which are initiated by the Chief of Police.

Illustration 5B shows the percentage of complaints that was received from January 1 through December 31, 1999 for each type of complaint. The largest percentage (53%) of the calls were handled as inquiries. The most serious complaint and the

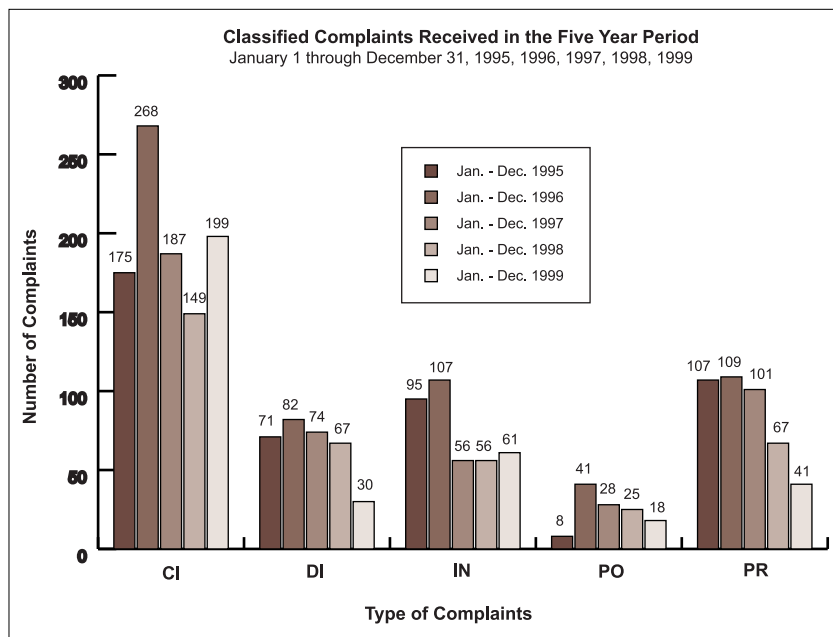
second highest (28%) type of complaint received in 1999 are the Formal CI and the Formal DI cases.

Illustration 5C reflects the complaints received from January 1 through December 31 for the

year 1995, 1996, 1997, 1998, and 1999 at the IPA and the PSCU offices.

In 1999, the IPA received 229 cases while the PSCU received 590 cases. The total cases received for this year is 819. The total number for 1998 and 1999 include Inquiry cases, which is why the numbers are higher than the prior years. Not only the total number of cases decreases in comparison to 1998, the percentage of cases received by the IPA office dropped eight percent from 1998.

The percentage of the complaints filed at the IPA office is calculated by dividing the total number of

Illustration 5D: Five Year Analysis of Complaints by Classification

1995 Complaints = 456 1996 Complaints = 607 1997 Complaints = 446 1998 Complaints * = 364 1999 Complaints * = 349

Formal: CI = Citizen-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural
 * Please note that the total for the 1998 complaints do not include the 385 Inquiry cases.
 * Please note that the total for the 1999 complaints do not include the 34 No Boland cases and the 436 Inquiry cases.

complaints (229) by the total number of complaints (819) received in the year 1999, minus the Formal Department-initiated (30) cases. $[229 / (819 - 30)] = 29\%$. The Formal DI cases are excluded from the calculation because those cases are initiated by the Chief of Police, only.

Illustration 5D looks at the different types of complaints in a five year period, starting with January 1 through December 31 for the year 1995, 1996, 1997, 1998, and 1999. All types of complaints received over five years have decreased, except for Formal Citizen-Initiated and Informal complaints.

TIME TO CLASSIFY AND COMPLETE ALL INVESTIGATIONS

The Professional Standards and Conduct Unit (PSCU) is respon-

sible for classifying all complaints. The time to classify a complaint is determined by the number of days it takes from the date the complaint is received to the date when the complaint is assigned to a PSCU investigator.

The goal is to have all complaints classified within 30 days.

The length of time to complete an investigation is calculated by the number of days it takes from the assigned date of the complaint until the investigation is completed. A case is considered closed when a finding is made or when no finding is possible for one of the following reasons:

- Lack of signature on the Boland Admonishment,¹¹
- Officer resigned from the SJPd before the investigation was completed,
- Complainant was uncooperative,

Time to classify

Number of days from the Received Date to the Assigned Date.

- Complainant withdrew the complaint,
- Unable to contact complainant or witness, or
- The identity of the officer could not be determined.

The goal is for an investigator to complete an investigation within 300 days, except in cases where a Class I Unnecessary Force¹² allegation is involved. The goal for Class I use of force cases is to have the investigation completed within 180 days.

Time to investigate

Number of days from the Assigned Date to the Closed Date.

¹¹ State law requires that the complainant sign the Boland Admonishment form in order to have the complaint fully investigated.

¹² In the 1996 Year End Report, the IPA implemented new goals for alleged use of force complaints. The use of force complaints are divided into two categories: Class I and Class II. Class I use of force cases will involve those complaints in which the complainant required medical assistance for their injuries. It is anticipated that prioritizing these cases will expedite the investigative process while ensuring that evidence is preserved and witnesses are contacted in a more timely manner. The intent of this classification is to resolve serious use of force cases within 180 days. Class II cases will include those complaints in which the complainant did not require medical care. These Class II cases and all other cases will be expected to close within 300 days. The 300 days goal was recommended in the 1997 Year End Report, adopted by the San José Police Department (SJPd) and was in place for data collection on January 1, 1999.

Illustration 5E: Complaints Classified and Completed

Time Period	Total Cases	Goal	Achieved Goal	%
Received between Jan. 1 - Dec. 31, 1999	383	Classify all complaints within 30 days	361	94%
Closed between Jan. 1 - Dec. 31, 1999	15	Complete UF Class I cases within 180 days	13	87%
Closed between Jan. 1 - Dec. 31, 1999	327	Complete all investigations within 300 days	319	98%

It is important that all investigations are completed timely; otherwise, several problems may arise from a prolonged investigation. These problems are: (1) important facts related to the incident may be forgotten, and a memory lapse by the witness may negatively affect the credibility of case; (2) witnesses may have moved, and the loss of an independent witness may leave the balance of the case resting on who are going to be believed, the complainant or the officer; and (3) the issue loses its urgency, and sometimes the complainant gets frustrated and no longer wishes to pursue the matter. As a result, the integrity of the complaint process is questioned and no one leaves satisfied.

Illustration 5E shows data for

classified and completed complaints. The number of classified complaints is based on cases **received** between January 1 and December 31, 1999. The completed complaints are counted as those cases **closed** between January 1 and December 31, 1999. This is the first year that the PSCU has uniformly met the goal of classifying and completing all cases within the specified time period. Illustration 5F through 5H, show a five year comparison of the time taken to classify and to complete all investigations. From 1995 through 1999, the PSCU has improved in classifying and completing all investigations timely. In classifying all complaints within 30 days, the PSCU has improved from 86% to 94%. In completion of UF Class I cases within 180 days, the PSCU

has improved from 22% to 87% of the goal. In completion of all cases within 300 days, the PSCU has improved from 85% to 98%. It should be noted that 1999 had the highest completion rate (98%) even though the goal was reduced from 365 days to the current 300 days.

New Investigative Goal that took effect in 1999

Beginning January 1, 1999 the goal to complete all investigations was reduced from 365 to 300 days. This goal was recommended in the 1997 Year End Report and adopted by the San José Police Department.

Illustration 5F: A Five Year View of Complaints Classified

Time Period	Total Cases	Goal	Achieved Goal	%
Received between Jan. 1 - Dec. 31, 1995	456	Classify all complaints within 30 days	392	86%
Received between Jan. 1 - Dec. 31, 1996	607	Classify all complaints within 30 days	526	87%
Received between Jan. 1 - Dec. 31, 1997	446	Classify all complaints within 30 days	403	90%
Received between Jan. 1 - Dec. 31, 1998	364	Classify all complaints within 30 days	341	94%
Received between Jan. 1 - Dec. 31, 1999	383	Classify all complaints within 30 days	361	94%

Illustration 5G: A Five Year View of Use of Force Class I Complaints Completed

Time Period	Total Cases	Goal	Achieved Goal	%
Closed between Jan. 1 - Dec. 31, 1995	N/A	Complete UF Class I cases within 180 days	N/A	N/A
Closed between Jan. 1 - Dec. 31, 1996	9	Complete UF Class I cases within 180 days	2	22%
Closed between Jan. 1 - Dec. 31, 1997	23	Complete UF Class I cases within 180 days	8	35%
Closed between Jan. 1 - Dec. 31, 1998	38	Complete UF Class I cases within 180 days	21	55%
Closed between Jan. 1 - Dec. 31, 1999	15	Complete UF Class I cases within 180 days	13	87%

Illustration 5H: A Five Year View of Complaints Completed

Time Period	Total Cases	Goal	Achieved Goal	%
Closed between Jan. 1 - Dec. 31, 1995	470	Complete all investigations within 365 days	399	85%
Closed between Jan. 1 - Dec. 31, 1996	570	Complete all investigations within 365 days	520	91%
Closed between Jan. 1 - Dec. 31, 1997	489	Complete all investigations within 365 days	420	86%
Closed between Jan. 1 - Dec. 31, 1998	454	Complete all investigations within 365 days	398	88%
Closed between Jan. 1 - Dec. 31, 1999	327	Complete all investigations within 300 days	319	98%

COMPLAINTS & ALLEGATIONS BY COUNCIL DISTRICT

CHAPTER 6

COMPLAINTS FILED BY COUNCIL DISTRICT

In this chapter, complaints and their allegations are analyzed by Council District. The first column in Illustration 6A lists the Council District¹³ and its corresponding Council Member. A Council

District indicates the location where the incident that lead to a complaint occurred. Unknown/ Outside City Limits means the location of the incident could not be identified or the incident did

not occur within the San José city limits. The first column in Illustration 6A lists the type of complaints¹⁴: Formal (CI or DI), Informal (IN), Policy (PO), Procedural (PR), No Boland (NB) and Inquiry (IQ).

Illustration 6A: Complaints by Council District

Council Districts	CI	DI	IN	PO	PR	Subtotal	NB	IQ	Total Cases
1 LEZOTTE	3	0	4	1	2	10	2	15	27
2 POWERS	12	0	9	1	2	24	0	25	49
3 CHAVEZ	72	11	15	6	11	114	15	110	240
4 MATTHEWS	12	0	3	1	6	22	3	19	44
5 DIAZ	29	1	6	1	7	44	4	31	79
6 FISCALINI	11	1	3	1	2	18	5	26	49
7 SHIRAKAWA, JR.	23	1	7	1	3	35	0	20	55
8 WOODY	12	2	4	1	2	21	1	19	41
9 DIQUISTO	8	0	4	2	1	15	1	10	26
10 DANDO	7	0	5	1	3	16	3	23	42
Unknown/Outside City Limits	10	14	1	2	2	29	0	36	65
Total Cases Received	199	30	61	18	41	349	34	334*	717
Formal: CI = Citizen-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural, NB= No Boland and IQ = Inquiry									

* Note that in 1999, the **total Inquiry cases received were 436**. Illustration 6A does not reflect this total due to 102 Inquiry cases were unlogged on the new database system in the conversion that was tested on January 1999 and effective March 1999. In the three month time period of 1999, 102 Inquiry cases were unable to be accounted for by council district. The **total cases received in 1999 were 819**.

¹³ See Appendix C (San José City Council District Map).

¹⁴ See Appendix A (Classification of Complaints).

Illustration 6A shows the numbers of complaints received from January 1 through December 31, 1999. Typically, the highest number of cases (240 or 33% of all complaints) were generated in District 3, largely because of the diverse activities generated in the downtown area. District 5, a neighboring district, has the second highest number of complaints (79); District 7 has the fourth highest number of complaints (55); and District 6 has the fifth highest number of complaints (49). The complaints classified as occurring in Un-

known/Outside City Limits generated the third highest number of complaints because 42 out of 65 complaints were not able to identify where the incident occurred.

Illustration 6B shows a comparative five year analysis of classified complaints by Council District. The time period is January 1 through December 31 for the year 1995 through 1999. Please note that the total cases received in 1999 include 334 Inquiry cases, making the total higher than other years. In

Illustration 6B, the effects of more scheduled activities in certain districts appears to generate more complaints. This becomes apparent when comparing the complaints generated in Districts 3, 5, 6, and 7 each year.

Illustration 6B: Five Year Analysis of Classified Complaints by Council District

Council Districts	Jan. - Dec. 1995	Jan. - Dec. 1996	Jan. - Dec. 1997	Jan. - Dec. 1998	Jan. - Dec. 1999
1 LEZOTTE	31	28	27	13	27
2 POWERS	33	50	24	21	49
3 CHAVEZ	143	208	156	131	240
4 MATTHEWS	24	37	15	16	44
5 DIAZ	42	59	46	29	79
6 FISCALINI	39	66	42	26	49
7 SHIRAKAWA, JR.	40	35	45	39	55
8 WOODY	37	41	17	23	41
9 DIQUISTO	27	28	30	19	26
10 DANDO	27	39	20	15	42
Unknown/Outside City Limits	13	16	24	32	65
Total Cases Received	456	607	446	364	717 *

* Please note that Inquiry cases are not reflected in the total cases received for 1995, 1996, 1997, and 1998. However, the total cases received in 1999 do include Inquiry cases. Please keep in mind that the total cases received in 1999 are 819, one hundred and two Inquiry cases are not accounted for in the Council District distribution due to the conversion into the new database system.

FORMAL ALLEGATIONS BY COUNCIL DISTRICT

A Formal complaint is a misconduct complaint that is citizen-initiated (CI) and/or initiated by the Chief of Police (DI). A misconduct complaint involves a complaint that alleges a violation of the law; a violation of a department policy or procedure; or a violation of a city rule or regula-

tion. A single complaint filed by a citizen may contain multiple allegations¹⁵. For example, a citizen alleging that unnecessary force was used in his/her arrest may also state that the arresting officer was rude or improperly searched their home. This single complaint may have three

different allegations: Unnecessary Force, Rude Conduct, and Unlawful Search.

Illustration 6C shows the Formal allegations by Council District for the time period of January 1 through December 31, 1999.

There are a total of 484 allega-

Illustration 6C: Formal Allegations by Council District

Council Districts	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
1 LEZOTTE	0	0	0	1	1	0	0	0	1	0	3	1%
2 POWERS	0	3	0	3	3	8	2	1	11	2	33	7%
3 CHAVEZ	4	0	1	32	10	21	24	12	57	6	167	35%
4 MATTHEWS	1	0	0	6	2	5	2	0	11	1	28	6%
5 DIAZ	0	1	1	14	1	13	3	0	39	0	72	15%
6 FISCALINI	0	0	1	6	0	2	4	1	14	1	29	6%
7 SHIRAKAWA, JR.	0	0	0	4	3	6	4	2	26	3	48	10%
8 WOODY	0	0	0	7	6	3	0	0	8	4	28	6%
9 DIQUISTO	0	0	0	8	2	3	3	0	10	2	28	6%
10 DANDO	0	0	0	5	0	5	1	1	5	2	19	4%
Unknown/Outside City Limits	0	0	0	11	3	2	1	11	1	0	29	6%
Total Allegations	5	4	3	97	31	68	44	28	183	21	484	100%
%	1%	1%	1%	20%	6%	14%	9%	6%	38%	4%	100%	

Allegation Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

¹⁵ See Appendix D (Misconduct Allegations).

tions, which arose from the 229 Formal complaints received in 1999. Council District 3 accounted for 83 Formal complaints, and produced 167 Formal allegations or 35% of all allegations received. In 1999, the most frequent allegations filed were Unnecessary Force (UF - 183 allegations or 38% of all allegations), Improper Procedure (IP - 97 allegations or 20% of all allegations), and Rude Conduct (RC - 68 allegations or 14% of all allegations).

From Illustration 6D, Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consis-

tently yield the highest number of complaints thorough the years. Illustration 6E, compares the most frequent allegations in a five

year time period from January 1 through December 31, 1995, 1996, 1997, 1998, and 1999.

Illustration 6E: The Three Most Frequent Allegations Received Over a Five Year Period

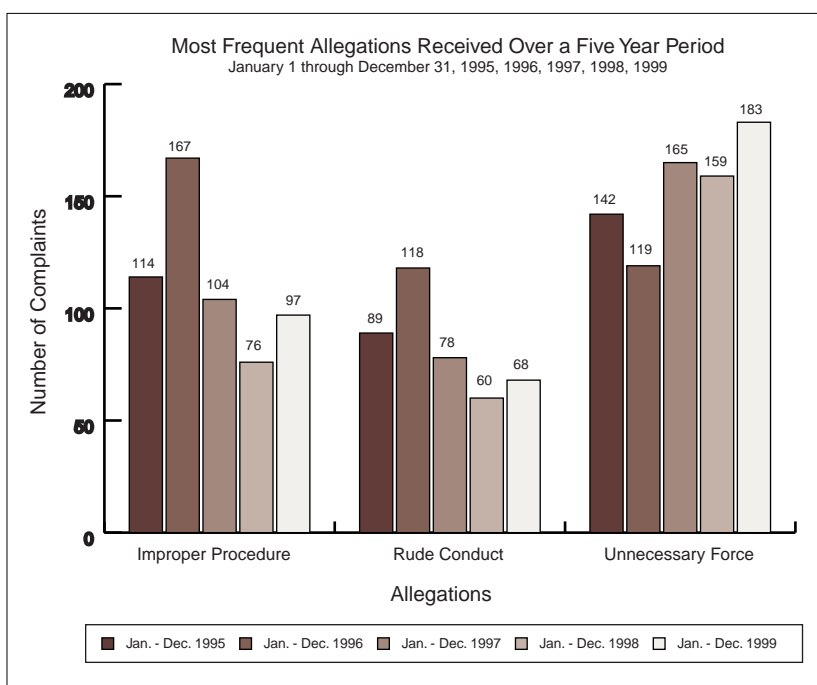


Illustration 6D: Five Year Analysis of Formal Allegations

Time Period	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.
Jan. - Dec. 1995	17	3	24	114	43	89	34	65	142	47	578
Jan. - Dec. 1996	17	1	20	167	46	118	37	51	119	35	611
Jan. - Dec. 1997	5	4	10	104	42	78	45	40	165	27	520
Jan. - Dec. 1998	4	0	7	76	22	60	29	43	159	7	407
Jan. - Dec. 1999	5	4	3	97	31	68	44	28	183	21	484

Allegation Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

ANALYSIS OF UNNECESSARY FORCE COMPLAINTS

There were 229 Formal complaints received from January 1 through December 31, 1999. Of these 229 Formal complaints, one hundred and fourteen (114) complaints were Unnecessary Force cases, that produced 183 UF allegations. Use of Force complaints are divided into two categories: Class I and Class II. Class I cases involve those complaints in which the complainant required emergency medical attention for his/her injuries. Class II cases include those complaints in which the complainant did not require immediate medical care. Of the 183 UF allegations, thirty-six (36) allegations were classified as Class I Use of Force and derived from 22 cases. The remaining 147 allegations met the criteria as a Class II Use of Force in 92 cases.

Illustration 6F, Illustration 6G, and Illustration 6H present a five year

view of the type of force used, the body area afflicted by the force used, and the degree of injury from the force used, respectively. Note that statistical information such as the type of force alleged, body area afflicted, type of force used, and the degree of injury resulting from the force¹⁶ is tabulated based on what is alleged by the complainant. If the initial statement given by the complainant differs from the resulting investigation, the

statistical information is changed on a case by case basis to reflect an accurate accounting on the Use of Force as it relates to the findings. The time period covers from January 1 through December 31 for the year 1996, 1997, 1998, and 1999.

In Illustration 6F, there were a total of 212 different types of force used in 1999. In each complaint, the complainant may have alleged more than one type

Illustration 6F: Type of Force Used

Type of Alleged UF	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999	
	Number	%	Number	%	Number	%	Number	%
Baton	16	10%	27	13%	25	13%	17	8%
Canines	3	2%	0	0%	4	2%	0	0%
Car (officer)	4	3%	14	6%	9	5%	10	5%
Car (complainant)	0	0%	2	1%	2	1%	3	1%
Chemical Agent	7	4%	12	6%	10	5%	10	5%
Gun (officer)	2	1%	3	1%	5	3%	1	0%
Gun (complainant)	0	0%	0	0%	3	2%	0	0%
Feet	22	14%	25	12%	20	10%	19	9%
Ground	6	4%	19	9%	16	8%	21	10%
Hands	60	38%	78	36%	66	34%	85	40%
Handcuffs (tight)	15	10%	12	6%	13	7%	9	4%
Knee	9	6%	9	4%	12	6%	12	6%
Object	4	3%	2	1%	2	1%	1	0%
Other	7	4%	11	5%	6	3%	13	6%
Unknown	1	1%	2	1%	1	1%	11	5%
Total	156	100%	216	100%	194	100%	212	100%

¹⁶ See Appendix E (Use of Force).

of force used by the subject officer(s). For example, a complainant may have alleged that when an officer was making an arrest, the officer pushed the complainant to the ground before placing a pair of handcuffs on tightly. This example would account for two types of force being used: one for forcing the complainant to the ground and one for placing the handcuffs on too tightly.

In Illustration 6F, the four types of force most commonly used on a regular basis are, baton, feet, ground, and hands. In 1999, the officer's use of a baton resulted in injury to the complaint 8% of

the time. This is a slight decrease from prior years. The alleged use of force resulting from the officer using his/her feet, such as leg sweeps or kicking the complaint, made up of 9% of the total Use of Force cases for 1999. This is a decrease from previous years.

The category "ground" includes allegations of being pushed to the ground or being hit/slammed against the ground. This allegation accounted for 10% of the force used, which is an increase in comparison to previous years. The subject officer's use of hands, such as punching, pushing, or grabbing a complain-

ant, is produced the highest number of use of force complaints each year. In 1999, the use of hands accounted for 40% of the force used. This is an increase from previous years.

In Illustration 6G, the area afflicted is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown.¹⁷ Each complaint may allege more than one area of body afflicted by the alleged use of force. For example, a citizen may allege that the officer punched him/her in the stomach and kicked him/her in the knee. The body area injured would be the torso and the limbs. In 1999,

Illustration 6G: Body Area Afflicted by Use of Force

Area Afflicted by Alleged UF	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999	
	Number	%	Number	%	Number	%	Number	%
Head	34	34%	41	30%	34	30%	27	20%
Torso	15	15%	18	13%	14	12%	17	13%
Limbs	24	24%	50	36%	35	31%	45	34%
MBP	27	27%	21	15%	27	24%	30	22%
Unknown	0	0%	7	5%	4	4%	15	11%
Total	100	100%	137	100%	114	100%	134	100%

¹⁷ The area of the force alleged is unknown because the case is an open investigation and the area where the force was applied is unclear at the present time.

the distribution of injury was 20% to the head, 13% to the torso, 34% to the limbs, 22% of multiple body parts injured, and 11% were unknown. In Illustration 6G, the injuries to the head decreased, while injuries to the limbs increased over the last years reported total.

In Illustration 6H, the “Degree of Injury” resulting from the alleged use of force ranged from minor to major, and included categories for “None Visible” and “Unknown” degrees of injury.¹⁸ For example, a citizen alleged that the officer pushed him/her to the wall while handcuffed, causing abrasions to

the facial area. This is counted as a minor injury. In 1999, there were 114 UF cases with the following distribution of injuries: 13% major injuries, 4% moderate, 48% minor, 21% had no visible injury, and 13% were unknown degree of injuries. In Illustration 6H, throughout the years, minor injuries remain the highest degree of injuries alleged by the complainant. However, the moderate degree of injuries dropped from 18% in 1996 to 4% in 1999.

Illustration 6H: Degree of Injury

Degree of Injury	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999	
	Number	%	Number	%	Number	%	Number	%
Major	9	10%	19	18%	15	17%	15	13%
Moderate	16	18%	24	22%	18	20%	5	4%
Minor	36	41%	48	44%	40	45%	55	48%
None visible	26	30%	9	8%	10	11%	24	21%
Unknown	1	1%	8	7%	5	6%	15	13%
Total	88	100%	108	100%	88	100%	114	100%

18 The degree of the force alleged is unknown because the case is an open investigation and the degree of injury is unclear at the present time. Major injury required medical attention usually arising from the use of baton. Moderate injury generally resulted from the use of chemical agent, canine, and tight handcuffs. Minor injury included the description of minor bruises, scrapes, or cuts from being grabbed, pushed, pulled or slapped. The category none visible is generally no visible injury detected.

SUSTAINED RATE AND DISCIPLINE IMPOSED

CHAPTER 7

The first column in Illustration 7A lists the Council District with their corresponding Council Members.

A Council District indicates the location where the incident that lead to a complaint occurred.

Unknown/Outside City Limits means that the location of the incident is unidentifiable or not within the San José district. The first row in Illustration 7A lists the Formal closed cases and its sustained findings. The Formal closed cases are those cases that were closed for the period from January 1 through December 31, 1999, regardless of when these cases were received.

Excluded from this illustration are the Informal, Policy, Procedural, No Boland, Inquiry, and non-sworn or reserve officer cases. These cases did not have a finding or the investigation was not fully completed or was closed

Illustration 7A: Sustained Cases by Council District

Council Districts	Formal Closed Cases		Formal Sustained Cases	
	CI	DI	CI	DI
1 LEZOTTE	5	0	1	0
2 POWERS	10	0	1	0
3 CHAVEZ	62	10	5	7
4 MATTHEWS	8	0	1	0
5 DIAZ	19	1	1	1
6 FISCALINI	10	3	2	3
7 SHIRAKAWA, JR.	20	1	3	1
8 WOODY	10	1	2	1
9 DIQUISTO	7	0	1	0
10 DANDO	2	0	0	0
Unknown/Outside City Limits	9	12	4	10
Total Cases	162	28	21	23

Note that this tabulation does not include non-sworn personnel or reserve officers cases.

with a No Finding classification, to merit the full spectrum of the findings¹⁹ that are possible from a fully investigated case.

Illustration 7A indicates that 21 out of 162 Formal CI closed cases were sustained, which resulted in an 13% sustained

rate. In contrast, 23 out of 28 Formal DI closed cases were sustained, a 82% sustained rate. The combined sustained rate for Formal cases in all the Council Districts is 23%.²⁰

¹⁹ See Appendix F (Definition of Findings).

²⁰ The 23% sustained rate was derived from the total number of sustained cases (44), divided by the number of Formal closed cases (190). Informal, Policy, Procedural, No Boland, and Inquiry cases do not have findings. Also excluded are the non-sworn or reserve officer cases.

Of the 190 Formal cases closed in this reporting period, January 1 through December 31, 1999, fifty-four (54) disciplines were imposed, see Illustration 7B.

Discipline²¹ is only imposed on Formal complaints, which are the most serious misconduct complaints. This type of complaint is initiated by a citizen (Citizen-Initiated - CI complaints) or by the Chief of Police (Department-Initiated - DI complaints.)

In Illustration 7B, the disciplines are listed by increased level of severity. When an officer is retired from the department, the open investigation is closed with a No Finding. The retired category is not a disciplinary action, but rather it is included for the purpose of tracking how many officers retired before the finding of the investigation was completed.

An officer receives discipline based on the entire complaint

Illustration 7B: Discipline Imposed for Formal Cases

Type of Formal Disciplines Imposed	CI	DI	Total	%
Training and/or Counseling	8	3	11	20%
Documented Oral Counseling (D.O.C.)	6	9	15	28%
Letter of Reprimand (L.O.R.)	1	6	7	13%
10-Hour Suspension	1	0	1	2%
20-Hour Suspension	3	2	5	9%
40-Hour Suspension	2	2	4	7%
80-Hour Suspension	1	1	2	4%
160-Hour Suspension	2	0	2	4%
Demotions / Transfers	1	0	1	2%
Terminations	1	1	2	4%
Retired	1	1	2	4%
Settlement Agreement	1	1	2	4%
Total Formal Disciplines Imposed	28	26	54	100%
%	52%	48%	100%	

Note that this tabulation does not include non-sworn personnel or reserve officers cases.

and not based on each separate allegation. For example, an officer may have had three allegations sustained, but will receive only one discipline (such as letter of reprimand, documented oral counseling, suspension, demotion, transfer, or termination.) An officer may receive training and/or counseling, even though the allegation in a complaint is not sustained.

In Illustration 7B, the three disciplines imposed for Formal cases with high frequency are Documented Oral Counseling (15 or 28%), Suspension (14 or 26%), and Training and/or Informal Counseling (11 or 20%).

In Illustration 7C, the data reflects the allegations where discipline was imposed. It can not be inferred that on a certain allega-

21 See Appendix G (Definition of Discipline Imposed).

tion discipline was imposed, because the discipline is based on the entire complaint. When an Unnecessary Force allegation is investigated, the finding has resulted in the case being closed with a finding of Exonerated or No Finding. In many cases, the reasons are that no independent witnesses or solid evidence was found to support the allegation. In 1999, for the first time, three Unnecessary Force cases were closed with a Sustained finding. And the discipline imposed was Documented Oral Counseling, Suspension, and Termination.

Illustration 7D depicts five years of Formal disciplines for cases closed from January 1 through December 31, 1995, 1996, 1997, 1998, and 1999.

Illustration 7D shows that the disciplines imposed most frequently are Training and/or Counseling, Documented Oral Counseling, Suspension and Letter of Reprimand. Demotions or transfers are either one or none in occurrence.

Illustration 7C: Allegations of Discipline Imposed for Formal Cases

Type of Formal Disciplines Imposed	Allegations					
	IP	MDP	RC	UC	UF	US
Training and/or Counseling	8	1	1	2	0	0
Documented Oral Counseling (D.O.C.)	8	5	0	1	1	1
Letter of Reprimand (L.O.R.)	5	1	0	3	0	0
10-Hour Suspension	1	0	0	1	0	0
20-Hour Suspension	3	0	1	2	1	0
40-Hour Suspension	0	0	0	5	0	0
80-Hour Suspension	0	0	0	2	0	0
160-Hour Suspension	1	0	0	2	0	0
Demotions / Transfers	0	0	0	1	0	0
Terminations	0	0	0	2	1	0
Retired	2	0	0	2	0	0
Settlement Agreement	1	0	0	1	0	0
Total Allegations	29	7	2	24	3	1

Illustration 7D: Five Year View of Formal Disciplines Imposed

Type of Formal Disciplines Imposed	1995	1996	1997	1998	1999	Total	%
Training and/or Counseling	33	21	19	20	11	104	27%
Documented Oral Counseling (D.O.C.)	27	24	15	23	15	104	27%
Letter of Reprimand (L.O.R.)	16	19	13	11	7	66	17%
10-Hour Suspension	8	4	4	4	1	21	5%
20-Hour Suspension	0	0	5	3	5	13	3%
40-Hour Suspension	0	1	2	2	4	9	2%
80-Hour Suspension	1	1	1	2	2	7	2%
100-Hour Suspension	0	0	0	1	0	1	0%
120-Hour Suspension	1	2	2	0	0	5	1%
160-Hour Suspension	3	1	3	1	2	10	3%
13 Month Suspension	0	1	0	0	0	1	0%
Demotions / Transfers	0	0	0	0	1	1	0%
Terminations	2	2	0	1	2	7	2%
Retired	2	3	3	3	2	13	3%
Resigned	8	4	6	5	0	23	6%
Settlement Agreement	0	0	0	1	2	3	1%
Total Formal Disciplines Imposed	101	83	73	77	54	388	100%
%	26%	21%	19%	20%	14%	100%	

Note that this tabulation does not include non-sworn personnel or reserve officers cases.

INTERVENTION COUNSELING

CHAPTER 8

The Intervention Counseling Program is used as an “early warning system” to track police officers with complaint histories for the purpose of identifying potential problems and providing guidance.

INTERVENTION COUNSELING

Three or more Formal complaints within a 12-month period;

-or-

A combination of five or more complaints (of all types of complaints) within a 12-month period.

the subject officer,²² whether sustained or not, in a positive attempt to assist him/her. No formal record is made of the substance of the IC session.

The PSCU conducts a monthly review of its investigation files to ensure that subject officers meeting the IC criteria are identified in a timely manner. When officers are identified as a result of this review, a memorandum is written by the PSCU Commander to the subject officer’s Bureau Chief requesting the scheduling and the completion of Intervention Counseling.

tween the 1995, 1996, 1997, 1998 and 1999 sessions. A longer time period from the IC date increases the possibility of having subsequent complaints.

In 1999, ten officers received no subsequent complaints from the date of their intervention counseling (IC). Two officers received one complaint and three officers received two subsequent complaints from the IC date. There were a total of 15 IC sessions.

Overall the five years time period, the year 1997 generated the most IC sessions.

During Intervention Counseling, the subject officer meets with the Deputy Chief of their bureau, the PSCU Commander, and their immediate supervisor for informal counseling. This informal counseling session involves a review of the complaint(s) against

Illustration 8A lists the number of IC sessions between January 1 and December 31 for the years 1995 through 1999. The number of subject officers with subsequent complaints from their IC date should not be compared due to the differences in time be-

In addition to Intervention Counseling, the SJPD has implemented other methods to address officers receiving multiple complaints. For example, subject officers and their supervisors may enter into a written agreement whereby certain steps

²² Subject officer refers to the sworn member of the San José Police Department (SJPD) against whom the complaint was made.

Illustration 8A: Intervention Counseling

Time Period of Intervention Counseling	Total Number of IC Sessions	Number of Subsequent Complaints from IC Date to December 31, 1999					
		0	1	2	3	4	5+
Jan. - Dec. 1995	18	1	2	7	1	5	2
Jan. - Dec. 1996	12	1	1	2	3	3	2
Jan. - Dec. 1997	21	4	7	3	3	3	1
Jan. - Dec. 1998	12	1	8	2	0	0	1
Jan. - Dec. 1999	15	10	2	3	0	0	0

are identified and followed in an effort to prevent the alleged misconduct from occurring in the future.

STATISTICAL BACKGROUND OF SUBJECT OFFICERS

CHAPTER 9

An additional statistical area tracked by the Office of the Independent Police Auditor (IPA) is the background of the subject officers who are listed in Formal, Informal, and Procedural complaints. Specific areas include the subject officer's unit, gender, and years of experience with the SJPD at the time the incident occurred. It should be noted that cases that are classified as Inquiries do not track the subject officer.

the Bureau of Field Operations (BFO). Fourteen (14) subject officers were from the Bureau of Investigations (BOI). Six (6) subject officers were from the Bureau of Administration (BOA). One subject officer was from the Office of the Chief (COP - vice unit).

The investigators were unable to identify 89 subject officers in 88

complaints. These officers were not identified for one of three reasons. Either the complainant did not sign the required Boland Admonishment form, or withdrew the complaint, or the investigator was not provided with enough information to accurately identify the subject officer. In total, there were 56 cases where the Boland Admonishment was not signed, and in 15 cases, the investigator

UNIT OF THE SUBJECT OFFICER

Illustration 9A lists the units of the subject officers at the time of the incident in which a complaint was filed. The complaints were received between January 1 and December 31, 1999. Data was rounded off to the nearest percentage.

Three hundred and forty-nine (349) subject officers who received a complaint were from

Illustration 9A: Unit of the Subject Officer

Bureau of Field Operations (BFO)		%
Airport	3	1%
Background / Recruiting	1	0%
Cruise Management Detail	1	0%
Field Service Management	1	0%
Field Training	4	1%
Information Center	8	2%
Mounted	1	0%
Narcotics Enforcement Team	28	8%
Patrol	274	79%
Pre-Processing Center	2	1%
Reserves	1	0%
Special Operations	5	1%
Street Crimes	7	2%
Traffic Enforcement Team	9	3%
Violent Crime Enforcement Unit	4	1%
Total incidents from BFO	349	100%

Bureau of Investigation (BOI)		%
Assault Juvenile	3	21%
Auto Theft/Vehicular Crimes	3	21%
Burglary/Fraud	2	14%
Court Liaison	1	7%
Drug Enforcement Administration	1	7%
Narcotics/Covert Investigation	1	7%
Sexual Assault/Child Exploitation	3	21%
Total incidents from BOI	14	100%

Bureau of Administration (BOA)		%
Administration	1	17%
Background / Recruiting	2	33%
License & Permits	3	50%
Total incidents from BOA	6	100%

Chief of Police vice unit	1	100%
---------------------------	---	------

did not have the necessary information to identify the subject officer because the complaint was withdrawn or the investigator was unable to contact the complainant. The reason the numbers appear to be skewed is because there were fewer complaints than the number of officers involved. In many cases there are multiple officers involved in a single complaint.

GENDER OF THE SUBJECT OFFICER

Illustration 9B reports the gender of the subject officers from complaints received between January 1 through December 31, 1999. Data was rounded off to the nearest percentage. Of the 1379 officers working for SJPd, 19% received a complaint.

Females who make up 8% of the force, were subject officers in only 4% of the complaints filed. In comparison males were 4% higher than their representative number.

Illustration 9B: Gender of Subject Officer

Gender	Number of Complaints	%	Number of Officers in the Police Department	%
Male	345	96%	1266	92%
Female	13	4%	113	8%
Total	358	100%	1379	100%

Illustration 9C: Ethnicity of the Subject Officer

Ethnicity	Number of Complaints	%	Number of Officers in the Police Department	%
African American	21	6%	73	5%
Asian American	41	11%	101	7%
Hispanic Latino	82	23%	314	23%
Native American	2	1%	7	1%
Filipino American	2	1%	24	2%
European American	210	59%	860	62%
Total	358	100%	1379	100%

ETHNICITY OF THE SUBJECT OFFICER

Illustration 9C shows the ethnicity of the subject officers currently employed in the SJPd as of December 31, 1999. These statistics are from the complaints received between January 1 and December 31, 1999. Data was rounded off to the nearest

percentage. The data shows that in every ethnicity except for Asian-American officers, there was a one percent deviation from the representative number. In comparison, Asian-American officers received 4% more complaints than their representative number.

Illustration 9D: Years of Experience of the Subject Officer

Year of Experience	Number of Complaints	%	Number of Officers in the Police Department	%
0-1+	29	8%	151	11%
2-4+	146	41%	262	19%
5-6+	41	11%	109	8%
7-10+	68	19%	229	17%
11-15+	27	8%	185	13%
16+	45	13%	443	32%
Total	358	100%	1379	100%

responsible for 41% of all the complaints received. Officers with more than 16 years of experience followed with 45 complaints. They comprise 32% of all officers in the SJPD and accounted for 13% of all complaints.

Illustration 9E: Allegations by Officers' Years of Experience

Year of Experience	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
0-1+	1	0	0	5	2	6	7	2	20	0	34	10%
2-4+	1	2	1	28	11	20	12	3	68	13	159	40%
5-6+	0	0	0	14	4	7	2	1	24	0	52	13%
7-10+	0	0	0	9	5	10	7	4	31	2	68	17%
11-15+	0	0	1	6	1	6	3	6	9	1	33	8%
16+	0	1	1	14	2	4	3	10	8	1	44	11%
Total Allegations	2	3	3	76	25	53	34	26	160	17	399	100%
%	1%	1%	1%	19%	7%	13%	9%	7%	40%	4%	100%	

YEARS OF EXPERIENCE OF THE SUBJECT OFFICER

Illustration 9D and Illustration 9E

present the subject officers' years of experience in the SJPD as of December 31, 1999. These statistics are from the complaints received between January 1 and

December 31, 1999. Data was rounded off to the nearest percentage.

Officers with two to four years of experience received the highest number of complaints. These officers accounted for 19% of all officers in the SJPD, and were

Officers with two to four years of experience received the most Unnecessary Force allegations. Overall, the officers with less than one year of experience have the least number of allegations filed against them.

Illustration 9F: Subject Officers by Number of Complaints

Time Period	Subject Officers by Number of Complaints						Total Subject Officers	Subject Officers With Two or More Complaints
	1	2	3	4	5	6		
Jan. - Dec. 1995	284	97	28	4	2	1	416	132
Jan. - Dec. 1996	287	77	18	10	1	0	393	106
Jan. - Dec. 1997	254	57	12	4	2	1	330	76
Jan. - Dec. 1998	203	51	10	3	1	0	268	65
Jan. - Dec. 1999	201	50	12	4	1	0	268	67

SUBJECT OFFICERS WITH ONE OR MORE COMPLAINT(S)

Illustration 9F presents the number of subject officers by the number of complaints filed against them. The data collected is from a five year time period between January 1 through December 31, 1995, 1996, 1997, 1998, and 1999.

From January 1 through December 31, 1997, multiple complaints were filed against 76 officers, while 254 officers received one complaint.

During the 1998 calendar year, multiple complaints were filed against 65 officers, a 14% percent decrease from 1997. There were 203 officers who

received one complaint in 1998, an 20% percent decrease from 1997.

In comparison, during the 1999 calendar year, multiple complaints were filed against 67 officers, a three percent increase over 1998. There was a one percent (1%) decrease in the number of officers receiving one complaint, from 203 in 1998, to a 201 complaints in 1999.

BACKGROUND OF COMPLAINANTS BY COUNCIL DISTRICT

CHAPTER 10

The Office of the Independent Police Auditor (IPA) utilizes a Voluntary Questionnaire to request information about the statistical background of the complainants. The sole purpose of the Voluntary Questionnaire is to monitor statistical trends in an effort to better serve the complainant and the community. This survey was implemented in April 1995 and has been tracked each year since. The complainant is asked to respond to seven questions: occupation, educational level, ethnicity, primary language, gender, age range, and how the complainant was referred to either the IPA or the PSCU. In an attempt to maximize data collection, an effort is made to collect questionnaire information from every complainant at the beginning of the complaint process. Because each complaint may have more than one complainant, the total number of questionnaires may be greater than the number of

Council Districts	Male	Female
1 LEZOTTE	8	3
2 POWERS	18	10
3 CHAVEZ	94	32
4 MATTHEWS	19	7
5 DIAZ	29	22
6 FISCALINI	16	6
7 SHIRAKAWA, JR.	25	13
8 WOODY	13	9
9 DIQUISTO	11	6
10 DANDO	13	8
Unknown/Outside City Limits	6	6
Total Complainants	252	122
%	67%	33%

Illustration 10A:

Gender of the Complainants by Council Districts

complaints received. The data gathered from each question were presented by Council District and its corresponding Council Member. Council District indicates the location where the incident that lead to a complaint occurred. Unknown/Outside City Limits mean that the location of the incident is unidentifiable or not within the San José district. The total number shown does not include Inquiry complaints which were not tracked in 1999, but will

be made available in the 2000 Year End Report.

GENDER OF THE COMPLAINANTS

Illustration 10A identifies the gender of the complainants by Council Districts for the period of January 1 through December 31, 1999. There are a total of 374 complainants filing complaints in 1999. More of male complainants (67%) than female complaints (33%) file a complaint.

Illustration 10B: Ethnicity of the Complainants by Council Districts

Council Districts	African American	Asian American	European American	Filipino American	Hispanic Latino	Native American	Vietnamese	Other	Decline
1 LEZOTTE	2	0	6	0	0	0	1	0	2
2 POWERS	2	3	7	1	10	1	0	0	4
3 CHAVEZ	21	1	16	0	37	3	3	2	43
4 MATTHEWS	4	0	2	0	6	0	3	1	10
5 DIAZ	0	1	3	1	24	0	2	0	20
6 FISCALINI	0	0	7	0	5	1	0	1	8
7 SHIRAKAWA, JR.	4	1	4	0	21	0	2	0	6
8 WOODY	2	0	3	0	5	0	1	0	11
9 DIQUISTO	0	0	5	0	2	0	1	3	6
10 DANDO	2	0	6	0	2	0	0	0	11
Unknown/Outside City Limits	1	0	3	0	6	0	0	0	2
Total Complainants	38	6	62	2	118	5	13	7	123
%	10%	2%	17%	1%	32%	1%	3%	2%	33%
% of San José Population	4.5%	21%	43%	0%	31%	0%	.5%	0%	0%

ETHNICITY OF THE COMPLAINANTS

Illustration 10B displays the ethnicity of the complainant by Council District for the period of January 1 through December 31, 1999. In this illustration, most of the complaints arise out of District 3, District 5, and District 7 incidents. The complainants that came forward to file a complaint are mostly Hispanics/Latino (32%), European American (17%), and African American (10%).

From the 1990 U.S. Census Report, this percentage is a good representation of the Hispanics/Latino in San José. However, the percentage for the European American (17%) who came forward to file a complaint is low in comparison to the European American (43%) reported to live in San José. On the other hand, the percentage for the African American (10%) is high in comparison to the African American (4.5%) representation in San José. Please note that since 123 or 33% of the com-

plainants decline to answer the Voluntary Questionnaire, it is difficult to determine if the IPA was able to serve all ethnicity living in the San José.

Since the office has been established, the IPA had requested from the community to do more outreach in the Hispanic/Latino and the Vietnamese community. Looking at Illustration 10B, the IPA has been successful in increasing awareness in those community. However, the Asian community still has not come

forward to file complaints. It is not for lack of trying. The difficulty the IPA has encountered is teaching the Asian community to speak out against the injustice to a civilian police oversight agency. The Asian community has always been a closed knit community. Most of the stories of injustice are spoken to members only. The culture itself is used to not speaking against authority in power or against a San José police officer for fear of retaliation.

Illustration 10C: Age of Complainants by Council Districts

Council Districts	Under 18	18-30	31-59	60+	Decline
1 LEZOTTE	0	2	7	0	2
2 POWERS	0	6	12	4	6
3 CHAVEZ	1	41	38	1	45
4 MATTHEWS	0	6	9	0	11
5 DIAZ	0	12	18	1	20
6 FISCALINI	0	3	10	1	8
7 SHIRAKAWA, JR.	4	9	16	0	9
8 WOODY	0	5	5	0	12
9 DIQUISTO	0	3	7	1	6
10 DANDO	0	5	5	0	11
Unknown/Outside City Limits	1	1	7	1	2
Total Complainants	6	93	134	9	132
%	2%	25%	36%	2%	35%

AGE OF THE COMPLAINANTS

Illustration 10C lists the age of the complainants by Council Districts for the period of January 1 through December 31, 1999. In this illustration, most of the complaints arise out of District 3, District 5, and District 7 incidents. The complainants that came forward to file a complaint are mostly between the age of 31-59 and between the age of 18-30. Please note that since 132 or 35% of the complainants decline to answer this portion of Voluntary Questionnaire, it is difficult to

make a broad statement like the working age group came forward to file a complaint more than any other age group or that these adults who voted for the IPA office fully utilize their rights to file a complaint.

EDUCATIONAL LEVEL OF THE COMPLAIN- ANTS

Illustration 10D lists the educational level of the complainants by Council Districts for the period of January 1 through December 31, 1999. In this illustration, the majority of the complainants are educated citizen who came forward to file a complaint. However, please note that 144 or 39% of the complainants decline to answer this portion of Voluntary Questionnaire.

Illustration 10D: Educational Level of the Complainants by Council Districts

Council Districts	High School or Below	College	Graduate	Decline
1 LEZOTTE	4	4	1	2
2 POWERS	7	14	0	7
3 CHAVEZ	37	31	9	49
4 MATTHEWS	5	7	2	12
5 DIAZ	15	11	3	22
6 FISCALINI	5	6	2	9
7 SHIRAKAWA, JR.	17	11	0	10
8 WOODY	5	4	0	13
9 DIQUISTO	3	5	3	6
10 DANDO	7	1	1	12
Unknown/Outside City Limits	3	7	0	2
Total Complainants	108	101	21	144
%	29%	27%	6%	39%

COMPLAINANT'S Oc- CUPATION

Illustration 10E lists the occupation of the complainants for the period of January 1 through December 31, 1999. In this illustration, most of the complainants are working laborer (18%) such as driver, janitor, etc.; working professional (9%) such as attorney, manager, etc.; working technical (6%) such as engineer, technician, etc.; or students (6%). Please note that 146 or 39% of the complainants decline to answer this portion of Voluntary Questionnaire.

Illustration 10E: Occupation of the Complainants

Occupation		%
Administration	18	5%
City or Govt. Employee	9	2%
Decline	146	39%
Disabled	6	2%
Homemaker	13	3%
Laborer	68	18%
Professional	32	9%
Retired	4	1%
Self-employed	5	1%
Services	15	4%
Student	23	6%
Technical	24	6%
Unemployed	11	3%
Total Complainants	374	100%

Illustration 10F: Subject Officers Receiving Complaints from Complainants by Ethnicity

Complainants	Subject Officers Receiving Complaints						% of Complainants	% of San Jose Population
	African American	Asian American	European American	Filipino American	Hispanic / Latino	Native American		
African American	3	5	22	0	7	0	11%	4.5%
Asian American	0	2	5	0	1	0	2%	21%
European American	6	6	39	0	9	0	19%	43%
Filipino American	0	0	0	0	2	0	1%	0%
Hispanic / Latino	4	15	57	2	34	0	35%	31%
Native American	0	0	5	0	1	0	2%	0%
Vietnamese	3	4	8	0	0	0	5%	.5%
Other	0	1	2	0	0	1	1%	0%
Decline	3	6	50	0	20	1	25%	100%
% of Officers receiving complaints	6%	12%	58%	1%	23%	1%	100%	
% of Officers in San Jose Police Department	5%	7%	62%	2%	23%	1%	100%	

Excluded from Illustration 10F are officers not identified cases, Policy cases, Department-Initiated cases and non-sworn officers cases.

SUBJECT OFFICERS RECEIVING COMPLAINTS FROM COMPLAINANTS BY ETHNICITY

Illustration 10F presents a view of subject officers receiving complaints from complainants by ethnicity for the period of January 1 through December 31, 1999. From each complaint, there may be more than one complainants as there maybe more than one subject officers. The tabulation is one count of the primary complainant with the corresponding

ethnicity for every subject officer(s) known in the case with their corresponding ethnicity.

The primary complainant is the first complainant listed in the case or the complainant directly interacted with or affected by the subject officer(s) at the time of the incident. For example, a case involved three officers (African American, Hispanic/Latino, White/European American) and two complainants (Hispanic/Latino as the primary complainant and White/European American as the co-complainant

or secondary complainant.) The marking in the table would show that the row Hispanic/Latino Complainants would have a total of three marks and the column for Subject Officers Receiving Complaints would have one mark for African American, one mark for Hispanic/Latino, and one mark for White/European American. Excluded from the illustration are officers not identified cases; Policy cases, which are cases against the policy of the department and not against a member of the San José Police

Department (SJPD); Department-Initiated cases, which are cases initiated by the Chief of Police and the citizen involvement is unknown or the case is a personnel issue and no citizen involved; and non-sworn officers cases.

This chart was created to see if one ethnicity of subject officer is abusing another ethnicity of complainants. However, keep in mind that there are factors that affects the reliability of the data collected. One factor is not all complainants complete the Voluntary Questionnaire. In Illustration 10F, there are 80 or 25% of all complainants declined to answer the ethnicity question.

From this illustration, it is logical to deduce that the higher group of ethnicity living in San José, the higher the percentage of that group is likely to file a complaint. However, from Illustration 10F, this deduction seems to be false. The difference in the percentage of population living in San José to the percentage of complainants filing a complaint is either too high or too low. For example,

there are 43% European American living in San José, but only 19% came forward to file a complaint. On the other hand, there are less than one percent age of Vietnamese living in San José; however, four percent (4%) came forward to file a complaint.

One possible reason may be that the San José population is based on old information, the 1990 U.S. Census.

The Hispanic/Latino complainants are the highest percentage (35%) to file a complaint. Most of these complaints are against European American officers and Hispanic/Latino officers.

Looking at Illustration 10F, all complainants from every ethnicity filed complaints mostly against the European American officers. However, keep in mind that the European American officers (62%) are the largest ethnicity hired in the SJPD and they have the least complaints against them (58%).

Both African American officers and Asian American officers

received more complaints than the percentage accounted for within the Department. For example, Asian American officers make up seven percent (7%) within the Department but they received 12% of the complaints. Most of these complaints are from Hispanic/Latino and European American complainants.

ANALYSIS OF THE AUDITED COMPLAINTS

CHAPTER 11

AUDIT CRITERIA

In an effort to maximize the availability of data captured in the complaint database, the IPA developed a checklist for gathering data and a process for evaluating the quality of the investigations. This process allows for consistency between auditors and provides a database that can be manipulated and randomly searched for critical trends and patterns. By developing a process that can audit and capture varied trends and patterns, the database is designed to highlight the critical elements, actions and aspects of an investigation. Consistency in capturing data is important, a significant aspect of the database is that it was designed to capture the nature of the complaint by using different auditing criteria for the different complaint classifications: Formal, Procedural, No Boland, Informal, Policy and Inquiry. Although each and every complaint is important, this report

only provides a synopsis of the Formal complaint process.

FORMAL COMPLAINTS

Formal complaints allege a serious violation of the law by SJPd officers. SJPd also uses the Formal complaint process to address serious violations of a department policy, procedure, rules or regulations by its officers. From January 1 through December 31, 1999, there were 118 Formal cases audited by the IPA. Of the 118 Formal complaints, 46 resulted from a call for service, 33 were self initiated, 28 were traffic related and 11 were classified as other.

It is important to understand that the 118 Formal cases represent the number of investigations completed in 1999. This total may differ slightly from the total number filed throughout 1999, because some cases may have been filed in 1998 and completed in 1999, while others that were filed in 1999

may still be active well into the year 2000.

Was review requested by the complainant?

Of the total number of complaints listed above, 57 complainants or 48% requested the IPA to review the case. Although most of the requests were made after the case had been closed by PSCU, a small percentage of the requests for review were made while the investigation was still active.

Was the review requested by the complainant?

Yes	57	48%
No	61	52%

Did the IPA request**further action from PSCU?**

The IPA requested further action from the PSCU in 11 or 9% of the Formal cases it reviewed. Requests varied from reopening an investigation to providing the IPA with additional information or documentation. Although the number of complaints varies from year to year, this year marked a significant decrease in the number of further action requests by the IPA. As a comparison, during the 1998 calendar year, the IPA made 27 requests, or 11% of the Formal cases audited.

Did the IPA request further action from the PSCU?

Yes	11	9%
No	107	91%

Did the Auditor attend officer**interviews conducted by the****PSCU after being notified?**

Formal complaints are the only type of complaint that has a process that is mandated by law (AB 301) for questioning and interviewing SJPd officers, pursuant to the investigation of a complaint. At this time, the Independent Police Auditor is the only member of the IPA that attends officer interviews. Because of this constraint, the Auditor must consider factors such as seriousness of the allegations, status of the officer being interviewed (subject or witness officer) and time constraints as to the Auditor's availability before making a decision to attend. During this calendar year, of the 118 Formal cases, the IPA requested to be notified of police officer interviews in 39 or 33% of the cases. Of those, the IPA was notified of 35 interviews, with the Auditor attending 21 interviews where notification was received. The PSCU failed to provide notice to the Auditor on four (4)

cases. This is a marked improvement from the prior year.

Recommendation: It appears that some of the notification problems in the past have been attributed to the frequent turnover of investigators at PSCU. In an effort to negate this concern, strong emphasis must be placed on providing investigators with on-going training that addresses the importance of maintaining a case file that chronicles how notices of upcoming interviews were given to the IPA. Proof of notice can be documented by saving a copy of the fax notice, e-mail print out or a notation can be made in the case file, with the date and time, if a phone call was used to make the notification. Recently, the PSCU commander implemented a form to document

Did the Auditor attend officer interviews conducted by the PSCU after being notified?

Notification requested	39	33%
Notice received	35	90%
Interviews attended	21	54%
Interviews not attended	5	13%
Interview plans changed	13	33%

and track officer interview notification.

As previously mentioned, currently the Independent Police Auditor is the only IPA representative that attends officer interviews. With the addition of an experienced Assistant Auditor, plans are underway to have the Assistant Auditor attend officer interviews in the near future.

Did the IPA agree with the finding of the complaint?

This section reflects the number of times the IPA agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in 6 or 5% of the 118 Formal cases even after further action was requested from the PSCU. In 1998, the IPA disagreed with 45 or 14% of the Formal cases.

Even though the IPA may disagree with a case resolution for a number of reasons, in most cases where there is a disagreement, weight given to the credibility of the complainant and/or

witnesses appears to have been the difference. It appears that in some cases the IPA arrived at a different conclusion based solely on the unbiased acceptance of the credibility of the information being provided by the complainant or witness.

Another reason that disagreements have occurred in the past is because cases have been sent for investigation to a unit other than PSCU. In these cases, the reason for the disagreement was because an important aspect of the investigation was omitted or the thoroughness of the investigation was in question.

Did the IPA agree with the finding of the complaint?

Yes - Agree	112	95%
No - Disagree	6	5%

DISAGREED CASES BY IPA

Case #1– Complainant alleged he was kicked in the chest and hit in the head, possibly with the butt end of a gun. The findings by SJPd Exonerated the officer. The IPA disagreed.

Case #2 – Complainant alleged he was unlawfully arrested and discriminated against during an investigation into a domestic violence matter. The findings by SJPd Exonerated one of the allegations and Unfounded four others. The IPA disagreed.

Case #3 – Complainant alleged he was pushed and forced into his vehicle by an officer, causing an injury to his knee and back. The finding by SJPd Unfounded the allegation because the Complainant was uncooperative and refused to release medical information relevant to the case. The IPA disagreed with the Unfounded finding.

Case #4 – Complainants alleged that unnecessary force was used during their arrest. The finding by

SJPD Unfounded the allegations because the investigator felt the complainants stories were contradictory. The IPA disagreed with the finding.

Case #5 – Complainant alleges that during an arrest, the arresting officer made discriminatory and racial comments about the complainant. The finding by SJPD Unfounded the allegation. The IPA disagreed.

Case #6 – Complainant alleges he was stopped for a minor vehicle code violation and physically forced out of his vehicle when the officer noticed an object (tool) on the floorboard. The finding by SJPD Exonerated the allegation because the officer feared for his safety. The IPA disagreed.

Did the incident give rise to criminal action against the complainant?

75% of the complainants who filed a complaint against a police officer were also arrested for a crime. However, in some cases where a complainant was ar-

rested, the District Attorney declined to issue a criminal complaint. The 25% figure involves complainants who filed a complaint, but were not accused of violating a law.

Did the incident give rise to criminal action against the complainant?

Yes	88	75%
No	30	25%

Was the complaint properly classified?

Yes	40	93%
No	3	7%

Was the procedure properly applied?

Yes	42	98%
No	1	2%

PROCEDURAL COMPLAINTS

Procedural complaints are those that despite the allegation of misconduct, no factual basis supports the allegation because the subject officer's conduct was within procedure. There were 43 Procedural complaints reviewed in 1999.

Was the complaint properly classified?

Of the 43 Procedural complaints reviewed, the IPA found three case that it felt were classified incorrectly. In the opinion of the IPA, the three cases should have been classified as Formal cases because the allegations made by each complainant appears to have warranted an investigation that included officer and witness interviews.

Was the procedure properly applied?

The IPA found that in one Procedural case, the subject officer(s) did not follow a proper procedure. Procedures are generally outlined in a Department General Order Manual, and are usually devel-

oped using training standards that are recognized by Police Officers Standards and Training (POST) or taught by the department as an acceptable practice or procedure. Procedural cases may only be classified as such if the officer(s) followed a correct and acceptable procedure, otherwise the complaint should be investigated as a Formal complaint.

Case #1– The complainant was arrested subsequent to an arrest warrant. Officers from a specialized unit responded to the complainant's residence and forced entry into the home, breaking through a door and entering with weapons drawn. In review of the case it was determined that the arrest warrant was issued for a non-violent offence and the complainant posed no threat of violence. It was determined that the use of force went beyond what would be considered appropriate for a warrant service with a minimal threat level. The procedure manual was changed to address the response to an arrest warrant,

with the development of criteria for consideration.

Did the IPA request further action from the PSCU?

Requests may vary from reopening an investigation to providing the IPA with additional information or documentation. The IPA requested further action from the PSCU in two Procedural cases that were reviewed.

Did the IPA request further action from the PSCU?

Yes	2	5%
No	41	95%

What is the IPA's finding of the investigation?

The IPA disagreed with the finding of the investigation in 1 of the 43 Procedural cases even after further action was requested from PSCU.

What is the IPA's finding of the investigation?

Yes - Agree	42	98%
No - Disagree	1	2%

SPECIAL AUDIT OF UNNECESSARY FORCE CLASS I CASES

What follows is a special audit to determine how well the new procedure is being implemented. In 1999, the IPA audited a total of 77 cases where excessive use of force was investigated. Of the 77 cases, 8 or 10% had major injuries and were classified as a Class I case. Major injuries involve lacerations, fractures or permanent injury.

ing to the scene where force was used and making sure that when necessary, evidence is collected and witnesses interviewed. The compliance rate for supervisor intervention is currently outstanding. Supervisors should be commended and encourage to continue their efforts.

What was the degree of injury?

A minor injury refers to an injury such as scratches and bruises. Moderate injuries are those that involve cuts or large scrapes. In 1999, most of the injuries were either minor or moderate. Minor injuries were reported 52% or on 40 cases and Moderate injuries were reported 9% or on 7 cases.

Special Audit Summary:

As reported in Chapter 4, "On Scene Investigations Following Use of Force." The department has been experiencing a marked increase in supervisors respond-

CASE AUDIT SUMMARIES

CHAPTER 12

In an attempt to keep the public informed of how the IPA functions, the following cases have been selected to illustrate the auditing process. These are actual cases investigated by the PSCU and reviewed by the IPA. These cases have been selected because they illustrate the different options and courses of action the IPA can pursue. To preserve the privacy of the individuals involved in each case example and to conform to current disclosure laws, locations and names have been omitted from the examples.

CASE #1

IPA CONFERS WITH THE PSCU

The complainant alleged that he was arrested and taken to the SJPD preprocessing center for booking. The complainant stated that while outside the preprocessing center, the officer slammed him against the wall and struck him several times while still handcuffed. The complainant stated that although

there were no witnesses, the visible injuries to his body supported his claim of mistreatment. The IPA contacted the PSCU investigator handling the case and requested an opportunity to review the security camera tapes from the preprocessing center for the date and time in question. After the PSCU investigator informed the IPA that the tapes had already been reviewed and did not show any improper actions or activity, the IPA reviewed the tapes, then requested to visit the preprocessing center. Once at the preprocessing center, the IPA and the PSCU investigator reviewed the placement of the cameras and determined that the area where the Complainant alleged to have been mistreated was not covered by the existing camera placements. As a result of this discovery, the placement of cameras at the preprocessing center is under review by SJPD.

CASE #2

IPA REQUESTS AUDIO TAPE RECORDING OF THE PSCU'S COMPLAINANT INTERVIEW

The complainant alleged that he was arrested for being drunk in public and was subjected to excessive force and kicked in the head while being handcuffed. The complainant called the IPA after his case had been closed by the PSCU. The complainant stated that his complaint regarding the officer having kicked him was not investigated. The IPA reviewed the file and requested



Officer making an arrest.

the audiotape interviews from the complainant and the involved officers. After reviewing the audiotapes the IPA determined that the allegation regarding the kicking incident was in fact investigated; however the allegation could not be corroborated or sustained.

CASE #3

IPA INTERVIEWS COMPLAINANT

AT THEIR RESIDENCE

The complainant stated that she drove herself to the hospital after being involved in a physical altercation with her husband. Although the complainant said she was only seeking care for her injuries, the hospital, as required by law called SJPD. The complainant alleged that when the officer arrived, she attempted to describe the altercation with her husband and her efforts to defend herself. The complainant alleged the officer appeared to be unsympathetic and asked questions that were accusatory and made her feel like she was being interrogated. Although not arrested at the hospital, the officer submitted a report listing



Auditor conferring with residents.

the complainant as a suspect, rather than a victim. Because of the officer's actions at the hospital, the complainant felt uncomfortable and refused to go to PSCU to be interviewed. PSCU called IPA and informed the office that the complainant was refusing to be interviewed. IPA called the complainant and after discussing the reasons for her refusal, determined that a good compromise would be to have the IPA conduct the interview. In an attempt to make the complainant feel more at ease with the process, the complainant suggested and the IPA agreed that the interview could be conducted at the complainant's residence.

CASE # 4

INVESTIGATION IS REOPENED AT THE REQUEST OF THE IPA

The complainant alleged that unnecessary force was used during the arrest of her husband at their residence. The complainant stated that police officers hit her husband with batons even after he complied with the officer's commands to lie down on the ground and stop resisting. The complainant stated that as a result of the excessive force, her husband's arm was broken from the baton strikes. The complainant called the IPA after the case was closed by PSCU and informed that an eyewitness neighbor was never contacted and/or interviewed. The IPA reviewed the case and requested that the PSCU re-open the investigation so that the eyewitness neighbor could be interviewed. The case was re-opened and the witness interviewed. The findings of the case remained the same however, the IPA was now satisfied with the thoroughness of the investigation.

CASE #5

IPA ATTENDS OFFICER

INTERVIEW

The complainant alleged that officers used unnecessary force while arresting him for driving under the influence. As part of the investigation on this case, the PSCU interviewed the subject and witness officers. The IPA attended the interviews of some of the officers, but because of a conflict could not attend all of the interviews. In those cases where the IPA could not attend the interviews, contact was made with the investigation officer prior to the interviews and questions provided for the investigator to ask while the officers were being questioned. The allegations against the officers were later found to be Exonerated. By attending the officer's interview, the IPA was in a better position to evaluate the complaint and it's investigation.

CASE #6

IPA REQUESTED COURT PRELIMINARY HEARING TRANSCRIPT

The complainant was arrested and tried for several charges

related to a civil disturbance. The complainant alleged that he was arrested without cause and while being place under arrest was subjected to excessive force and injury. The Complainant alleged that because he felt he was being mistreated, his unintended actions of self-defense were mistaken for acts of aggression and resulted in excessive force being administered. The IPA requested the court trial transcripts. By reviewing the transcripts of the sworn testimony, the IPA was better able to determine the validity of the allegations and the findings made by the PSCU.

CASE #7

IPA CONFERS WITH SJPD TO EFFECT CHANGE

The complainant was arrested subsequent to an arrest warrant. Officers from a specialized unit responded to the complainant's residence and forced entry into the home, breaking through a door and entering with weapons drawn. In review of the case it was determined that the arrest warrant was issued for a non-

violent offence and the complainant posed no threat of violence. It was also determined that the specialized unit was used not for the severity or high-risk nature of the contact, but rather because at the time there was a lack of enforcement personnel available to serve the arrest warrant.

Concerned with the nature of the complaint, the IPA conferred with the Commander of the specialized unit who developed a process for evaluating and weighting the threat assessment in serving an arrest warrant. New guidelines were developed that broke down threat levels on a scale of 1, 2, or 3. The guideline also addressed such issues as; tactics, type of uniform worn, and type of weapons carried.

Although the findings of the case found the actions of the specialized unit to be within policy, the newly developed guidelines provide the department and the community with a process that assures a level of safety for all concerned.

CONCLUSION

CHAPTER 13

This past year the IPA experienced a significant change in personnel services with a 50% turnover. Although this high level of personnel change can be problematic, the IPA has continued to function with minimal disruption with the addition of competent, quality replacements. Because of the confidentiality surrounding the officer complaint process, the recruitment process became a critical endeavor for the IPA. In an attempt to maintain a high level of service to the community, the IPA focused its recruitment efforts on candidates with a background and some knowledge in the type of services provided by the IPA. Even though the recruitment process was time consuming and exhausting, the efforts and attention to detail brought forth two candidates with strong academic credentials and critical work experience. One new employee comes to the IPA with a background in public relations and the

other with prior administrative experience dealing with officer misconduct investigations and a working knowledge of the citizens complaint process. By hiring new employees with a strong work history, the IPA has been able to move forward with minimal disruption and has continued to address the problems, issues and/or trends as they occur.

As in previous years, 1999 was also filled with a number of significant accomplishments. Pending recommendations were adopted and implemented such as the Officer-Involved Shooting Review Panel. The review panel as developed by the Chief of Police, includes the IPA as a member. The review panel is charged with reviewing and considering the actions that led to the shooting, then makes recommendations that can lead to the adoption of a training plan or a change/development of a policy or procedure.

As previously mentioned, the IPA took advantage of the opportunity to increase the visibility of the office by hiring an individual with prior public relations experience. With the new addition, the IPA focused its attention of increasing the number of presentation made to the community and developing office information packets that were translated into languages that reflect the IPA constituents. On December 13, 1999, the IPA hosted its first citywide public forum on "Police Misconduct", at the Mexican Heritage Plaza. The forum panel was comprised of community members and criminal justice professionals with a vested interest in the complaint process. The forum was moderated by KGO NEWSTALK AM 810 host, Gene Burns and aired on live radio.

The IPA is committed to continuing its outreach efforts to the community by developing alternative sites where the IPA can

maintain direct contact with the community and distribute office literature. With the development of seventeen referral sites that are spread throughout the city, the IPA has developed a network of resources that can address the growing needs of the community. The IPA will continue to expand its use of referral sites and provide staff training at these sites to enhance the mission of the IPA.

The Independent Police Auditor Advisory Committee (IPAAC) also became a reality this past year. The IPAAC, which is comprised of community leaders, held its first series of meetings and developed a process for providing input to the IPA. The efforts of the IPAAC have already had a positive impact on the IPA. The IPAAC provided staff with feedback that was critical in developing the framework for the public forum.

This past year, the IPA also

participated in the city's effort to introduce a proposed change in budget structure. The IPA participated in workshops that introduced the "Investing in Results" concept. At a workshop held for the City Council on December 15th and 16th, 1999, the IPA introduced its five proposed core services²³. In an effort to conform to city standards, the IPA will continue to participate in the development process for the new budget structure and will assure that any structural change provides a foundation for continuing the professional services provided by the IPA.

The IPA also went on-line with its web site during the past year.

The web site provides information regarding the functions of the IPA and has a site for accessing prior Year End Reports.

The IPA will continue to work on achieving its objectives in further-

ance of its mission²⁴. The IPA will report on its progress and challenges in the 2000 Year End Report.

The IPA will continue to work on achieving its objectives in furtherance of its mission. One of the goals for year 2000 is to focus community outreach efforts towards the youth in the City of San José. The IPA will report on its progress and challenges in the next Year End Report.

23 Core Service – 1) Initiate, the investigative process, 2) Monitor/track/participate in excessive force investigation, 3) Public awareness, 4) Audit/track citizen complaints, 5) Policy recommendations.

24 To provide independent civilian review of the citizen complaint process to ensure its fairness, thoroughness, and objectivity.