

IPA AUDITS IN 2021 — A FOCUS ON TRANSPARENCY

The complaints outlined below were closed by IA and audited by the IPA in 2021. The complaints selected were not chosen by a statistical method. Instead, these were selected because we believe they are illustrative of the interchange between the IPA and the Department. The narratives reflect how the IPA raises issues about the quality of the IA investigations and how the Department responds to those issues.

Under the City Ordinance, the IPA is to ensure that investigations into police misconduct are **fair, thorough, complete and objective**. If this standard is not met, the IPA can request additional investigation and/or analysis. Please see the illustration **What We Look For** in Chapter Four.

Agreed at First Review

If, upon initial review, the IPA staff finds that IA's investigation into alleged misconduct is fair, thorough, complete, and objective, then will close the case as AGREED AT FIRST REVIEW.

Agreed after Further Action

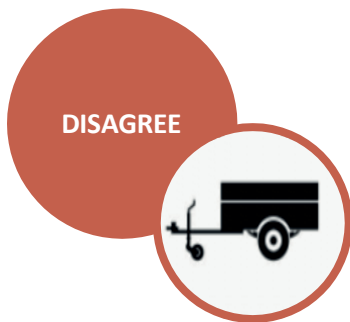
The IPA staff may find that IA's initial investigation into alleged misconduct needs improvement. We may request that IA staff take additional action to address concerns about the quality of the analysis or whether the finding is supported by the evidence. If IA's subsequent investigation adequately addressed our concern, then the IPA will close the case as AGREED AFTER FURTHER ACTION.

Closed with Concerns

At the end of the process, if the IPA still has **some** concerns about the quality of IA's investigation/analysis or whether the evidence supports the finding, the IPA will close as WITH CONCERNS.

Disagreed

At the end of the process, if the IPA still has **significant** concerns about the quality of the investigation/analysis or whether the evidence supports the finding, the IPA will close as DISAGREE.



Complaint: Among other things, the complainant alleged that an SJPD officer registered his large RV as a *utility trailer* with an associated \$7 fee thereby avoiding an annual DMV fee of approximately \$500. The complainant believed the officer had abused his position as a police officer and/or was given *special treatment* due to his position to obtain the Permanent Trailer Identification (PTI) for his RV.

IA's First Investigation & Analysis:

The initial IA investigation consisted of

- Reviewing a photograph of the DMV permanent trailer ID Card sent by the complainant
- Contacting the DMV
- Reviewing comments regarding the PTI program on a web discussion group
- IA did not interview the subject officer



IA concluded that the RV owned by the subject officer (officer) was a 42-foot, 3 axle, fifth-wheel trailer that must be pulled by a separate vehicle. Under IA's interpretation of the DMV's manual on the Permanent Trailer Identification (PTI) program⁸⁰ the officer's RV fell within certain exceptions and was thus qualified for PTI status.

The IA investigator also referenced on-line discussion forums which revealed some confusion about the registration of trailers, RVs, coaches, utility trailers, etc. The investigator presumed that if non-sworn persons were confused, the officer would likewise be confused.⁸¹



IA concluded that the officer's use of the PTI registration was justified, lawful and proper. Therefore, the PROCEDURE allegation was EXONERATED.

IPA's Response to IA's First Investigation & Analysis:

IPA contested this initial closure because it was neither thorough nor complete. A thorough investigation would include obtaining the RV's registration and payment history. Moreover, the discussion board postings about the PTI program were neither quantitative nor qualitative and did not confirm that the officer was confused about the PTI program. The subject officer needed to be interviewed.

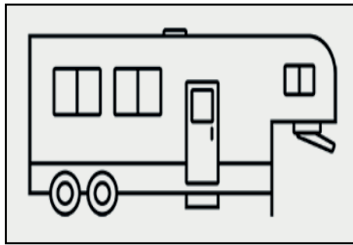
IA's Second Investigation & Analysis:

IA re-opened the investigation

- IA did not interview the officer
- IA did not take measurements of the officer's RV
- IA obtained additional information from a DMV employee (conversation not recorded). The RV was registered in early 2016 and the amount paid appeared to be the standard amount for registration. The employee noted that the officer paid \$10 in 2020 because the trailer was registered as a PTI with a renewal fee of \$10 every five years.
- Using only a photograph and a ruler, the investigator created a diagram and data extrapolation about the officer's RV.

IA’s analysis and findings remained unchanged from the initial investigation. IA concluded that the 42-foot, 3 axle, fifth-wheel trailer RV qualified for the DMV’s PTI program. Online discussion forum conversations also revealed general confusion regarding DMV registration under the PTI program.⁸² Thus, IA concluded that the officer’s actions in registering the RV in the PTI program were justified, lawful, and proper.

IPA’s Response to IA’s Second Investigation & Analysis:



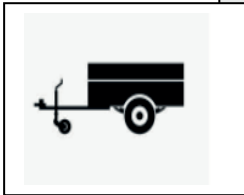
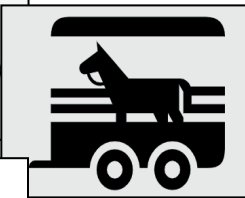
The IPA contested IA’s second investigation on three points:

First, IA never measured the RV or interviewed the officer to confirm the dimensions of the RV. Conclusions were based on a diagram and IA’s *data extrapolation*. Given that IA could have simply measured the actual RV, this approach was neither objective nor complete.

A *trailer coach* is a vehicle, other than a motor vehicle, *designed for human habitation or human occupancy* for industrial, professional, or commercial purposes, for carrying property on its own structure, and for being drawn by a motor vehicle. CVC Section 635

Second, excerpts from on-line discussions are not supporting evidence. Only an interview would show if the officer was confused about the DMV registration of his trailer coach under the PTI program and, if so, what steps he took to remedy his confusion.

Lastly, the RV would not qualify for the DMV’s PTI program and its associated fees because the RV is a **trailer coach** (body type model CCH) and cannot be registered under the PTI program. The exceptions that IA relied upon apply to fifth-wheel travel trailers (not coaches). The alleged dimensions of Officer’s RV place his vehicle in the classification of a trailer coach and not a travel trailer.⁸³



All trailers, except *trailer coaches* and park trailers, are registered under the *Permanent Trailer Identification* (PTI) program. For example, PTI trailers include semi-trailers, boat trailers, utility trailers, flat bed trailers, box trailers or horse trailers. CVC section 468

IA's Third Investigation & Analysis:

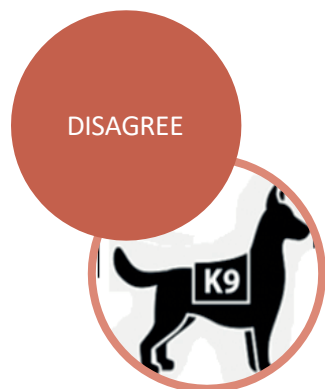
IA reopened the investigation and interviewed the officer. The officer stated that he initially had trouble getting a VIN verification since he had purchased the trailer new from an east-coast state in 2016. He believed that the initial plates sent to him by CHP or DMV *didn't look normal*. He stated that, around 2016 or 2017, he re-did the process through the CHP and DMV. According to the officer, the second set of plates *looked normal*. The officer stated that he did not know anything about the PTI program until this complaint was filed. He denied submitting any paperwork for the PTI program and asserted that CHP or DMV determined how to register a vehicle into any particular classification.

IA concluded that there was no indication the officer registered his RV illegally or improperly. Thus, the officer's actions in registering the RV in the PTI program were justified, lawful, and proper. IA noted that the officer denied making any misrepresentation about his RV and that the associated paperwork was completed by the CHP, the DMV or the Midwest bank acting as his attorney during the purchase process.⁸⁴

IPA's Response to IA's Third Investigation & Analysis:

The IPA noted that IA failed to provide a cogent explanation addressing how the RV got a PTI classification without any explanation or action by the officer. We believe it is puzzling that a bank, a company located in the Midwest, would be aware of and request a California PTI for this RV without notifying the officer. The facts also show that paperwork submitted about the officer's RV contained conflicting information, were incomplete and lacked his signature. These significant discrepancies in IA's analysis were improperly resolved in favor of the officer. Under these circumstances, a **not sustained** finding would be appropriate and supported by the evidence.

IPA Closure: The IPA closed this case as **disagree**.



Complaint: The complainant alleged that during the early hours of a Saturday, she and her husband were awakened by the SJPD helicopter, people screaming, and dogs barking. From their backyard, the couple looked outside and observed a naked male suspect pacing back and forth. The male laid down and masturbated for about seven minutes. Numerous officers arrived and illuminated the scene. The officers gave the suspect commands, but the naked suspect continued to pace back and forth.

At one point, the suspect appeared to obey the officers' commands by walking to the sidewalk and getting down upon his knees on the sidewalk. Then, the suspect rose to his feet, naked and with empty hands. The suspect was illuminated with spotlights, and seconds later, officers released a police dog. The dog attacked the suspect and the suspect fell out of the complainant's line of sight.

The complainant alleged, among other things, that the officer should not have used a police dog on an individual going through a mental health crisis.

IA's First Investigation & Analysis:

The IA investigator

- conducted a brief interview with the complainant
 - obtained dispatch logs, BWC video, the complainant's video, and the police report.
- **13 officers responded to the scene; not one was interviewed.**

IA's investigation revealed that, shortly after midnight, a reporting party (RP) [distinct from the complainant who was a neighbor] called 911 to report an unknown naked male was inside his home. The male was rummaging through his property. The RP provided a physical description of the male and his last known location.

Thirteen SJPD officers responded to the scene. The police helicopter located a male lying down under a covered porch area outside of the residence. Officers found the suspect completely naked and masturbating on the front porch. A perimeter was established around the residence. Officers formed an arrest team, which included an SJPD officer trained in using a dog (K9 officer) and his assigned police dog.

Officers announced that a police dog may be used and the suspect could be bitten. The suspect put his hands up but then continued to masturbate. Officer asked the suspect if he understood; the suspect continued to masturbate. Officers continued to give several arrest commands. Per the officers' direction, the suspect exited a small gate near the sidewalk, got down on his knees and put his hands up in the air. Seventeen seconds later, per officers' direction, the suspect placed his hands on the sidewalk. Despite commands, the suspect refused to crawl towards officers on the other side of the street. Instead, according to the IA analysis from the written reports the suspect got into a *modified sprinters stance*. Six seconds later, the K9 officer deployed the police dog who engaged the suspect on his upper arm. In total, the dog remained engaged on the suspect for approximately 1 minute and 26 seconds.⁸⁵ IA asserted that this length of time was reasonable.⁸⁶

Without interviewing the K9 officer or any officers, IA asserted that, at the time force was used (i.e., deployment of the police dog), the suspect had committed a felony burglary inside the residence (Penal Code 459). In addition, the officer's report documented his determination that the suspect's erratic behavior of masturbating on the front porch while being noncompliant with lawful orders was a violation of Penal Code 148 (delaying or obstructing an officer).

IA asserted that the K9 officer reasonably believed the suspect posed an immediate threat of violence or serious physical injury to officers and citizens. Based on training and experience, the officer documented his knowledge that suspects who commit burglary typically have tools that could be used as weapons (hammers, pry bars, screwdrivers, knives, or other sharp instruments) to break into buildings. According to the officer's report, the porch area and surrounding shrubbery were unsearched and an area in which weapons could have been easily concealed. The officer surmised that if arrest team officers were forced into close proximity with the suspect, the suspect could arm himself with a weapon. The K9 officer also believed the suspect might re-enter the house creating a potential hostage situation because the officer was unaware if the victim was still inside the residence.

IA concluded that the type and degree of force used was objectively reasonable and based upon the facts and circumstances of the situation. According to IA, the investigation proved that the K9 officer's use of force (deployment of the police dog) was justified, lawful, and proper.

IPA's Response to IA's First Investigation & Analysis:

The IPA appealed the exonerated finding on force initially to the IA Unit Commander and subsequently to the Chief of Police. The IPA contended that the IA investigation failed to critically examine whether a reasonable officer would believe that that the suspect, fully naked and masturbating, created an *immediate* threat of violence or serious injury to others such that the use of the police dog was warranted.

Review of the CAD call hardcopy revealed some additional salient facts:

- The RP stated that the naked male believed he had been invited inside (which would negate the specific intent required for a burglary)
- The RP stated that male volunteered to *clean up*
- The male did not touch the RP, threaten the RP and did not carry any weapons
- Twice the RP said all the doors and windows were locked.
- The RP stated he had no roommate
- The RP exited the residence at 00:37:46, no other persons in the residence
- Approximately 2 minutes later (at 00:39:35) the K9 announcements are made
- Approximately 3 minutes later (at 00:42:48), AIR3 states that the male is fighting with K9

The K9 officer's BWC video indicates that radio traffic advised that the RP was out of the residence; that advisement was sufficiently loud to be heard on the K9 officer's BWC video. Four minutes after this advisement, the dog was deployed.

The factors to consider when balancing an arrestee's constitutional rights and the need for use of force include:

1. The severity of the crime at issue

Officers assumed that the suspect had committed a residential burglary. California Penal Code Section 459 defines burglary as the act of entering a building with the intent to steal something. In this encounter, the suspect told the RP that he believed he had been invited to enter and volunteered to *clean up* before he left. He was unarmed and did not touch or threaten the RP.

2. Whether the suspect poses an *immediate* threat to the safety of persons

Merriam-Webster defines *immediate* as: *occurring, acting, or accomplished without loss or interval of time. Immediate* relates to the present instant, the here and now. It does not encompass possibilities that something might occur.

The K9 officer stated that he had a *reasonable belief that the suspect posed an **immediate** threat of violence or serious physical injury to officers based upon his erratic behavior of self-pleasuring himself while fully naked on the porch.*

Although this conduct is undoubtedly alarming and disturbing, we believe that a person self-pleasuring himself while fully naked on a porch does not pose an **immediate** threat of violence or serious injury to other persons. And, the IPA asserts that a reasonable officer would not come to this conclusion. There is no indication that the suspect had a weapon. The RP did not see a weapon. The suspect raised his hands into the air multiple times during the encounter. He raised his hands into the air 34 seconds before the police dog was released and he put his hands on the sidewalk 17 seconds before the police dog was released. None of the 13 officers on scene saw a weapon in the suspect's hands.

The K9 officer surmised that the suspect might access a weapon because *criminals who commit the act of burglary typically have tools that could be used as weapons, such as hammers, pry bars, screwdrivers, knives or other sharp instruments to break into buildings.* The officer's statement may be true if the burglar had been clothed or had a backpack, but its application to fully naked persons is attenuated.

The K9 officer also stated that by releasing his dog, he was preventing a potential hostage situation. His report stated, *communications was still on the phone with the RP trying to obtain more information and to see if we could safely have the RP exit the residence or stay inside.* However, the officer's BWC video indicates that radio traffic advised that the RP was out of the residence and that the advisement was sufficiently loud to be heard on his own video. In addition, the K9 officer's uncertainty about whether the RP remained in the residence is speculative,⁸⁷ it is not **immediate**.

3. Whether the suspect is **actively resisting** arrest or attempting to evade arrest by flight.

The facts show that the suspect was non-compliant, in part, with officers' commands. However, before the police dog was released, the suspect did not move in ways to defeat the officers' attempt at physical control such as bracing, tensing, pulling away. Officers did not touch the suspect and he did not touch them. He was not assaultive, aggressive or combative. He was on his knees with his hands in the air 34 seconds before the dog was released. Seventeen seconds before the dog was released, he put his hands on the sidewalk as directed. According to IA, the suspect assumed a *modified sprinters stance*. Given that he was ordered to place his knees and hands on the sidewalk, it seems likely that the officers directed him to take this stance. Since none of the officers were interviewed, this point remains unresolved. This does not indicate an attempt to evade arrest by fleeing.

In sum, the IPA concluded that the IA investigation was not thorough or complete.

- No SJPD officers were interviewed.
- Discrepancies were resolved in favor of the officer

Chief's Response to IPA's Appeal:

At IPA's request, the Chief provided a response focused on the three elements outlined on the prior pages.

1. **the severity of the crime at issue**

The Chief contended that Residential burglary is a *strike* offense, per California Penal Code section 1192.7(c), which lists *serious or violent felonies*. Furthermore, he noted that there is inherent danger presented by an unknown suspect inside a structure for unknown reasons. In addition, the RP had initially refused to exit the house but then relented. Prior to the dog being deployed, however, Communications advised that the victim had exited the residence. Unfortunately, both the K9 officer and his supervisor missed this transmission. Thus, both these officers were operating under the mistaken assumption that the RP was still inside the residence. The Chief did not explain what efforts the K9 officer and his supervisor made to confirm the location of the resident before deploying the dog.

2. **whether the suspect poses an immediate threat to the safety of persons**

The Chief noted that when the suspect was first discovered by the RP, the suspect was standing naked in the victim's bedroom and acting in a bizarre manner. The officers had no idea how the suspect got there, or what he may have brought with him when he arrived that may have still been inside the house or out on the front porch area. Additionally, if the suspect re-entered the house, he could possibly arm himself with weapons or dangerous household objects contained within. Had the suspect entered the house, the officers would have been justified using the police dog to search for him. Therefore, the Chief did not find persuasive the fact that the suspect was naked at the time of the police dog's deployment.

3. **whether the suspect is actively resisting arrest or attempting to evade arrest by flight.**

The Chief noted that the suspect initially exited the residence and began to comply with the direction given to him by the officers. He then stood up and walked back towards the front door of the residence. The suspect's actions indicated an intent to either enter the victim's residence or to flee in some other direction. The suspect's actions did not indicate an intention to comply with the directions given to him by the officers.

IPA Closure: IPA closed this case as **disagree**. The investigation and analysis were not thorough or complete and thus failed to support an exonerated finding. Both the IA Unit Commander and the Chief's responses relied on assumptions about the involved officers' conduct without interviewing them. We believed that factual discrepancies and inconsistent rationales were improperly resolved in favor of the subject officer.



Complaint: The complainant resides with her one-year-old grandchild and her daughter (the child’s mother). The child’s father resides elsewhere. At the time of this incident, there were no court orders regarding the custody of the one-year-old. The father called SJPd for a civil standby. He wanted to pick up his child and avoid any disturbance with complainant’s family.

Two officers arrived. After speaking with family members and after the mother declined to allow the father to take the child, the officers left. However, the complainant felt the officers were unprofessional during the encounter. Among other things, she felt the officers unduly pressured and intimidated the mother to release the child to the father. Officers were dismissive of the mother’s concern that the father had been placed on two mental health holds in the month prior. Allegedly, officers were rude to members of the extended family who were visiting at Thanksgiving.

IA’s First Investigation & Analysis:

The assigned IA investigator

- Pulled the computer dispatch records
- Reviewed both officers’ BWC video
- No officers were interviewed

The IA Unit’s analysis asserted that when the mother’s brother became verbally abusive, the officers told him to go back into the house. IA noted that the officers did not use profanity with the brother. Similarly, the officer did not direct profane or derogatory language at the complainant or her family. Based on BWC footage, IA asserted that the officer did not intimidate or attempt to intimidate the mother and did not pressure her into giving custody of the child to the father. The officer did state, *you can only imagine that him being the father and him walking away on a holiday without seeing his child is going to fire him up*. Without interviewing the subject officer, the IA investigation asserted that the officer made the comment in overall context which brought into light the totality of situation. IA stated:

Unresolved custody issues are likely to be emotionally charged, especially when a civil standby is requested, and the police are summoned. The [subject] officer recognized the outcome of the civil standby may produce future animosities between the parties. The officer’s comment was targeted and intended to shed light on how future interaction might unfold.

It was puzzling to us how IA ascribed such a cogent explanation to the officer if that officer was never interviewed. Nonetheless, IA closed the COURTESY allegation as UNFOUNDED.

IPA's Response to IA's First Investigation & Analysis:

IPA had concerns about IA's investigation and analysis. IA asserted that the officer was professional during the encounter because he did not use profane or derogatory language. IPA agrees that the officer did not use profane language. However, the IA analysis did not address other aspects of the officer's behavior. When the complainant provided officers with the information about the father's recent mental health holds, it would have been prudent for the officers to check on the father's history rather than insisting that the mother relinquish the child. Instead, the subject officer told both women, *You can only imagine that [the father of the child] walking away without seeing his child is going to fire him up*. The comment was unnecessary, appeared intimidating, and lacked due regard for the mother's anxiety and the child's safety. *Firing up* a person with recent mental health issues is generally ill-advised; here the officer is suggesting to the women that it will be their fault if the father gets *fired-up*.

Without an interview of the complainant or her daughter, the assumptions regarding what comments and gestures were intimidating are speculative. Without interviewing the subject officer, IA determined the rationale that motivated the officer's choice of words. Since motivation is subjective, such conclusions cannot be drawn without input from the officer himself. It appeared all doubts were resolved in favor of the officer which is not objective. The investigation and analysis were incomplete. The IPA recommended that the investigation be re-opened.

IA's Second Investigation & Analysis:

IA re-opened the investigation and attempted to contact the complainant for more detail. She did not respond. IA did not interview the subject officer. IA then concluded, based on the analysis in its initial investigation, that the COURTESY finding would remain UNFOUNDED.

IPA Closure: IPA closed with concerns.



Complaint: The complainant has several children of adult age. She alleged that her adult son was detained and arrested by SJPd. She herself was detained and placed in handcuffs and later moved into the back of a patrol car. The allegations included BIAS-BASED POLICING (RACE), ARREST/DETENTION, and PROCEDURE.

IA's First Investigation & Analysis:

Documents show that officers were dispatched to a disturbance call. The reporting party (RP) said a male was seen pulling a female's hair and trying to hit her. Both the male suspect and the female victim were described as Hispanic, 20-30 years, approximately the same height and weight, both wearing blue jeans.

A passerby told officers that two males were arguing in the middle of the street. Officers found two males in the middle of a street yelling at each other. Officer 7 and Officer 8 separated the males. Complainant (a 50-year-old Hispanic female) was outside trying to persuade her son to

come inside. Officers handcuffed and pat-searched the complainant. For 20 minutes, she sat handcuffed on the street curb. She was then moved to the back of a patrol car where she remained for another 26 minutes.

IA concluded that the officers' conduct was within policy. The IA analysis asserted that because the officers were investigating a possible domestic violence (DV) incident, it was important to separate the parties to prevent further violence and to determine who was the primary aggressor. In addition, placing both the males and the female in handcuffs de-escalated the situation. IA deemed that there was no evidence of BIAS-BASED POLICING.

IPA's Response to IA's First Investigation & Analysis:

Although IA asserted that the officers were investigating a possible DV incident, the facts do not support that assertion. IA stated it was important to determine who was the primary aggressor. The initial reporting party indicated that the male was seen pulling a female's hair and trying to hit her. In the absence of other facts, it appears that the male was the primary aggressor. If the officers were indeed investigating the DV incident, the act of pat-searching and handcuffing the DV victim appeared both insensitive and out-of-policy. IA contended that placing both the male and female in handcuffs de-escalated the situation. It seems unlikely that handcuffing a probable DV victim would de-escalate two males in a verbal argument. And, in this case, handcuffing the complainant in front of her adult son resulted in the immediate escalation in the son's conduct.

A detention is only lawful if the officer has reasonable suspicion that the detainee has engaged in criminal conduct. The detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. While the complainant is sitting on the curb, one officer says, *I have a feeling it was them two [males] fighting against each other and mom stepped in to stop them.* Another officer replies, *Right – when we rolled down the corner – that's what it like was happening.* Yet the complainant remained handcuffed for the next 34 minutes.

The complainant was detained for 46 minutes (19:15 to 20:27). The IPA asserted that the initial detention was improper and the length of the detention was unreasonable. IA's assertion that the officers were investigating a DV incident in which she was involved was not supported by evidence or analysis. There was no reasonable suspicion that she was engaged in criminal activity. The reason for the pat-search was not established.

We asked that the investigation be re-opened and that SEARCH allegations be added. Our particular concern was focused on the officers' pat-search of the complainant.

IA's Rebuttal:

IA did not re-open the investigation. Their rebuttal asserted that complainant matched the description of the DV victim, and thus the officers were justified in detaining her to investigate alleged DV. They handcuffed the males and the complainant to ensure that there was no chance of further violence to the complainant or to the male. In IA's rebuttal, it was asserted that *In this case, at the very least, officers observed an objective manifestation of criminal activity – a fight in public – a violation of CA Penal Code 415(1).*

While the complainant was in the patrol car, an officer said, *We got a call about a man and a woman. The man was pulling her hair, so I don't know what's happening right now.* According to IA this *statement clearly outlined that the officer had not yet dismissed complainant of any wrongdoing.* IA also asserted that the detention was not unreasonably long because the complainant asked for a Spanish speaking officer. In fact, the complainant did not request an interpreter. Officers asked if she spoke English or Spanish; she replied that she spoke Spanish and no English. None of the officers ask for a translator. Twelve minutes later, the primary officer asked, *does anyone speak Spanish?*

IA asserted that the pat-search was justified and within department policy. IA's rationale was multilayered. According to IA, under the definition of police purpose, the officers were investigating a crime of violence. The yelling was an indication that a disturbance was still on-going. It was night-time and the area was illuminated with streetlights. The location has been historically a gang neighborhood. There had been numerous drive-by shootings and homicides in that area. It was clear from the BWC footage that the complainant was wearing a shirt that obscured her waistband. Even though the RP did not see a weapon, that did not mean a weapon could not be hidden on the complainant's person.

IPA's Appeal to the Chief:

The IPA appealed IA's rebuttal to the Chief of Police. Our appeal focused, among other things, on the complainant's detention and the pat-search.

The Detention: In our appeal, we argued that IA's investigation provided no facts to support reasonable suspicion that the complainant had engaged in criminal conduct.

- **Domestic Violence:** The complainant was not asked any questions about domestic violence. She was never asked whether she had been hurt or injured – clearly an important question to ask a potential victim. This lack of questioning casts doubts on any assertion that she was detained based on a DV incident - including the length of that detention.
- **Fighting in Public (Penal Code 415(1):** Similarly, the complainant was not asked if she had challenged anyone to fight or had engaged in public fighting. Neither of the males were asked if the complainant had challenged or engaged in public fighting. None of the witnesses on the sidewalk were asked about who engaged in fighting. This lack of questioning casts doubt on any detention based on 415(1) suspicions - including the length of that detention.

The Pat-Search: In our appeal, we argued that IA's investigation provided no facts to justify officers pat-searching the complainant. The U.S. Supreme Court has provided a two-prong test under which officers may pat-search a person if (1) the underlying detention is valid and (2) the officer has reason to believe he is dealing with an armed and dangerous individual.⁸⁸

- **First Prong:** Given that complainant's detention was invalid, the associated pat-search would be invalid under the first prong.

- **Second Prong:** Regarding the second prong, we asserted that IA failed to show sufficient facts that officers reasonably believed the complainant was armed and dangerous. She did not make furtive movements. Her actions were not threatening – she immediately dropped everything she was holding when officers approached. The IA investigation showed no facts that her clothing bulged in a manner suggesting the presence of a weapon. And we disputed IA’s assertion that the sound of yelling provided evidence that a serious and violent offense was occurring.

Chief’s Response to IPA Appeal:

The Chief agreed with the IPA’s argument on the detention of complainant; the EXONERATED finding was changed to SUSTAINED. The Chief also stated there would be NO FINDINGS on the requested additional pat-search allegation, but that the conduct would be addressed through informal training.

IPA Closure: The IPA closed this case with concerns.



Complaint: In February 2020, an anonymous person made an online complaint with the IPA office alleging that a SJPD officer was working on paid overtime as an electrician on the SJPD’s Department’s command vehicle (CRV). The anonymous complainant claimed the officer was defrauding the taxpayers because he was observed primarily sitting in the CRV on his cellphone and that he submitted excessive overtime at taxpayer expense.

IA’s First Investigation & Analysis:

The IA investigator:

- Interviewed (but did not record) one of the officer’s supervisors
 - Did not review any timecards
 - Did not interview the subject officer

IA initially closed the allegations as UNFOUNDED. The officer’s supervisor said that he was *in charge* of the CRV retrofit project which required extensive work. According to this supervisor, the usual City channels, namely the General Service (GSA) and Fleet Maintenance were unavailable to perform the work. Thus, the subject officer was *assisting* because he had previously worked as a certified electrician with the City of San José. The supervisor asserted that all of the officer’s work was approved by his chain of command.

IPA’s Response to IA’s Initial Investigation & Analysis:

The IPA countered that IA had not provided any documentation of either the work completed and/or the timecards. The investigation of the alleged timecard fraud was incomplete because IA failed, among other things, to determine:

- 1) If SJPD followed proper procedure regarding hiring an electrician,
- 2) If SJPD followed proper procedure regarding pay,⁸⁹
- 3) If an adequate mechanism was used to document the subject officer's work on the CRV, and
- 4) If the Department determined the accuracy of the timecards/quality of the subject officer's work.⁹⁰

IA's Second Investigation and Analysis:

IA re-opened the investigation. The IA investigator:

- Obtained and examined documents
- Interviewed the subject officer
- Re-interviewed the subject officer's supervisor
- Interviewed a witness officer

The witness officer stated that he saw the subject working on the CRV at different times on different days. He observed subject officer sitting inside the CRV on his cell phone *spending a lot of time not doing much work*. When the witness officer advised the subject officer's supervisor of his concerns, he was told that the subject officer was conducting *electrical upgrades to the van*. The witness officer felt a supervisor should *ensure someone was overseeing the hours worked*. He believed that the subject officer's supervisor was assigned to the night shift and unable to monitor all the hours alleged to justify the overtime expenditure. Both the subject officer's supervisor and the witness officer confirmed this conversation occurred in 2018.

After reviewing the IA interviews and the additional documentation, IA closed the sole CONDUCT UNBECOMING AN OFFICER (CUBO) allegation as UNFOUNDED on two grounds:

- (1) **The anonymous Complaint was untimely:** IA stated that the concerns raised by the witness officer in 2018 were similar in nature to the allegations brought forth by the anonymous complainant in February 2020. Government Code section 3304 (also known as the *Police Officers Bill of Rights (POBAR)*) states that officer misconduct must be investigated within one year of the Department's discovery by a person authorize to initiate an investigation of the alleged misconduct. IA asserted that once the witness officer told the subject officer's supervisor about alleged excess overtime, the Department, by extension, also became aware of the misconduct. Thus, any investigation into timecard fraud needed to be completed by 2019.
- (2) **The subject officer performed an exemplary job:** IA stated that the subject officer maintained *constant communication* with his supervisors throughout the project. This *constant communication* allowed for his commanders to stay involved and aware. He documented his overtime on his timesheet as he was instructed and in accordance with City policy. The subject officer utilized his expertise and skill to improve the Department's CRV. IA closed its investigation with the assertion that the evidence showed the alleged fraud did not occur. The finding was UNFOUNDED.

IPA's Response to IA's Second Investigation & Analysis:

- (1) The IPA noted that, per case law, the Department indeed had knowledge of misconduct once the knowledge is shared with a person who can initiate an investigation. The issue was whether the subject officer's supervisor could, by himself, initiate an investigation. Designating persons who can initiate a Department investigation is within the discretion of the Department. The IPA requested that the Department enumerate those persons within the chain of command who are/were authorized to initiate an investigation (e.g., sergeants, lieutenants, captains) so as to avoid confusion in the future as this issue also caused concern in the investigation of a separate complaint. The Department responded that it would not create a Duty Manual section designating a single person or command level with the authority to initiate investigations because the current system is *appropriate and timely*.
- (2) IA asserted that the subject officer properly documented his time and that the amount of overtime for this retrofit project was not excessive. The IPA questioned IA's conclusion based on two factors: (a) questionable documentation, and (b) proper supervision and expertise.

(a) Questionable Documentation

Unfortunately, there was no contemporaneous documentation showing what retrofit work was done and on what dates.⁹¹ The subject officer supplied a hand-written log at his interview. He stated that he listed the entries on page one within a week of the action described. The entries on the remaining pages, dating from 2019, were created *from memory* shortly before his January 2021 interview at IA – approximately two years later. Furthermore, IA failed to critically examine the log. Such examination showed that, for all the dates and conduct listed on page one (created within a week of the action described), there were no corresponding entries on his timesheet for those dates reflecting such work. This creates credibility issues with the hours worked and the approval of those hours, not only for the first page but the following pages created *from memory*.

The subject officer said that he worked on the CRV retrofit using both regular and overtime hours. He did not distinguish the regular hours devoted to the CRV retrofit from other regular hours devoted to law enforcement. He did not have a consistent method for inputting his hours. He referenced photographs on his cell phone (date/time) to confirm the hours he worked on a particular day. His timesheets were approved by different sergeants depending on who he was working for at the time. IA's assertion that *after the review of the timecards, it was apparent that he distinguished the overtime he worked on the command van from other department approved overtime* is not supported by the facts.⁹²

(b) Supervision and Expertise

According to persons interviewed by IA, the subject officer's knowledge of electronics and technology made him a qualified person to assist on the project. Apparently, he also had familiarity with RVs.

However, given the lack of expertise in electrician work or familiarity with RVs held by any of his supervisors, one questions whether anyone possessed the ability to evaluate and approve the retrofit work. Electricians employed by the City of San José are supervised by more experienced electricians with expertise in the scope of work and knowledge of the time and materials needed for various job. Both the electricians and the supervisors keep records that can corroborate their time spent on various projects.

Furthermore, although it appears that the subject officer was chosen due to his expertise as an electrician, many of the tasks he performed on the retrofit did not require electrician skills. Some tasks may have been done more efficiently and effectively by other skilled professionals within the City. Many of these other tasks could have been completed by non-sworn staff on regular time. For example, there are many entries on research, talking to fiscal, and shopping.

PLUMBING	Research plumbing fixtures and toilets, remove old fixtures, sinks, toilets, and all joints due to leaks, shop for toilet and accessories, talk to fiscal regarding purchasing toilet, repair leaks and install new faucets, install new toilet
CHAIRS	Research new chairs for interior, write-up purchase order for new chairs, talk to fiscal regarding purchasing chairs, shop for chairs
TV MOUNT	Design and research overhead TV mount, write up purchase order for TV mount
TECHNOLOGY	research & design interior touchscreen computer & mounting bracket, research & design LaserJet printer options, research & design layout of modems, Meet with R&D for SIM cards for modems, Install SIM cards in modems, research & designed Bluetooth speaker option, install and wire Bluetooth transmitter, write up purchase order for speaker and transmitter
PAINTING	Meeting regarding new paint job designs, coordination with painters and graphics designer, design changes, write up purchase order for paint job, drop off for paint in Newark, pick up from paint in Newark
OTHER	install hooks in bathroom for gun belts, shopping for food for deployments, install feminine product shelf, purchase feminine products
MISC.	Corporate yard visit to pressure wash exterior

For some years, the Department has been understaffed. An SJPD officer's time is very valuable to the City's constituents. Much effort is expended at every step of an officer's hiring, academy training, field training, supervision, and evaluation process to ensure each officer meets expected standards. Officers receive pay commensurate with those standards. Officers working overtime receive 1.5 times their regular pay. It is important for the fiscal standards of the City and the expectation of the community that officers be paid to perform tasks that only sworn officers can

do, such as driving patrol cars, deploying weapons, and making forceable arrests. The IPA has grave concerns that this officer was working as an electrician, a plumber, a chair-purchaser, a paint/design liaison, and a courier picking up/dropping off items – while being paid a salary and overtime paid at time and a half. Although the CRV retrofit project was deemed a success by the Department, it appears the Department does not have a firm grasp on the dollars and time expended on the project. We recommend that overtime should be more closely scrutinized, documented, and supervised.⁹³

For these reasons, the IPA this closed this complaint with concerns.



Complaint: An anonymous complainant reported observing a police officer on top of a prone suspect. The suspect was screaming, *Get off me*, and was *sort of crying*. At the scene were four police vehicles, an ambulance, and a fire truck; a police helicopter was overhead. The complainant was unaware of the underlying incident but believed the suspect may have been unnecessarily injured and the officer utilized unnecessary force.

IA First Investigation & Analysis:

The IA investigation showed that Officer 9 and Officer 10 were assigned as a two-officer vehicle. They saw a person riding his bike without a bike light. The bicyclist crossed over a double solid yellow in the street pavement. The officers activated lights and siren to stop the bicyclist for the two vehicle code violations. The suspect rode away on his bike – a violation of Penal Code section 148 (delaying or refusing to obey the lawful commands of an officer). Officer 9 exited the car and initiated a foot pursuit. Officer 10, driving his police vehicle, followed the suspect and unsuccessfully attempted to block the suspect’s path. Officer 10 then pursued the suspect on foot. The SJPD helicopter supported the event by providing updates on the suspect’s location to officers on the ground. Officer 10 described the location *as dimly lit, a high crime area, and high gang area*. He stated that, *based on his training and experience, the longer this event continued, the higher risk there was for officers being injured and injury to the suspect*. Officer 10 deployed his Taser at the suspect who was riding his bicycle. The Taser was not effective. The suspect continued riding his bike until he collided with a small wall. Officers controlled the suspect with force to effect the arrest.

IA investigated one FORCE allegation against Officer 10 (Taser) and another FORCE allegation against Officer 9 (use of body weight). Since IA staff are precluded from making a SUSTAINED finding, the issue of whether the Taser deployment on a person riding a bicycle was appropriate was sent up the Chain of Command for Findings & Recommendations (F&R). The F&R process concluded that the use of the Taser was within policy.

IPA's Response to IA's First Investigation & Analysis:

The IPA was concerned with the officers' decision to engage in a foot pursuit, at night, on a bicyclist who (1) did not have a front light on his bike and (2) crossed over a double yellow line and then failed to stop when ordered. We believed that it was unclear whether the officers' actions were in accordance with Duty Manual section L 2202.

L 2202 DISCRETIONARY ENFORCEMENT:

The Department must necessarily exercise discretion in the enforcement of laws for the following reasons: the Department has limited resources available, and there are often a number of acceptable and more effective ways of accomplishing the purpose of the law. Officers will take enforcement action whenever the criminal act is or has the potential to endanger the lives, safety, property and well-being of the public.

In our opinion, the officers engaged in a pursuit of a person whose *criminal act* had no *potential to endanger the lives, safety, property and well-being of the public*. Instead, the officers placed themselves and the suspect in a dangerous situation as many foot pursuits result in officers being injured and/or using excessive force on the suspect.

We were also concerned that the Department's Duty Manual fails to indicate under what conditions a Taser may be deployed on a bicyclist. As of the date of the incident, the TASER manual indicated that there is a risk of death or serious injury if the deployment is used on a person who is *operating or riding in or on any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, cart, train, or airplane) conveyance (e.g., escalator, moving walkway, elevator, skateboard, skates or rollerblades) or machinery.*

IPA Closure: The IPA closed with concerns.



Complaint: The complainant stated that he was driving near a vehicle accident where a person drove into a utility box and SJPD officers and the San José Fire Department responded. The complainant alleged that two patrol officers and the fire department were on scene when a third SJPD patrol car came to the scene driving recklessly, almost hitting another car. The complainant alleged that the officer's reckless driving endangered other drivers and was unnecessary since other officers had already responded.

IA's First Investigation & Analysis:

IA came to a finding of EXONERATED with proposed training for the PROCEDURE allegation of reckless driving. IA acknowledged that the officer was driving too fast at 75 mph on a city street

but argued that he was responding to a dangerous vehicle accident. Although other officers were already on scene, the goal of the subject officer was to block traffic to prevent any other vehicles from passing through the accident scene.

IPA’s Response to IA’s First Investigation & Analysis:

Although IA’s rationale may be true in part, the IPA noted that IA had failed to analyze the officer’s conduct against the more relevant Duty Manual sections, namely L 1211 Determining Manner of Response and L 2004 Use of Emergency Lights and Siren.

Duty Manual section L 1211 states that there are only two types of police vehicle response:

(1) Normal Response and (2) Emergency Response.

A Normal Response is any call or assignment which is not an emergency...Department members will obey all traffic laws and consider road traffic conditions when making a “normal response.” Red lights and/or siren are not authorized. (Emphasis added.)

An Emergency Response is any call or assignment which is an emergency and requires a faster police response than would occur if traffic laws were strictly obeyed. Red lights and siren are used...When making an “emergency response,” emergency lights and siren are used to warn other users of the highway and to assist in gaining the right of way. (Emphasis added.)

Officers cannot disobey traffic laws to get to an accident scene more quickly without using lights and sirens. As stated in the Duty Manual sections above, it is very dangerous to drive at 75 mph on a side street without warning other drivers. The officer said that he was not responding Code 3, but this *was*, in fact, a Code 3 response—an incomplete one.

IA’s analysis failed to note that another officer had arrived at the scene earlier had cancelled any other Code 3 responses. Further, Duty Manual section L 1211 states that Code 3 responses require that a sergeant acknowledge an officer’s request to respond Code 3 before that officer initiates the emergency response. Here, the officer did *not* obtain a sergeant’s permission to respond Code 3 but *did* initiate an emergency response without the requisite lights and sirens, creating a danger to other vehicles sharing the road. This conduct does not comply with the Duty Manual. Therefore, an EXONERATED finding was not supported.

IA’s Second Investigation & Analysis:

IA re-opened the investigation and conducted additional analysis. The PROCEDURE allegation for excessive speeding was SUSTAINED through the Findings and Recommendations process (F&R).

IPA Closure: The IPA agreed after further action.



Complaint: This complaint was submitted online. On a Wednesday at approximately 10 pm, the complainant noticed a parking citation and an orange warning notice on her car. Both documents reflected badge #XXX and were dated Thursday, the next day. The citation was for parking on a street for more than 72 hours without movement. The time on the citation was 4 p.m. She disputed the citation and the warning.

IA's First Investigation & Analysis:

IA staff first needed to identify the subject officer. SJPD badge numbers are four digits and the citation in question had only three digits. This process proved time-consuming because officers had improperly logged in/out parking citation books.

Once determining identity, IA interviewed the subject officer. The IPA did not attend the interview. However, the IPA explained to the interviewing sergeant that seemingly mundane issues, such as misdating citations, can reveal bigger issues.⁹⁴ The IPA provided IA an article on just such an incident in 2016. An Asian driver made a complaint against a Massachusetts State Police Trooper who repeated yelled at the driver, *do you speak English?* The driver, who had a medical degree from Harvard and spoke four languages fluently, alleged the trooper was unprofessional. And, the driver noted, the trooper did not put the actual date on the citation; instead, he put the following day as the incident date. This complaint eventually exposed a massive scam of phony tickets and falsified time sheets within the State Police implicating 46 troopers. Eight troopers pled guilty to embezzlement charges. The IPA wanted to be certain that IA focused detailed questioning about the date on the citation.

The subject officer was not in a patrol assignment. Instead, he was a tow hearing officer. During his interview, he acknowledged that he cited the complainant's car. He stated that *neighbors often notified him of vehicles that had been on the street for an extended period of time*. He also believed that he *may have written parking tickets on his street before* but could not remember. IA also interviewed the subject officer's neighbor. The neighbor acknowledged that she told the officer or his wife about those cars parked for an extended period. She stated that the officer *is wonderful about tagging them* [vehicles].

IA investigator requested a list of parking citations issued by the subject officer over the last three years. However, his message request to San José's Department of Transportation went unanswered.

IA concluded that there was insufficient evidence to determine whether the officer violated procedure by citing the vehicle for San José Municipal Code 11.36.220 Storing Vehicles on Streets prior to 72 hours elapsing. If the complainant has parked her vehicle close to midnight on Tuesday, then 72 hours would not have elapsed from the time she parked the vehicle to the time the vehicle was cited on Wednesday. However, the subject officer was very confident that at

least 72 hours had passed. IA found no evidence to corroborate when the car was parked. IA made a finding of NOT SUSTAINED.

IA also determined that there was insufficient evidence to determine whether the officer violated procedure by taking off-duty enforcement action in a neighborhood dispute where there may have been a conflict of interest. IA made a finding of NOT SUSTAINED.

IA determined that there may be sufficient evidence to determine whether the officer violated procedure when he placed the incorrect date on the citation. This allegation was deemed SUSTAINED through the Findings and Recommendation process (F&R).

IPA's Response to IA's First Investigation & Analysis:

The IPA asserted that IA's investigation was not thorough or complete without obtaining a history of citations issued by the subject officer. In our estimation, follow-up with the City's Department of Transportation was imperative.

❖ Car Parked in Excess of 72 hours

IA concluded that there was insufficient evidence to show whether 72 hours had elapsed before the subject officer issued the citation. IA asserted it was unable to corroborate how long the complainant's car had been parked. The IPA asserted that sufficient evidence existed by assessing the credibility of the complainant and the subject officer.

- In his IA interview, the subject officer said that he did an on-view of the car 5 to 7 days before he issued the citation. He explained that he usually notes the presence of the car and then returns the following week if see if the car had moved. He said that he *doesn't wait until the 73rd hour* to cite a car. However, **it would be impossible for the officer to see the car 5 to 7 days before he issued the Wednesday citation because the complainant purchased the car the previous Sunday.**
- The time on the citation and the orange warning sheet was 1600 – 4 p.m. However, in his interview, the subject officer stated that he would not be home at 4 p.m. His timecard for that day reflects he clocked out at 4:30. He put an incorrect date on both the citation and on the orange warning. Badge numbers for SJPD officers contain four digits. The subject officer's badge number is #XXXX; on the citation, he listed is badge number as #XXX. His badge number is illegible on the orange warning, yet all his other entries are legible. **The combination of these six errors could be carelessness, however it could also reflect a desire to be undetected.**
- The officer stated that **he could not tell if the car had moved during the 72 hours and returned to the same position.** He stated that he normally chalks tires when he is working patrol. But he was not working patrol – he was working as a tow hearing officer. No explanation was provided as to why he could not chalk the tire, check valve stem position or simply put a pebble on the tire.

❖ Conflict of interest

IA determined that there was insufficient evidence to determine whether the officer violated procedure by taking off-duty enforcement action in a neighborhood dispute where there may have been a conflict of interest. When asked why he did not affix the orange warning card, wait 72 hours, and then issue a citation, the officer replied, *I was just trying to avoid the tow.*

IA's analysis did not examine whether it is proper for the Department's Tow Hearing Officers to be issuing warnings on or off duty about potential tows and ticketing cars for violating Municipal Code 11.36.220 without a warning.

The problem with the subject officer issuing the warning is that, if the complainant had not moved her car, he would be both the hearing officer and the witness at the tow hearing.⁹⁵ The burden of proof is on the Department to establish that the car had been properly towed.⁹⁶ The officer's testimony would be needed to establish the proper record. That testimony might also entail explaining why a warning and a citation were issued simultaneously which is not standard procedure.

It seems self-evident to the IPA Office that tow hearing officers should not engage in any enforcement actions on or off-duty that could possibly result in a car tow.

IA's Second Investigation & Analysis:

IA re-opened the investigation and obtained citations issued by the subject officer. These citations revealed that the subject officer, while off duty, cited over 20 cars around his neighborhood during the past 1.5 years; in that same period, the officer wrote only one other parking citation that was not in his neighborhood. IA revisited the evidence on the municipal code citation and conflict of interest. Those allegations were forwarded to the Chain of Command; each were deemed SUSTAINED.

IPA Closure: IPA closed this case as agree after further action.



Complaint: While her vehicle was stopped at a red light, the complainant witnessed a police interaction from her vehicle. The incident happened very quickly. The complainant saw an officer stop his patrol car, exit his patrol car, use a loudspeaker, and make contact with a woman in front of a business. The woman had her hands raised. The officer went back to his vehicle and returned with a weapon which the complainant believed was a gun. The officer rushed to the woman and said something. The officer then pulled the woman by her hair and took her to the ground. According to the complainant, the woman did not show any resistance or try to run away from the officer.

IA's First Investigation & Analysis:

The IA investigator

- Interviewed the complainant
- Reviewed the computer dispatch records, the officer's report and BWC video
- The subject officer was not interviewed

According to IA, the investigation showed that the officer was dispatched to a weapons call in front of a medical office. Dispatch advised that a woman was walking in front of the business armed with a knife, calling out an employee's name. When the officer exited the patrol car, he had his firearm pointed at the suspect. The suspect was pacing in front of the location creating a disturbance by yelling and demanding to see her sister who was inside the building. The suspect dropped her bag and put her hands out *airplane style*. The officer informed dispatch that the suspect was not following orders to get on the floor. According to the officer's narrative, the suspect stated, *Just shoot me*. He transitioned to a taser and began yelling commands. The officer told the suspect get *on the f**kin' ground* and walked up with a Taser. The suspect tried to walk toward the front doors of the business. The officer yelled, *get on the f**kin ground*. The officer then pulled the suspect away from the door and did a *hair pull take down* to bring her to the ground. The officer stated that the suspect refused to give him her left hand and instead turned onto her back and raised her right arm and hand towards the officer's face. The officer then struck the suspect once in the face with an open hand strike. The officer said, *don't f**kin' move, b**ch!* The suspect replied, *you are hurting me*. He responded, *good*. The suspect was then handcuffed.

The suspect was a 48-year-old female, 5'1" tall and 115 pounds. The subject officer had 10+ years of experience with SJPD.

Without critical examination and without interviewing the officer, the IA investigator accepted the officer's assertion that his use of force *was due to the suspect's erratic behavior, her refusal to comply with his commands, the suspect's statement to the officer to "Shoot her" and the safety of the occupants in the business*. The FORCE allegation was closed as EXONERATED.

IPA's Response to IA's First Investigation and Analysis:

The IPA was concerned with the analysis and the finding on the FORCE allegation. We also asserted that a COURTESY allegation should be added and investigated.

Duty Manual section L 2608.5 Physical Contact and Body Weapons has a two-prong test:

- (1) Does the suspect present an immediate and credible threat of physical harm to any person?, or
- (2) Is there is an immediate need to use physical force?

Regarding prong #1, the officer documented his belief that the occupants in the building were in danger. In our estimation the IA analysis failed to critically examine the danger posed by the suspect. The complainant indicated that when the suspect had possession of the knife, she did not point it at anyone. The dispatch records [CAD] reflected that the suspect threw the knife into the middle of the road before the subject officer arrived on scene. When the suspect walked up to the

front of the building, there is no indication that she had re-armed herself with the knife. The CAD stated that the suspect did not retrieve the knife that she had thrown into the road. The CAD also reflected that the suspect could not get in through the front of the building per *build design*.

There is a considerable distance between the roadway and the front entrance of the medical building. The IA analysis did not critically examine the officer's assertion that the suspect posed an immediate and credible threat of physical harm to himself. Again, the entries in the CAD supported a conclusion that the suspect was not armed with a knife and could not enter the building when the officer used force. However, since the officer was not interviewed, the evidence on this point was incomplete.

Regarding prong #2, the IA analysis failed to critically examine whether the need to use force was immediate. There was no examination of whether the officer could have delayed going hands-on in order to wait for the arrival of back-up officers and/or to engage in de-escalation tactics. Since the officer was not interviewed about the urgency of the scenario, the evidence on this point was incomplete.

Although IA confirmed that the officer had received Critical Incident Training (CIT), the analysis failed to address the officer's utilization (if any) of that training. There was no discussion of how the officer used de-escalation tactics when approaching this incident with a female experiencing a mental break. Training is a component of the learning process, but carrying that training into practice is the true test of whether such a program is effective. An examination of how the officer used his CIT training and de-escalation tactics was necessary for a complete analysis of the force interaction.⁹⁷

The IPA also asserted that the language used by the officer during the interaction warranted analysis. The officer's profanity and word choices violated Duty Manual C 1308 (COURTESY). We also had concerns that such word choices (1) were not reflective of CIT training (2) were counter to any attempt to de-escalate the situation, and most concerning (3) were not the first complaint in which this subject officer has called a mentally ill woman a *b**ch*.

IA's Second Investigation & Analysis:

IA re-opened its investigation.

- The subject officer was interviewed.

After additional analysis, the IA sent allegations of FORCE and COURTESY up the Chain of Command to the Findings and Recommendation process. The F&R process SUSTAINED both the FORCE and COURTESY allegations and added an additional FORCE allegation which was also SUSTAINED.

IPA Closure: IPA closed this case as agree after further action.



AGREE AT
FIRST
REVIEW

Complaint: The complainant was the parent of a college student who had experienced domestic violence. The grown child had been physically attacked by their partner. A roommate who heard the noise and stopped the attack. Days later, the college student's parent came to visit and called SJPD to take a report. The officers who responded to the call took the victim's statement as well as the complainant's (the parent) statement.

The roommate who was present during the actual attack was not at the home at the time that the officers responded. The victim provided the officers with the contact information for the roommate. The victim wanted to ensure that the roommate would be contacted and that her statement would be included in the police report. The primary officer failed to add the contact information for the roommate to the case and later the case was dismissed by the District Attorney. The complainant alleged that if the primary officer completed the report and included the witness information, the District Attorney may have gone forward criminal prosecution.

IA's First Investigation& Analysis:

The IA investigator:

- Compiled all written documentation
- Reviewed Body-Worn Camera video
- Interviewed the officers who responded to the call.

The allegation of PROCEDURE for an incomplete report was SUSTAINED through the Findings and Recommendation process.

IPA's Response:

The IPA agreed that the officer should have included the information regarding the witness as Domestic Violence cases often hinge upon gathering all available evidence including witness statements. The IPA reviewed all documentation and analysis that IA compiled and felt it was thorough.

IPA Closure: The IPA agreed at first review.



Complaint: On the date of this event, the complainant was unhoused; she was living under a freeway. The complainant had made a call to the Santa Clara Sheriff's Office earlier regarding a similar incident. However, SJPD was called for a separate incident. The complainant alleged that an individual had threatened both to kill her and to set fire to the encampment where she was staying.

Two SJPD officers responded to the call. Both officers reviewed the actions completed by the Sheriff's department but did not follow up with the complainant regarding the threats of violence or arson. Neither officer attempted to obtain from the complainant the details of how the suspect had threatened her. Such action is necessary to ascertain whether the suspect needed to be arrested. Instead, both officers made assumptions regarding the threats and other crimes as described by the complainant and made the decision that nothing was to be done.

IA's First Investigation & Analysis:

Through the Findings and Recommendation (F&R) process, the Department made a finding of SUSTAINED for both officers regarding PROCEDURE allegations. Although neither officer fully ignored their duties, both conducted a lackluster investigation that did not fully comply with the Duty Manual.

IPA's Response: The IPA reviewed all documentation, BWC video and attended the officer interviews. The IPA agreed that both officers had a duty to thoroughly investigate allegations of violence and arson. The IPA agreed with IA's analysis.

IPA Closure: The IPA agreed at first review.
