COUNCIL AGENDA: 06-20-06
ITEM: 8.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Barbara Attard

SUBJECT: **2005 IPA Year End Report**

DATE: June 14, 2006

Enclosed is a copy of the 2005 IPA Year End Report detailing the activities and findings of the Office of the Independent Police Auditor for presentation at the June 20, 2006 City Council Meeting. This report covers the period of January 1 to December 31, 2005.

The report focuses primarily on:

- Comprehensive statistics statistical analysis of 2005 investigation oversight and audits
- An analysis of trends in complaints, complainant and officer demographics, and complaints by council district
- Presentation of two new policy recommendations for Council action:
  - That the SJPD Establish an Expanded Shooting at Vehicles Policy
  - That the SJPD Continue to Train Officers to Wait for Backup, When Practical, in Situations Where There are Reasonable Objective Indicators that the Situation Could Escalate to Violence

The IPA and the Police Chief have met four times to discuss the IPA report and policy recommendations, including a meeting with Mayor Gonzales and two meetings with Assistant City Manager Mark Linder. Chief Davis and I will be available to answer any questions from Mayor Gonzales or members of the City Council.

Respectfully submitted,

BARBARA J. ATTARD
Independent Police Auditor

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

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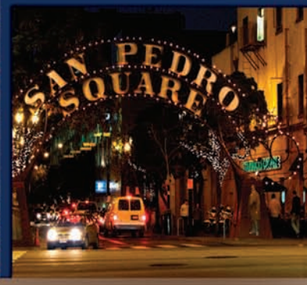
IPA 2005 YEAR END REPORT



2005 IPA YEAR END REPORT

A REPORT TO THE SAN JOSÉ CITY COUNCIL

Barbara J. Attard

Independent Police Auditor

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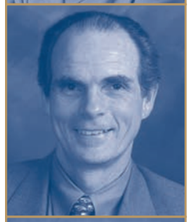

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The IPA logo incorporates one of the most recognized legal symbols, Lady Justice. Lady Justice is blindfolded signifying impartiality. The IPA logo depicts the scales of justice with a badge symbolizing the SJPD on one side and an image symbolizing the people of San Jose on the other. In creating this logo, the IPA envisioned a trademark that would convey the message that it would be the weight of the evidence that would determine the outcome of a complaint. The virtues represented by Lady Justice: fairness, impartiality, without corruption, prejudice, or favor are virtues central to the mission of the IPA office and are the guiding principals by which the IPA seeks to operate.

Teresa Guerrero-Daley, former Independent Police Auditor, designed this logo.

THIS REPORT WAS REPRODUCED AT TAXPAYER'S EXPENSE.

You are welcome to keep this copy if it is useful to you.
If you no longer need this copy, your are encouraged to return it to:

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We maintain an inventory of past audit reports,
and your cooperation will help us save on extra copying costs.

Photograph of San Pedro Street courtesy of Mike McEvoy

Layout and printing by Image X

BARBARA ATTARD
Independent Police Auditor

Office of the Independent Police Auditor

June 9, 2006

Honorable Mayor and Members of the City Council
200 East Santa Clara Street
San José, CA 95113

Dear Mayor Gonzales and Members of the City Council:

Enclosed is the Independent Police Auditor's (IPA) 2005 Year End Report submitted for your approval. This annual report focuses primarily on statistical analysis of complaint data for the 2005 calendar year. In 2005 a total of 429 complaints were filed, a 17% increase over 2004. The report examines complaint classification and findings of Internal Affairs investigations.

Two new policy recommendations are presented: one that the San José Police Department (SJPD) establish an expanded shooting at vehicles policy, and the second that the Department continue to train officers to wait for backup in situations in which there are objective indicators that the situation could escalate to violence. Both recommendations are the result of analysis of officer-involved shooting cases and are being made in an attempt to reduce risks to officers and the community at large in inherently dangerous situations. The report also provides updated information on past recommendations.

It will be an honor to appear before you to provide an overview of this report at the City Council meeting scheduled for June 20, 2006. Chief Davis will be providing a response to this report on the same date.

I would like to acknowledge Mayor Gonzales and the City Council for your continued support of the Office of the Independent Police Auditor and the civilian oversight process. I want to thank the members of the IPA staff for their ongoing support and the major contribution they have made to the development of this report. I want to acknowledge the IPA Advisory Committee for its contribution to the City and the IPA. On behalf of the IPA staff, I would also like to recognize and express appreciation of the San José Police Department, in particular the Internal Affairs Unit, for providing the office with the information needed to prepare this report and their ongoing cooperation.

I welcome your comments and will be available to answer questions or provide further explanations as requested.

Respectfully submitted,

Barbara Attard
Independent Police Auditor

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INDEPENDENT POLICE AUDITOR & STAFF

Photograph courtesy of Erika Holmgren

Barbara Attard, Police Auditor – Ms. Attard was appointed as the Independent Police Auditor in January 2005. She is a licensed private investigator with civilian oversight experience spanning the last 23 years. Ms. Attard served as the director of the office of the Berkeley Police Review Commission for seven years before coming to San José. Her career in oversight began with the San Francisco Office of Citizen Complaints. Ms. Attard's previous professional experience includes working in employment and training with Friends Outside and with the San Francisco Sheriff's Department County Parole program. Ms. Attard earned her Bachelor's degree in Philosophy at Humboldt State University and a Masters in Public Administration at the University of San Francisco. Ms. Attard is the President of the National Association of Civilian Oversight of Law Enforcement (NACOLE).

Steve Wing, Assistant Police Auditor – Mr. Wing has worked with the IPA for the past five years. He joined the IPA with more than twenty-four years experience in community and public services, working as a public interest and legal services attorney and in a variety of management and policy positions with the City of San José. Mr. Wing obtained his Juris Doctor from Santa Clara University and a Bachelor's degree in Criminology from the University of California, Berkeley.

Suzan L. Stauffer, Complaint Examiner – Ms. Stauffer comes to the IPA with more than 20 years of experience working in the criminal justice field. A Bay Area native, Ms. Stauffer earned a Bachelor of Arts degree from Stanford University and a Juris Doctor from the University of San Francisco. She served as a prosecuting attorney in California and Hawaii before coming to the City of San José. In 1993 Ms. Stauffer designed and implemented the award winning Safe Alternatives & Violence Education Program (SAVE) for the City of San José and remains committed to making a difference in the community.

Vivian D. Do, Data Analyst – Ms. Do joined the IPA from the private sector with specialized experience in information technology. Ms. Do enjoys the working environment at the IPA where she can focus her technical skills on computer and technology related needs, including data analysis, database management and desktop publishing. Her skills are an integral part of the process of producing the IPA annual reports. Ms. Do earned a Bachelor of Science degree from San José State University, California.

IPA Staff in 2005

Photo from left to right: Barbara Attard, Steve Wing, Vivian Do, Suzan Stauffer and Sandra Avila.

Sandra Avila, Public & Community Relations – Ms. Avila's role was to promote public awareness citywide about the Office of the Independent Police Auditor by conducting presentations, attending community events and developing partnerships with community organizations. Ms. Avila has returned to her prior position as a Crime Prevention Specialist with the San José Police Department.

Diane M. Doolan, Public Relations & Community Education – Ms. Doolan joined the Office of the IPA in March of 2006. She is the former Director of the Mental Health Advocacy Project and has over ten years of experience working with individuals who have physical, mental and developmental disabilities. Ms. Doolan is a former Vice-President of the California Coalition of Mental Health Patients' Rights Advocates and a former instructor in the Crisis Intervention Training Academy of the San José Police Department. She earned her Juris Doctor in 1998 from the University of California Hastings College of Law. Her Bachelor's degree was obtained in her state of origin, from Southern Connecticut State University.

Mission

The Mission of the Independent Police Auditor Advisory Committee (IPAAC) is to assist the Office of the Independent Police Auditor by providing information on ways to improve the police complaint process, by promoting public awareness of a person's right to file a complaint, and by increasing the accountability of the San José Police Department to the public.

Purpose and Objectives

The purpose of the IPAAC is to identify, mobilize, and coordinate resources in order to assure maximum public, private, agency, and individual commitment to effective police oversight.

The objectives are to:

1. Promote the mission of the IPA, and inform the IPA of the needs, problems, and/or issues that may surface in various communities.
2. Promote high standards of quality police service and civilian oversight in the City of San José.
3. Provide community input to increase the visibility of the IPA through forums, community events, IPA services, and the complaint process.

Participation

Participation is exclusive to those individuals selected by the Independent Police Auditor and who reside, do business, or have significant interest in police oversight for the City of San José or neighboring communities. The IPA convenes meetings of the IPAAC on an average of three (3) times per year.

Independence of the Police Auditor

The Independent Police Auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views of the Police Auditor alone. No person shall attempt to undermine the independence of the Police Auditor in the performance of her duties and responsibilities as set forth in the San José Municipal Code Section 2.06.020.

Independent Police Advisory Committee Members

Yoyi Aglipay-Franco, Filipino American Heritage Appreciation Project, Inc. (1999-2005)

Tony Alexander, Silicon Valley African American Democratic Coalition (1999-2005)

Ahmad Al-Hewel, South Bay Islamic Association (2001-2005)

Robert Bailey, San José Human Rights Commission (2002-2005)

Rick Callender, NAACP (2001-2005)

Bob Dhillon, United Neighborhood of Santa Clara County (1999-2005)

Minh Steven Dovan, Attorney (1999-2005)

Larry Estrada, Santa Clara County La Raza Lawyers (2000-2005)

Nancy S. Freeman, Ph.D., Juvenile Justice Commission (2005)

INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE

IPA Staff and Independent Police Auditor Advisory Committee (IPAAC) Members.
Top row: Diane Doolan, Barbara Attard, Jennifer Tait, Wiggsy Siversten, Jeff Moore and Steve Wing.
Second row: Jeff Dunn, Sundust Martinez,Victor Garza, Merylee Shelton and Bob Dhillon.

Josué García, Santa Clara & San Benito Counties Building Trades Council (2004-2005)

Victor Garza, La Raza Roundtable (1999-2005)

Kenneth D. Lee, Korea IT Network (1999-2005)

Sundust Martinez, Indian Health Center of Santa Clara Valley, Inc., Native Voice TV. (2004-2005)

Sofía Mendoza, Community Child Care Council (1999-2005)

Jeff Moore, Emmanuel Baptist Church (2005)

Helal Omeira, Council on American-Islamic Relations (2001-2005)

Merylee Shelton, San José City College (1999-2005)

Wiggsy Siversten, San José State University (1999-2005)

Patrick J. Soricone, Billy DeFrank Lesbian & Gay Community Center (2004-2005)

Jennifer Tait, Friends Outside National Organization (2004-2005)

Alfredo Villaseñor, Community Child Care Council (2001-2005)

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Chapter One: The Office of the Independent Police Auditor

The importance of civilian oversight of law enforcement is an ongoing discussion in communities across the country. The City of San José has provided oversight of the San José Police Department for the past twelve years through the Office of the Independent Police Auditor (IPA). As San José grows and the population becomes increasingly diverse, a positive relationship between the police and the community remains a priority. Police misconduct is a serious issue that deeply impacts the trust and support the public has in its police department. The IPA, in cooperation with the San José Police Department (SJPD), serves to assure the residents of San José that there is a fair and thorough process available to address community concerns and investigate citizen complaints of police misconduct.

The IPA has five primary functions: (1) to provide an alternate location where people may file complaints, (2) to monitor and audit investigations conducted by the SJPD Internal Affairs Unit (IA), (3) to promote public awareness of the complaint process, (4) to make recommendations to enhance and improve SJPD policies and procedures, and (5) to respond to the scene and review officer-involved shooting investigations.

The IPA prepares reports for the City Council semi-annually, providing statistical analysis of complaints received and closed, analysis of visible trends, and discussions of new and past recommendations. Pursuant to the requirements of San José Municipal Code Section 8.04.010(D), this Year End Report presents the findings for the 2005 calendar year.

In 2005, under the leadership of police auditor Barbara Attard, the office has increased community outreach, conducted audits of more than 90% of closed Internal Affairs investigations, and made several substantive policy recommendations that have been adopted by the police department.

Chapter Two: Policy Recommendations

This year's annual report details two new policy recommendations that resulted from the review of officer-involved shooting incidents.

I. New Recommendation – That the SJPD Establish an Expanded Shooting at Vehicles Policy

Although San José has not experienced an increase in incidents of officers shooting at moving vehicles, there have been three cases since 2003. Agencies in other jurisdictions have recognized the ineffectiveness of shooting at vehicles and the inherent dangers to the public and officers alike. The IPA recommends that the SJPD expand its policy regarding shooting at moving vehicles by emphasizing that officers should move out of the way of the vehicle, when possible. An officer should be allowed to shoot at a moving vehicle only if the officer is unable to move out of the way of the vehicle and the officer has an objectively reasonable belief that it is necessary to defend the life of the officer or another person.

II. New Recommendation –That the SJPD Continue to Train Officers to Wait for Backup, When Practical, in Situations Where There are Reasonable Objective Indicators that the Situation Could Escalate to Violence

In two officer-involved shootings reviewed by the IPA, the officer approached the suspect alone without waiting for backup to arrive. Although the IPA was able to review these cases with the benefit of hindsight, it appeared that there were objective and visible factors indicating that the situation could turn violent. The IPA recommends that the SJPD continue to provide regular training that instructs officers to wait for backup in situations that have the potential for becoming violent.

III. Updates of Prior Recommendations from the 2005 IPA Mid-Year Report

- **Establishment of a TASER Policy**

  Following the City Council's adoption of the IPA policy recommendation that the SJPD establish written guidelines for TASER use, the SJPD established "TASER Usage Guidelines." The guidelines have been disseminated to all officers and have become part of the Department's training curriculum.

- **IPA to be Provided Copies of Homicide Reports for Review in Officer-Involved Shooting Cases**

  The IPA recommendation that the SJPD provide the IPA with copies of homicide reports for IPA review in officer-involved shooting cases was approved by the City Council. The ability to review homicide files in the IPA office will facilitate the ability of the IPA to conduct a more thorough evaluation of the issues in officer-involved shooting cases for policy analysis.

Chapter Three: The Complaint Process and Year End Statistics

This chapter discusses the IPA's involvement in the complaint process, including complaint intake, monitoring the investigation, and auditing completed Internal Affairs (IA) reports. Statistical information about the types of cases received in 2005 by both IA and the IPA, the classification of cases, findings reached by IA, officer discipline, and the audit process, is detailed and analyzed.

In 2005 a total of 429 complaints were filed. This represents a 17% increase over 2004 and a 33% increase over 2003. Review of a span of five years indicates that the number of complaints in 2003 was unusually low, and that an annual complaint level in the 400 range is a more accurate average rate.

Review of the classification of complaints filed in 2005 revealed a change in pattern from previous years. Complaints classified as "inquiries" increased 72%, from 118 in 2004 to 203 in 2005.[1] This increase is of concern to the IPA because in cases classified as inquiries there is minimal or no investigation, officer's names are not documented, and the case is not tracked for disciplinary

[1]For a full discussion of the inquiry issue, see the textbox on page 15.

purposes, early intervention, patterns of misconduct, or *Pitchess* motions for discovery in criminal cases. The IPA conducted a special audit of 187 cases classified as inquiries in 2005 and found that 84 of these cases articulated misconduct issues that should have been investigated and retained in the officer's record. The IPA will continue to review inquiries in the coming year to determine if this is an ongoing issue that warrants further attention.

The IPA monitors the classification and the progress of complaint investigations, and audits the findings and conclusions reached by IA. The IPA audited all unnecessary force cases and 94% of the total number of complaints closed. Of the 136 investigated complaints audited, the IPA concurred with the findings in 101 cases, 82%. Further action was requested on 24 cases before the investigation was closed. The IPA disagreed with the finding in five cases, one of which was appealed to the City Manager. Chapter Three provides a synopsis of the five cases in which the IPA disagreed with the IA findings.

Chapter Four: Use of Force Analysis

This chapter provides information and data concerning complaints alleging that San José police officers used unnecessary force (UF) and information about officer-involved shooting and death in custody cases. There were 70 unnecessary force complaints containing 112 unnecessary force allegations filed in 2005. This represents a 13% increase over the 62 UF complaints filed in 2004 and a 43% increase over the 49 UF complaints filed in 2003.

The IPA audited 45 unnecessary force complaint investigations closed in 2005. Over the past five years combined levels of major and moderate injuries have remained consistently low, 15% of alleged injuries in 2005. Minor and no injuries have accounted for the highest percentage of injury levels with 38, 84%, reported in 2005. The three most common types of unnecessary force alleged resulted from use of hands, contact with the ground, and the use of batons.

In 2005 there were two officer-involved shooting cases and two death in custody cases. The review process for one of the officer-involved shooting cases was completed in early 2006. The IPA found both the homicide and administrative investigation reports for this case to be thorough and objective. The IPA will review investigations of the three pending cases, when completed, to determine if any policy or training recommendations are appropriate.

Chapter Five: Subject Officer Demographics

Various types of statistical data about officers receiving complaints are presented in this chapter. In 2005, 224 of San José's 1,364 police officers were named in complaints. Seventeen female officers were named as subject officers, representing 8% of subject officers, slightly less than their 10% overall representation in the Department.

Officers with two to four years of experience continue to be named in the highest number of complaints when compared to their representation in the Department. Officers in the two to four-year range make up 11% of all officers in the SJPD and accounted for 21% of officers named in complaints filed in 2005. Officers with five to six years of experience comprised 11% of officers named in complaints and represent 7% of officers in the Department.

The data indicate little difference between the ethnic ratio of officers in the SJPD and the percentage of complaints they receive.

Chapter Six: Complainant Demographics

Chapter Six provides a summary of the background of complainants in 2005. Demographic information was requested during complaint intake as well as through the IPA voluntary mail surveys. This year's statistics include information from a larger percentage of complainants than has been available in years past, perhaps providing a more accurate accounting. The data from this sample indicate that Hispanic complainants filed the greatest number of complaints, 129, followed by white complainants, 76, and African American complainants, 45. African American and Hispanic complainants filed complaints at a higher rate than their representation in the San José community.

Chapter Seven: Community Outreach

Outreach to the community is a mandated function of the Office of the Independent Police Auditor. Awareness of the complaint process is critical in raising public confidence in both the police department and the office of the IPA. To maintain an effective community connection, the IPA has made a commitment to reach out to the community and provide face-to-face contact with individuals, groups and organizations. Demonstrating the commitment to provide information about the mission and services of the IPA to young people, the IPA made 11 presentations to San José youth. Through community meetings, neighborhood associations, newspaper articles and media interviews, the IPA reached more than 4,700 people during the year, a 31% increase over 2004.

Highlights of IPA outreach in 2005 include television interviews on cable television's *Local Edition* and *Native Voice TV*, and articles in local newspapers. These appearances generated an increased interest from Latino viewers and other community members who contacted the IPA with questions and concerns.

The Independent Police Auditor Advisory Committee (IPAAC), comprised of 21 members, continues to offer support, advice, and insights as representatives of San José's diverse community.

The San José IPA, now in its twelfth year, continues to receive national and international recognition. In 2005, Barbara Attard was invited to present the San José model of oversight at the National Conference for Civilian Oversight of Law Enforcement (NACOLE) in Miami, Florida. She was also selected to present comparative models of oversight as the United State's representative to a United Nation's Development Program conference in Brazil.

Chapter Eight: Cases By Council District

This chapter provides a presentation of complaints and allegations by the council district in which they occurred. As in prior years, statistics indicate that the largest numbers of complaints are filed in Council District 3, which includes the downtown area. This chapter also provides information on the breakdown of unnecessary force complaints as well as the numbers of more general citizen inquiries and contacts.

Conclusion

2005 was the first year under the leadership of IPA Barbara Attard. While maintaining the high quality of services provided by the office, the IPA also increased community outreach and received a greater percentage of intake complaint calls than were received in the past five years.

Two IPA mid-year policy recommendations regarding TASER use by SJPD officers and improved access to homicide reports were approved by the City Council. This report sets forth two new recommendations, one regarding shooting at moving vehicles, the other a recommendation for continuing training regarding officers waiting for backup in potentially violent situations.

The IPA identified an increase in citizen complaints being classified as inquiries that has prompted a dialog with IA about case classification and issues that will be studied and addressed in future reports.

Civilian oversight of local law enforcement by the IPA is an extremely valuable service to the community and is best achieved through both cooperation with the San José Police Department and collaboration with members of the larger community.

Chapter One

I. IPA 2005: New IPA Continues the Tradition

The Office of the Independent Police Auditor (IPA) was established more than twelve years ago by the San José City Council. The Council reviewed information and heard testimony from community members, professionals in oversight, activists, and law enforcement before establishing the auditor model of oversight to reach out to the diverse San José community and to help enhance police/community relations.

In 2005 Barbara Attard, a long-time oversight practitioner, was appointed as the new Independent Police Auditor. With several staffing changes, a new IPA team was established. A training program was developed for new employees, and the work of the IPA resumed with the enthusiasm of new employees and the dedication of the established staff. Continuing the tradition of the Office of the Independent Police Auditor, in 2005 the IPA increased outreach over the previous year, conducted audits of more than 90% of the closed Internal Affairs (IA) cases, and made substantive policy recommendations.

This year-end report covers primarily the period of January 1, to December 31, 2005.

II. Establishment of the Office of the Independent Police Auditor

The San José City Council passed the ordinance to establish the Office of the Independent Police Auditor in 1993. The IPA was created to provide civilian oversight of the citizen complaint process and to make policy recommendations to the San José Police Department (SJPD). In response to a grassroots effort to establish oversight in San José, and increased awareness following the Rodney King incident, the City Council took a unique approach to oversight and established the Office of the Independent Police Auditor.

In 1996, San José residents voted to amend the City Charter to make the IPA a permanent branch of city government.
The change to the City Charter also directed the City Council to appoint the Police Auditor to serve four-year terms and established that the removal of the Police Auditor, midterm, requires a vote of at least ten of the eleven City Council

members. See **Appendix A** for the complete San José Charter Section 809. In the last few years the IPA has gained the authority to respond to and review investigations of officer-involved shootings, some of the most serious incidents that involve police officers.

III. Independence of the Police Auditor

The IPA is established as an independent body as set forth in Title 8 of the San José Municipal Code, Section 8.04.020, A and B:

- The Police Auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views of the Police Auditor alone.
- No person shall attempt to undermine the independence of the Police Auditor in the performance of the duties and responsibilities set forth in Section 8.04.010.

See **Appendix A** for the complete San José Municipal Code, Section 8.04.

IV. Reporting Requirements

The IPA reports are prepared on a semi-annual basis pursuant to the requirements of the San José Municipal Code Section 8.04.010 (D). This section states that the report of the IPA shall:

- Include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken.
- Analyze trends and patterns.
- Make policy recommendations.

V. Functions of the Independent Police Auditor

The mission of the IPA is to provide independent review of the citizen complaint process, thereby ensuring increased accountability by the San José Police Department. The primary functions of the IPA are:

- To serve as an alternative location to file a complaint against a San José police officer;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct community outreach and provide information about the services the office provides to the community;
- To make recommendations to enhance and improve policies and procedures of the SJPD;
- To respond to the scene of and review officer-involved shooting investigations.

The following two new policy recommendations resulted from reviews of officer-involved shooting incidents that occurred in 2004, with related investigations and Shooting Review Panels completed in 2005.

New Recommendation – That the SJPD Establish an Expanded Shooting at Vehicles Policy

During the past several years many major law enforcement agencies have recognized the ineffectiveness and inherent dangers to the public and officers themselves created by shooting at moving vehicles. Many departments have adopted stricter policies that either ban such shootings or more narrowly define the circumstances under which shooting at vehicles would be within policy.[2] The more restrictive policies against shooting at vehicles emphasize that an officer's first response should be to get out of the way of the vehicle. Officers are informed that experience has proven that bullets are unlikely to stop moving vehicles, and that vehicles driven by incapacitated drivers may crash and cause injuries to officers or other innocent persons.

Although San José has not experienced a significant increase in incidents involving officers shooting at moving vehicles, there have been three cases since 2003. One case is particularly troubling because it could have caused a greater tragedy. After being shot by an officer, the driver sped away from a residential neighborhood, reaching estimated speeds of 50 to 60 miles per hour, before finally losing consciousness and crashing into a tree on a major street about a half-mile from the scene of the shooting.

The existing SJPD policy regarding shooting at moving vehicles is contained in section L2641 of the SJPD Duty Manual. It states: "*Firearms will not be discharged under the following circumstances: … At moving or fleeing vehicles involved in violations of the Vehicle Code (including felony violations such as 2001, 10851, 23105) unless necessary to defend the life of the officer or another person.*"

[2] Other cities reviewed by the IPA that have established more restrictive shooting at vehicles policies include: Los Angeles, CA; San Francisco, CA; San Diego, CA; Seattle, WA; Philadelphia, PA; Cleveland, OH; Boston, MA; and Washington, D.C.

The IPA recommends that the SJPD establish a policy advising officers that shooting at moving vehicles is dangerous, to be avoided, and generally ineffective, and that the moving vehicle itself shall not presumptively be considered a deadly weapon. Officers should be instructed to move out of the path of the vehicle and refrain from discharging a firearm at the vehicle unless there is no reasonable or apparent means of escape. The policy should continue to allow officers discretion to shoot at moving vehicles only if the officer had an objectively reasonable belief that it was necessary to defend the life of the officer or another, within the above stated parameters.

The intent of this policy is to raise the standard that determines when an officer would be justified in shooting at a moving vehicle. The recommended policy would direct officers to first move out of the way of an oncoming vehicle and reinforce to them that shooting at the vehicle may actually increase the risk of death or injury to officers as well as the subject and members of the public at large. Such a policy would better serve San José police officers, and the larger San José community, by encouraging the officers to remove themselves from dangerous situations involving approaching vehicles, and reduce or eliminate the possibility of injured drivers losing control of the vehicle.

New Recommendation – That the SJPD Continue to Train Officers to Wait for Backup, When Practical, in Situations Where There are Reasonable Objective Indicators that the Situation Could Escalate to Violence

The IPA recognizes that officers deal with a myriad of field situations on a daily basis. In certain situations, assessments and decisions on how to proceed have to be made in a rapid manner. Officers do not have the benefit of hours of analysis and 20/20 hindsight. It is important to note, however, that review of two officer-involved shooting incidents in 2005 revealed there were indictors the situations had the potential to escalate into violence. In both of these cases, the subject officers did not have backup during the initial contact with the suspects. The IPA recommends that officers continue to receive regular training to identify and evaluate risk factors when approaching a situation and that they be encouraged to wait for backup, when practical, in situations where there are reasonable objective indicators that the situation could escalate to violence.

Updates of Prior Recommendations from the IPA 2005 Mid-Year Report

Establishment of a TASER Policy

In the 2005 Mid-Year Report the IPA recommended that the SJPD establish written TASER guidelines. The recommendation was adopted by the City Council. The SJPD and the IPA agreed that the "TASER Usage Guidelines," issued as a Training Bulletin, provide appropriate guidance to officers for TASER use. The guidelines have been issued to officers and are now part of the training curriculum. Officers will be held as accountable to the training guidelines as they are to policies in the Duty Manual.

IPA to be Provided Copies of Homicide Reports for Review in Officer-Involved Shooting Cases

A second recommendation made by the IPA in the 2005 Mid-Year Report, and adopted by the City Council, was that the SJPD provide the IPA with copies of homicide reports for IPA review in officer-involved shooting cases. The SJPD and the IPA agreed that as with all police records, the IPA will ensure that the homicide file will be reviewed only by confidential IPA staff. The IPA has agreed that no copies of the homicide file will be made and original reports will be returned to the Department after all analysis is completed.

Chapter Three

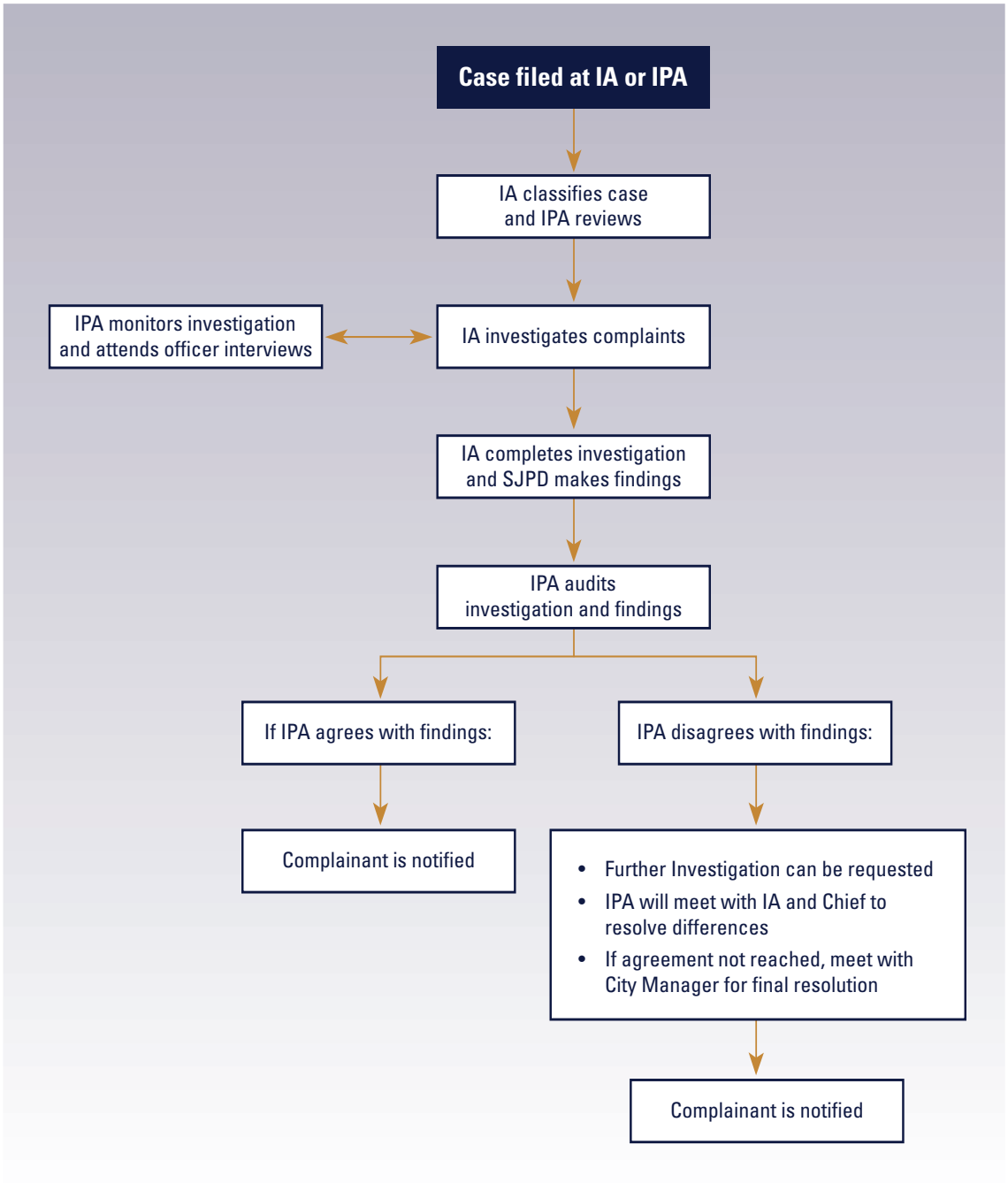


Illustration 3-A: The Complaint Process

CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

This section discusses the IPA's involvement in the complaint process, including complaint intake, monitoring of the investigation, and auditing completed Internal Affairs (IA) reports. Statistical information about the types of cases received in 2005 by both IA and the IPA, the classification of cases, findings reached by IA, officer discipline, and the audit process, is detailed and analyzed.

I. Oversight of the Complaint Process

Prior to the establishment of the IPA, complaints against San José police officers were reported exclusively to officers assigned to IA. Since 1993 the IPA has offered an alternative non-police venue for filing complaints and has provided independent review of misconduct complaint investigations to ensure timely, objective, and thorough investigations by IA investigators.

The IPA follows a specific process mandated by the San José Municipal Code and California Penal Code §832.5 and §832.7[3] that provide procedures for investigation of citizen complaints.

Complaints go through three phases in the IPA office: the intake process, monitoring the investigation, and the audit of the completed investigation. The flowchart presented in **Illustration 3-A** provides a graphic representation of the main steps involved in the complaint process after a person contacts either the IPA or IA to file a complaint.

A. Filing Complaints

Members of the public may report their complaints of suspected police misconduct to the IPA or IA via mail, telephone, facsimile, e-mail, or in person. The intake officer at either the IPA or IA interviews the complainant about the nature of the complaint. With the complainant's consent, interviews are recorded to ensure accurate documentation of the information provided by the complainant.

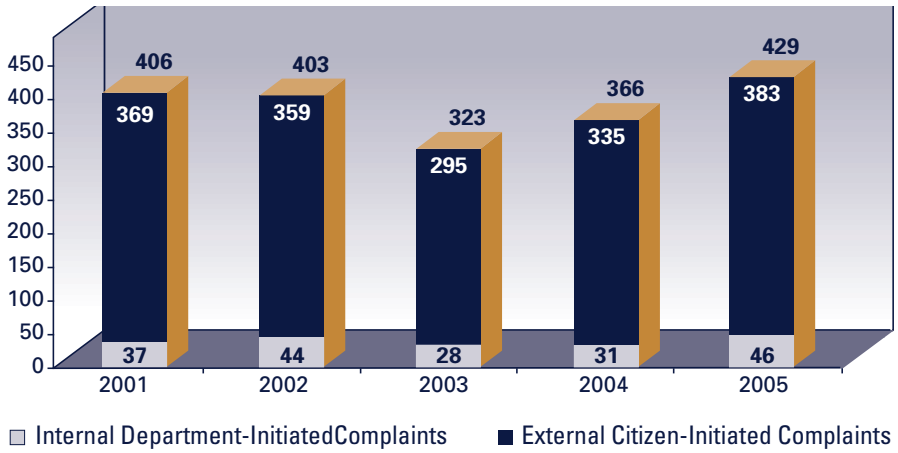
Intake officers explain the complaint process and provide documents to complete and sign to initiate the complaint investigation and the audit process. If the interview was not conducted in person the documents are mailed. Cases received by the IPA are forwarded to IA for investigation.

Complaint Confidentiality

California Penal Code §832.7 (Appendix B) deems complaints of police misconduct and complaint investigations confidential as they may be considered part of an officer's personnel file. Governed by this law, the IPA is limited in the information that it can reveal to a complainant or the public about investigated cases. The statistical analysis provided in this report must be in a form that will not disclose the identities of the parties involved.

[3] Full Text of San José Municipal Code §8.04.010 is included in **Appendix A** and California Penal Code §832.5 and §832.7 are included in **Appendix B**.

Illustration 3-B: Five-Year Overview of Total Complaints Received



Complaints Received—Internal and External

All complaints from members of the public that involve a San José officer are registered and documented in a shared IA/IPA database. Complaints from members of the public are "external" complaints; IA also investigates police department-initiated "internal" complaints. As indicated in **Illustrations 3-B** and **3-C**, in 2005, 429 total complaints were filed, a combination of internally generated and external complaints. This represents a 17% increase over the total 366 complaints filed last year, and a 33% increase since 2003. Review of a span of five-years indicates that the number of complaints received in 2003 was unusually low, and that a complaint level in the 400 range is a more accurate average rate.

Illustration 3-C: Five-Year Overview of Type of Complaints Received

TYPE OF COMPLAINTS	2001	2002	2003	2004	2005
Formal: Citizen-Initiated Complaints	106	97	86	111	106
Formal: Department-Initiated Complaints	37	44	28	31	46
Informal: Command Review Complaints	49	41	39	29	7
Procedural Complaints	57	49	27	32	42
Policy Complaints	9	1	1	7	2
No Boland/Withdrawn	30	43	29	38	23
Inquiry	118	128	113	118	203
Total Complaints Filed	**406**	**403**	**323**	**366**	**429**

Intake: IA and IPA

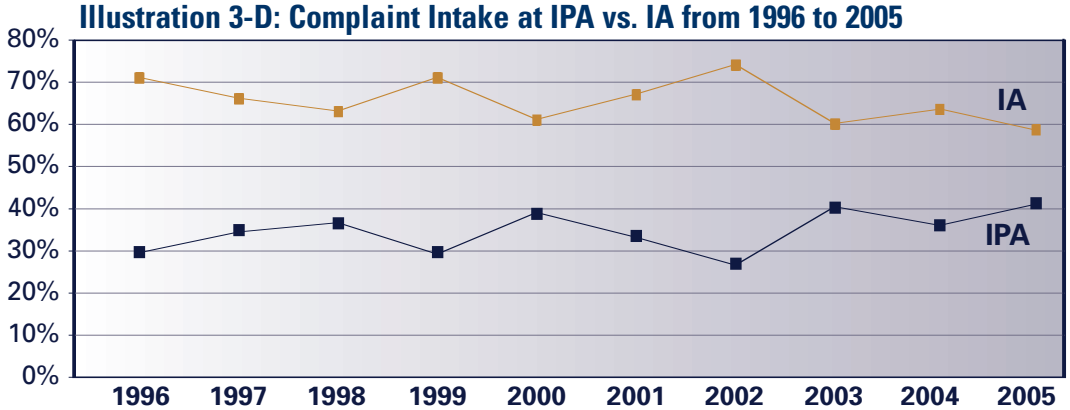
In 2004, the SJPD invested in a new complaint database program that allows better tracking of issues and officer's misconduct records. The SJPD IA database is shared with the IPA allowing both offices access to immediate, real time information regarding complaints and other types of citizen inquiries.

In 2005, approximately 42% of the complaints and contacts received from civilians, 185 of 441, were filed at the IPA office. As shown in **Illustration 3-D**, this 2005 level of intake marks the highest percentage of complaints received at the IPA office in the past 10 years. The tracking of intake levels at the IPA is important as a measure of gauging the effectiveness of outreach efforts and community awareness of, and confidence in, the IPA.

Police Contacts

Allegations of police misconduct should be considered with the understanding that most San José police officers successfully resolve situations with no issues of complaint. In 2005, members of the SJPD handled 393,196 calls for service from the public. These contacts ranged from responding to life threatening situations, to issuing traffic citations, to responding to false alarms. Of all the citizen-to-police contacts in 2005, just over 31,062, 7.9%, involved making an arrest or issuing a criminal citation. This is consistent with the overall low crime rate in San José.

Illustration 3-D: Complaint Intake at IPA vs. IA from 1996 to 2005



	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
IA Intake	71%	66%	63%	71%	61%	67%	74%	60%	64%	58%
IPA Intake	29%	34%	37%	29%	39%	33%	26%	40%	36%	42%

The Rise in Cases Classified as Inquiries—An Analysis of Potential Impacts

During the review of cases filed in 2005, a pattern of change in case classifications was apparent. Citizen complaints classified as "inquires" had increased 72%, from 118 in 2004 to 203 in 2005. The SJPD defines an inquiry as: "*…a complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated.*" In cases classified as inquiries there is minimal or no investigation, officer's names are not documented, and the case is not tracked for disciplinary purposes, early intervention, patterns of misconduct, or *Pitchess* motions for discovery in criminal cases.

In order to determine whether the inquiry classification was appropriate, the IPA reviewed 187 closed inquiry cases from 2005 and disagreed with the inquiry classification in 84 cases. Based on review of the information available in the intake summaries, the inquiry cases were divided into three groups:

> Group 1: Complaints with summaries that contained misconduct allegations that justified an investigation, and if sustained would justify discipline;
>
> Group 2: Complaints that met the Department's definition of an inquiry case and were properly classified; and
>
> Group 3: Complaints with intake summaries that contained insufficient information to determine the nature or extent of the misconduct reported.

Determination of the Inquiry Review:

Group 1: 84 complaints articulated misconduct issues that should have been investigated and retained in the officer's record. Because they were classified as inquiries limited, if any, investigation was conducted and the officer's name was removed from the complaint.

Group 2: 71 complaints met the Department's definition of an inquiry, alleging minor misconduct or procedural issues that were addressed to the satisfaction of the complainant at the time of intake, and did not warrant more extensive investigation.

Group 3: 32 complaints contained incomplete intake summaries. Based on the information provided it was not possible to determine what misconduct was being alleged, and whether there were issues to be investigated.

In 2005, 203 complaints were classified as inquiries by both the IA and the IPA; at year's end, 187 had been closed. Of the 187 closed inquiries, 84 did not meet the Department's definition of an inquiry. These complaints were not fully investigated and officer identification was not documented, making it impossible to track the cases for patterns of misconduct or early intervention.

Ongoing Monitoring

Because such a large number of the inquiry cases contained misconduct issues that should be tracked, the IPA will continue to monitor this issue. Cases that do not fall within the inquiry guidelines should be classified as formal/informal complaints, investigated, and appropriately tracked with officers identified. The IPA will continue to review inquiries in the coming year to determine if this is an ongoing issue that warrants further attention.

Types of Allegations Received

The new complaint database has enabled the IPA to specifically track all types of allegations received in the last two years. Previously only allegations of unnecessary/excessive force were specifically examined. In 2005, IA and the IPA began recording allegations in inquiries as well, making more complete analysis of inquiries possible. In this and future reports, comparative data regarding all types of allegations received and closed will be included and analyzed.

In 2005, 429 complaints containing 735 allegations were received. Of the 383 external/citizen-initiated complaints, 203 complaints containing 246 allegations were classified as inquiries.[4] A single complaint may include multiple allegations. See **Illustration 3-E** for delineations of allegations received. Of the 429 cases received, the three types of allegations most frequently reported in 2005 were:

- Improper procedure was the allegation most often cited in both 2004 and 2005 in all cases. In cases classified as complaints, improper procedure allegations decreased slightly in 2005, 154 allegations received, down from 163 filed in 2004. There were 102 improper procedure allegations in cases classified as inquiries in 2005.
- Unnecessary force allegations in cases classified as complaints increased slightly to 112 allegations, 23% of allegations filed in 2005, up from 98 allegations, 18% of all allegations filed in 2004. There were 13 unnecessary force allegations in cases classified as inquiries in 2005.
- Rude conduct allegations decreased by over 50% in 2005 in cases classified as complaints, from 135 allegations in 2004 to 64 allegations filed in 2005. In 2005, 58 rude conduct allegations were recorded in cases classified as inquiries.

Other types of allegations in cases classified as complaints were reported at a much lower level, comprising 8% or less of the allegations filed, as delineated in **Illustration 3-E.**

Illustration 3-E: Types of Allegations Received in Formal/Informal Cases and Inquiries

ALLEGATIONS RECEIVED FORMAL/INFORMAL CASES	2004 #	2004 %	2005 #	2005 %
Improper Procedure	163	30%	154	31%
Unnecessary Force	98	18%	112	23%
Rude Conduct	135	25%	64	13%
Unlawful Arrest	31	6%	37	8%
Unlawful Search	13	2%	33	7%
Unofficer-like Conduct	14	3%	27	6%
Missing/Damaged Property	15	3%	18	4%
Failure to Take Action	10	2%	17	3%
Racial Profiling	9	2%	10	2%
Discrimination	7	1%	7	1%
Excessive Police Service	3	1%	6	1%
Harassment	2	0%	4	1%
Policy/Procedural	5	1%	0	0%
Delayed/Slow in Response	0	0%	0	0%
Inquiry (Unclassified)	36	7%	0	0%
Total Allegations	**541**	**100%**	**489**	**100%**

ALLEGATIONS RECEIVED INQUIRIES	2005 #	2005 %
Improper Procedure	102	41%
Unnecessary Force	13	5%
Rude Conduct	58	24%
Unlawful Arrest	13	5%
Unlawful Search	7	3%
Unofficer-like Conduct	3	1%
Missing/Damaged Property	5	2%
Failure to Take Action	10	4%
Racial Profiling	2	1%
Discrimination	2	1%
Excessive Police Service	4	2%
Harassment	5	2%
Policy/Procedural	0	0%
Delayed/Slow in Response	2	1%
Inquiry (Unclassified)	20	8%
Total Allegations	**246**	**100%**

[4] See the text box on page 15 for a complete analysis of the statistics and impact of inquiry cases.

Misconduct Allegations

Allegation types recorded in formal complaints:

Discrimination (D) allegation arises when an officer provides differential or unfair treatment to a person or group on the basis of their race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

Delayed/Slow Response (DR) allegation arises when there is an unreasonably slow or delayed response to a call for service.

Harassment (H) allegation arises when an officer harasses a person either physically, verbally or by gesture on the basis of race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, medical condition, or disability.

Excessive Police Service (ES) allegation arises where a citizen alleges excessive, recurring contacts by a police officer or by multiple police officers.

Failure To Take Action (FA) allegation involves no police service given to the citizen.

Improper Procedure (IP) allegation involves a violation of City policy or of a regulation in the San José Police Department Duty Manual.

Missing/Damaged Property (MDP) allegation is used to report incidents of missing or damaged property.

Rude Conduct (RC) allegation is abusive behavior or language, threats, profanity, and poor attitude while on duty.

Unlawful Arrest (UA) allegation is an arrest that is not legally conducted.

Unofficer like Conduct (UC) allegation refers to conduct either on or off duty which adversely reflects upon the police department, i.e. violations of the law, drug or alcohol use, misuse of City property, gratuities, bribes or abuse of authority.

Unnecessary Force (UF) allegation is when the level of force used on the citizen is excessive or improper.

Unlawful Search (US) allegation is an improper or illegal search.

Racial Profiling (RP) allegation indicates that an officer initiates a contact solely based on the race of the person contacted.

B. Monitoring Ongoing Investigations

The IPA monitors the classification and the progress of all complaint investigations from members of the public. Providing a quality control measure, this process enables the IPA to assess the objectivity and thoroughness of the investigation, the fairness of the interview process, the collection of physical evidence, and the strategy and tactics employed by the investigator.

When monitoring a case the IPA may: review documents, attend officer interviews, request investigations, conduct or request further interviews, examine the location where the complaint originated, and maintain contact with complainants. This process ensures that all information is examined and documented promptly, completely and accurately.

Classification of Complaints:

After a case is received, IA determines whether or not an investigation is warranted and the appropriate level of investigation. Cases are classified depending on the seriousness of the case and the most appropriate method of investigation. The IPA reviews the classification of the case in the early stages of the investigation and during the audit process.

Illustrations 3-F and **3-G** present an overview of the types of complaints that have been filed. As discussed above, the total number of complaints has increased over the last two years. There was an increase of 14% in complaints from the public, from 335 in 2004 to 383 in 2005. The largest increase in a specific complaint classification in 2005 was in inquiries, which rose from 118 in 2004 to 203 in 2005, 53% of all cases received from the public. A full analysis of the impact of the rise in inquiry cases is provided in the text box on page 15.

A related change in 2005 was the sharp decrease of 76% in cases classified as command review complaints, from 29 in 2004 to seven in 2005. Command review cases are typically rude conduct cases that are brought to the attention of the officer's chain of command, and require that the officer participate in a meeting with a supervisor and the IA commander. As discussed above, in 2005 over 50% of the rude conduct cases were classified as inquiries. As inquiries, the officers names were not tracked, and often the misconduct did not receive supervisory review or accountability through the chain of command.

There was also a 48% rise, from 31 to 46, in internal department-initiated cases in 2005.

Illustration 3-F: External Complaints Filed

EXTERNAL COMPLAINTS	2004 IPA	2004 IA	2004 Total	2005 IPA	2005 IA	2005 Total
Formal: Citizen Initiated Complaints	33	78	111	44	62	106
Informal: Command Review Complaints	9	20	29	3	4	7
Procedural Complaints	9	23	32	21	21	42
Policy Complaints	2	5	7	1	1	2
No Boland	11	7	18	5	7	12
Withdrawn	9	11	20	7	4	11
Inquiry	37	81	118	65	138	203
Total Complaints Filed	**110**	**225**	**335**	**146**	**237**	**383**
Citizen Contacts (Not complaints vs. SJPD)	21	9	30	39	19	58

Illustration 3-G: Internal Complaints Filed

INTERNAL COMPLAINTS	2004	2005
Department Initiated	31	46
Total	**31**	**46**

Classification of Complaints/Contacts

COMPLAINT DEFINED: A complaint is an expressed dissatisfaction with SJPD, which relates to Department operations, personnel conduct, or unlawful acts. A complaint involves an administrative investigative process which can result in discipline by the SJPD. The complaint process must not be confused with criminal charges which are filed by the District Attorney's office, or the claim process which is handled by the City Attorney. There are seven classifications of complaints used by the SJPD:

1. Formal Complaint: After the initial investigation by the intake officer, IA determines that the facts of the allegations, if proven, would amount to a violation of the law or of Department policies, procedures, rules or regulations.

- **External Civilian/Citizen-Initiated** (CI): Complaint initiated by a member of the public alleging misconduct by an SJPD officer.
- **Internal Department-Initiated** (DI): Complaint initiated by the Chief of Police alleging a serious violation of Department policy or a violation of law by an officer.

2. Command Review (CR) Complaint involves allegations of minor transgressions on the part of a subject officer, which may be handled informally by bringing the matter to the attention of the officer's chain of command. (Typically a rude conduct complaint.)

3. Procedural (PR) Complaint is defined in two ways:

- After the initial investigation by the Intake Officer, the Department determines the subject officer acted reasonably and within policy and procedure given the specific circumstances and facts of the incident, and there is no factual basis to support the misconduct allegation.
- The allegation is a dispute of fact wherein there is no independent information, evidence or witnesses available to support the complaint and another judicial entity is available to process the concerns of the complainant.

4. Policy (PO) Complaint pertains to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid. These complaints do not focus on the conduct of the officer but on the policy or law with which the complainant disagrees.

5. Inquiry (IQ) refers to a complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. Officer's names are not tracked in cases classified as inquiries.

6. No Boland (NB) complaints are closed within 30 days from the date the case was received due to the complainant failing to sign the Boland Admonishment. California Penal Code §148.6 requires that complainants sign a Boland Admonishment form informing them that they can be prosecuted for a misdemeanor violation if they knowingly file a false complaint. *Due to a U.S. Supreme Court decision in May 2006, complainants will no longer be asked to sign the Boland Admonishment.*

7. Citizen Contacts (CC) are communications involving issues that are not misconduct against a San José police officer. Complainants are referred to the appropriate agency to handle their concerns or are offered help to deal with bureaucratic procedural issues, i.e. tow hearings and property issues, etc.

The Audit Process: A Multi-Faceted Examination for Quality Control

Auditing by the IPA is the final step in the processing of a complaint, and is conducted prior to notifying the complainant or the subject officer of the findings. Audits involve a critical examination and analysis of the circumstances that led to the misconduct complaint, and evaluation of the quality of the investigation. The audit process is the community's assurance that complaints are taken seriously and examined thoroughly, impartially, and without preconceived conclusions.

The IPA also monitors the classification of complaints both at the intake stage and during the audit process. Classification is an important management tool that allows IA to distribute the workload and invest staff time in more serious cases. The IPA reviews the classification of complaints to ensure that cases are properly classified and that the investigation level is commensurate with the seriousness of the issues raised in the complaint. Improper classification of cases could undermine the effectiveness of the complaint process.

Upon completion of an investigation of a complaint by IA, a copy of the investigative report is sent to the IPA for audit. The audit review includes a thorough examination of all documents and may involve listening to recorded interviews and contacting witnesses to verify information or ask further questions.

The audit determines whether the case should be closed as indicated by IA or whether additional investigation or analysis should be requested. Audits are documented in an internal IPA database for statistical purposes.

C. Auditing Complaints

The IPA is mandated to audit all excessive/unnecessary force complaints and 20% of all other complaints. The IPA has historically expanded the number of audits conducted beyond its mandate, and has audited over 90% of the external civilian complaint investigations completed by IA. In 2005, the IPA conducted audits of approximately 94% of the total number of complaints closed, including inquiries.[5] In 2005, IA completed 359 complaint investigations, 322 external complaints and 37 internal police-generated complaints. Because audits are completed after cases are closed, and may involve ongoing discussions with SJPD, audited cases may not reflect the actual cases closed in any calendar year. The IPA conducted audits of 116 investigated cases and 187 inquiries. **Illustrations 3-H** and **3-I** detail the types of cases closed and audited.

Internal police-generated complaints are reviewed and are audited if there is a "citizen nexus" that links the case to a citizen complainant. Cases closed as "No Boland" or withdrawn are also reviewed. In these cases the IPA has the authority to contact complainants to confirm their interest in terminating the investigation. Cases categorized and closed as citizen contacts are reviewed, but not as rigorously as cases which are formally audited. This comprehensive approach allows the IPA to do a more thorough and accurate analysis of misconduct and policy issues facing the SJPD.

[5] As previously discussed, due to the large rise in inquiries, in 2005 the IPA audited 187 cases classified and closed as inquiries. In the past the IPA has reviewed inquiries, but has not conducted a comprehensive audit of cases in this classification. Further discussion of the inquiry review is on page 15.

Illustration 3-H: Types of Complaints Audited and Closed

EXTERNAL COMPLAINTS AUDITED	2004 Audited	2004 Closed	2005 Audited	2005 Closed
Formal: Citizen Initiated Complaints	116	126	66	72
Citizen Nexus to Department Complaints	2	0	0	0
Informal: Command Review Complaints	34	34	10	8
Procedural Complaints	27	32	26	30
Policy Complaints	7	7	2	2
No Boland/Withdrawn	34	40	12	23
Inquiry	N/A	115	187	187
Total Complaints Audited	**220**	**354**	**303**	**322**

Illustration 3-I: Internal Complaints Closed

INTERNAL COMPLAINTS	2004	2005
Department Initiated	24	37
Total Complaints Closed	**24**	**37**

Audit Results — Agreement/Disagreement with IA Findings and/or Classification

Through audits, perceived deficiencies in an investigation and/or disagreements with findings reached by the IA investigator are determined. An audit results in closure of the case, request for additional investigation, or disagreement with the outcome of the investigation. If there is disagreement, the issue is first raised with the IA commander. If the IPA and IA are unable to resolve their differences, a formal memorandum will be presented to the Chief of Police detailing the IPA's concerns. Meetings are held to discuss, explain and debate the merits of the issues. The issues raised by the IPA may be settled at the IA commander level, or with the Chief of Police. If no consensus can be reached with the Chief of Police the case may be forwarded to the City Manager for final resolution.

Of the 136 investigated cases audited in 2005, 92 cases, 68%, were "agreed at first review." Further action was requested in 19, 14%, of the cases. Further action can entail requesting additional documentation, research or investigation. Many of the 20 audits pending at year-end were cases that required additional information or were the subject of discussions between the IPA and SJPD.

Cases in Which the IPA Disagreed with IA Findings and/or Classification

Each year there are cases that result in disagreement. In 2005, of the 116 audits completed, five cases, 4%, resulted in disagreement. As shown in **Illustration 3-K**, in the last five years there has been disagreement on 5% or less of the cases audited each year.

Profiles of the cases and the issues that resulted in disagreement in 2005 are featured in the text box below, "**Cases in Which the IPA Disagreed with IA Findings.**"

Illustration 3-J: IPA Audit Determination in Investigated Cases

AUDIT DETERMINATION IN INVESTIGATED CASES	2005 Audits	%
Agreed at First Review	92	68%
Agreed after Further Action	19	14%
Disagreed after Further Action	5	4%
Audits in Progress	20	15%
Total Complaints Audited	**136**	**100%**

Illustration 3-K: Five-Year Overview of IPA Determinations of Audited Complaints

IPA DETERMINATION	2001	2002	2003	2004	2005	Total
Agreed with Findings	269	300	290	216	111	1186
Disagreed with Findings	8	14	14	4	5	45
Total Cases Audited	**277**	**314**	**304**	**220**	**116**	**1231**
% Agreed with Findings	97%	96%	95%	98%	96%	96%
% Disagreed with Findings	3%	4%	5%	2%	4%	4%

Cases In Which The IPA Disagreed With Internal Affairs Findings

1 Case One

The complainant alleged that during a dispute over a table in the lounge of a popular restaurant, a uniformed on-duty sergeant improperly used his position and force, and treated him in a rude, unprofessional manner. After a brief exchange about who was next in line for the table, the complainant swore at the sergeant and turned to walk away. The sergeant then grabbed the complainant's wrist and forcefully directed him outside and detained him for disturbing the peace.

Internal Affairs reported that the allegation of rude conduct was "unfounded," indicating that the investigation conclusively proved that the rude conduct did not occur. The IPA disagreed, concluding that there was insufficient evidence to conclusively prove or disprove the complainant's allegation of rude conduct.

After review of the reports and witness statements, the IPA concluded that the evidence showed that the sergeant's primary concern was not that the complainant was disturbing the peace, but that the sergeant did not like being called names. This being the case, courts have held that police may not punish individuals for directing obscene words and gestures towards them, as this is protected speech and lawful under the First Amendment.[6]

The IPA disagreed with the findings of "not sustained" and "unfounded" in this case. The IPA concluded that the facts supported a finding of "sustained" for the allegation that the sergeant used force and improperly detained the complainant, and "not sustained" for the allegation that the sergeant behaved in a rude manner towards the complainant.

The IPA presented its disagreement with the Internal Affairs investigation to the Chief of Police and the City Manager, who disagreed with the IPA recommendations for changes.

2 Case Two

The complainant alleged that he was falsely arrested for possession of a controlled substance. A review of the evidence and police reports in this case indicated that the complainant was arrested after narcotics were found in the open area under the front grill of his vehicle which was parked behind his business. Prior to arresting the complainant, officers reported seeing what they believed to be a drug transaction between two other men. When the officers responded, one suspect ran and was captured after a struggle in front of the complainant's car. That suspect was seen dumping his pockets while running near the complainant's vehicle and was also found in possession of a bindle of a controlled substance, packaged the same as the others located in the front grill of the complainant's vehicle. The complainant was not outside during that time.

The subject officer, a sergeant, directed the officers to arrest the complainant, question him regarding the drugs, and then release him if they found he was likely not involved. After being taken from his job, arrested, taken to jail, and having his car towed, the complainant was released without charges. No evidence was presented that the complainant had possession or knowledge of the narcotics which were found in close proximity to the place the other suspect had struggled

[6] United States v. Nolan L. Poocha 259F. 3rd 1077 (2001)

before being taken into custody. After review of the police reports and witness statements the IPA concluded that the evidence was insufficient to establish the probable cause needed to arrest the complainant for possession of a controlled substance or tow his car.

Internal Affairs had classified the case as "procedural" with an allegation of improper procedure and did not address the complainant's allegation of false arrest. The IPA disagreed with the classification and finding of "within procedure." The case warranted reclassification as a formal complaint, with an added allegation of false arrest and full investigation. The IPA appealed the decision but the findings by Internal Affairs remained unchanged.

3 Case Three

The complainant alleged that an officer was rude and disrespectful in action and language, and used unnecessary force, when he stopped the complainant while trying to disperse a crowd following a large public event. The complainant stated that when he showed his military identification as the officer approached him, the officer knocked it from his hand, making a rude comment. The officer forcibly took the complainant to the ground and arrested him for resisting arrest.

Internal Affairs found the complainant's allegation of unnecessary force to be "exonerated" and the rude conduct allegation to be "not sustained." The IPA reviewed the police reports and listened to witness interviews and concluded that the complainant's witnesses and the witness officers' statements contradicted the statements of the subject officer. The subject officer's police report also contradicted significant parts of his IA interview.

The IPA disagreed with the findings of Internal Affairs and concluded there was sufficient evidence to support a finding of "sustained" for each allegation in this case. The IPA appealed the decision but the findings by Internal Affairs remained unchanged.

4 Case Four

The complainant alleged that the officers entered and searched his home without his permission, and used rude language in speaking with his son.

The evidence showed that the officers did not have a warrant to enter the house and the statements of the witnesses contradicted those of the officers who stated that the 15-year old son of the complainant had authorized entry. The juvenile stated that when he opened the door the officers did not ask permission to enter, but walked past him into the house. The officers said the youth did not say anything and did not appear to be afraid or intimidated by them. They stated that the youth's body language indicated permission to enter. The complainant, who was in the house at the time, was never asked for permission to enter or search the house.

The IPA agreed with the "not sustained" finding for the rude conduct allegation based on insufficient evidence. The IPA disagreed with the finding of the Internal Affairs investigation exonerating the officers of improper procedure and unlawful search.

A finding of exonerated requires that the incident occurred as alleged and that the officer's actions were found to be justified, lawful, and proper. The IPA concluded that the evidence in this case was not sufficient to prove or disprove that allegation of unlawful search and recommended a finding of "not sustained" on both allegations. The IPA appealed the decision but the findings by Internal Affairs remained unchanged.

5 Case Five

The complainant alleged that two San José officers falsely arrested him because they misidentified him as the suspect who was the subject of their foot pursuit. He also alleged that the officers used unnecessary force when he was arrested. The IA investigation found the unnecessary force allegations to be "not sustained" finding insufficient evidence to clearly prove or disprove the allegation. IA recommended that the allegation of unlawful arrest be returned to the chain of command for findings and recommendations[7] questioning whether the officers conducted a sufficient investigation before arresting the complainant.

The chain of command reviewed the IA investigation and found the unlawful arrest allegation to be "exonerated."

The IPA disagreed with the finding of "exonerated" for the allegation of unlawful arrest because the evidence was not sufficient to establish that the officers were reasonable in their belief that the complainant was the suspect they were pursuing. While both subject officers claimed to be certain of their identification of the complainant as their suspect, the IA investigation developed sufficient evidence to contradict this identification, including the description of the suspect broadcast by the officers, which varied significantly from that of the complainant in height, weight, and ethnicity. One officer expressed doubt about his identification of the complainant, and there were several other inconsistencies between the statements of the officers concerning the identification of the complainant as their suspect.

The IPA disagreed with the finding of this case at the Internal Affairs level; however, for technical reasons, the case was not appealed further.

[7] In cases in which there may be sufficient evidence to "sustain," the case is sent back through the officer's chain of command for review, further investigation, and determination of findings.

II. Findings of Internal Affairs Investigations

Illustrations 3-L and **3-M** detail the findings of IA complaint investigations. The standard of evidence used by IA is "preponderance of evidence." This means that the evidence indicates that it is more likely than not that a violation did or did not occur. In 2005, IA completed 359 complaint investigations, 37 internal department-initiated complaints containing 44 allegations, and 322 external complaints containing 400 allegations. It is significant to note that 34 allegations, 77% of the 44 allegations investigated in internal cases, were sustained. Of the remaining 10 allegations, three (one each) were closed as not sustained, exonerated, and unfounded, and seven were closed as no finding.

In pointed contrast, in citizen-initiated cases, just 6 allegations, 2%, were sustained; 116 allegations, 29%, were exonerated; 99 allegations, 25%, were closed as no finding; 47 allegations, 12%, were unfounded; 52 allegations, 13% were found to be within procedure; and 44 allegations, 11% were not sustained.

Illustration 3-L : Dispositions of Allegations: External/Citizen-Initiated Cases

DISPOSITION	ALLEGATIONS														Total
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained								5					1		6
Not Sustained		1			11			11		21					44
Exonerated				11	63			16	2	2		12		10	116
Unfounded					14	2		15	3	10		1	1	1	47
No Finding	3	2	1		14	8	4	23	1	19	3	9	2	10	99
Within Procedure	1			1	7			26		10		2		5	52
No Misconduct Determined	2	1				2		10			3	3	1	2	24
Command Review								4		5					9
Within Policy						1		1				1			3
Total Allegations	**6**	**4**	**1**	**12**	**109**	**13**	**4**	**111**	**6**	**67**	**6**	**28**	**5**	**28**	**400**

Illustration 3-M : Dispositions of Allegations: Internal/Department-Initiated Cases

DISPOSITION	ALLEGATIONS														Total
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained						1		18	7				8		34
Not Sustained													1		1
Exonerated								1							1
Unfounded					1										1
No Finding								3					4		7
Within Procedure															
No Misconduct Determined															
Command Review															
Within Policy															
Total Allegations	**0**	**0**	**0**	**0**	**1**	**1**	**0**	**22**	**7**	**0**	**0**	**0**	**13**	**0**	**44**

ES=	Excessive Police Service	FA=	Failure to Take Action	RP=	Racial Profiling
D=	Discrimination	H=	Harassment	UA=	Unlawful Arrest
DR=	Delay in Response/Slow Response	IP=	Improper Procedure	UC=	Unofficer-like Conduct
F1=	Unnecessary Force (w/medical)	MDP=	Missing/Damaged Property	US=	Unlawful Search
F2=	Unnecessary Force (w/o medical)	RC=	Rude Conduct		

Sustained Misconduct

In 2005, six of 110 completed external citizen-initiated complaints were sustained (closed with at least one sustained allegation) resulting in a 5% sustained rate,[8] see **Illustration 3-N**. In complaints from the public, five improper procedure allegations were sustained and one allegation of unofficer-like conduct was sustained. In sharp contrast, 31 of the 37 internal department-initiated investigations closed with at least one sustained allegation, an 84% sustained rate. **Illustrations 3-L** and **3-M** detail findings in both external and internal cases.

Department-initiated complaints are initiated by the Chief of Police and may include both internal and external matters. An external matter is one that involves a citizen, while internal issues can involve any type of policy or procedural violation, including personnel issues such as tardiness and abuse of sick leave, or loss of property, etc. The highest number of allegations sustained (18) in internally generated complaints was for allegations classified as improper procedure. Eight unofficer-like conduct allegations were sustained. These allegations often address complaints related to off-duty behavior.

Illustration 3-N: Five-Year Overview of Formal Complaints Sustained

PERIOD/ TYPE OF COMPLAINTS	Closed Complaints	Sustained Complaints	Sustained Rate
2001 External Complaints	225	29	13%
2001 Internal Complaints	35	24	69%
2002 External Complaints	171	8	5%
2002 Internal Complaints	52	34	65%
2003 External Complaints	189	11	6%
2003 Internal Complaints	40	34	85%
2004 External Complaints	192	18	9%
2004 Internal Complaints	24	22	92%
2005 External Complaints	110	6	5%
2005 Internal Complaints	37	31	84%

[8] The sustained rate in external cases is calculated based upon the number of sustained complaints from those classified as formal, command review, or procedural.

III. Discipline Imposed

As delineated in **Illustration 3-O**, in 2005, discipline was imposed on 13 officers in external citizen-initiated cases and on 35 officers in internal department-initiated cases. A total of six allegations were sustained in six closed external complaints and a total of 34 allegations were sustained in 31 internal complaints closed.

The majority of types of discipline imposed in citizen-initiated complaints were training and/or counseling. In one external case an officer was demoted. It is significant to note that in six external citizen-initiated cases, allegations were found to be not sustained or exonerated and yet discipline of counseling and/or training was imposed. Documented Oral Counseling (DOC) was the discipline imposed on over 50% of the officers who received discipline. Officers received DOC in 21 internal and five external cases. Suspensions were imposed against six officers in internal complaints; three officers received 10-hour suspensions; and one each received 20, 30, and 100-hour suspensions. Three officers retired or resigned prior to being disciplined in internal cases, and one officer received a settlement agreement.

Illustration 3-O: Discipline Imposed on Subject Officers

	2004				2005			
DISCIPLINE	Officers in External Complaints	Officers in Internal Complaints	Total	%	Officers in External Complaints	Officers in Internal Complaints	Total	%
Training	3	0	3	5%	6	0	6	13%
Training and Counseling	21	3	24	39%	1	1	2	4%
Counseling	3	0	3	5%	0	0	0	0%
Documented Oral Counseling (DOC)	7	7	14	23%	4	20	24	50%
DOC & Training	0	0	0	0%	1	1	2	4%
Letter of Reprimand	0	2	2	3%	0	3	3	6%
10-Hour Suspension	0	2	2	3%	0	3	3	6%
20-Hour Suspension	0	1	1	2%	0	1	1	2%
30-Hour Suspension	0	0	0	0%	0	1	1	2%
40-Hour Suspension	0	4	4	6%	0	0	0	0%
60-Hour Suspension	0	1	1	2%	0	0	0	0%
80-Hour Suspension	1	0	1	2%	0	0	0	0%
100-Hour Suspension	0	0	0	0%	0	1	1	2%
Settlement Agreement	0	1	1	2%	0	1	1	2%
Disciplinary Transfer	1	0	1	2%	0	0	0	0%
Demotion	0	0	0	0%	1	0	1	2%
Termination	0	3	3	5%	0	0	0	0%
Retirement before Discipline	0	0	0	0%	0	1	1	2%
Resigned before Discipline	1	1	2	3%	0	2	2	4%
Total Discipline Imposed	**37**	**25**	**62**	**100%**	**13**	**35**	**48**	**100%**

Complaint Dispositions/Standard of Evidence

Standard of Evidence: "Preponderance of Evidence," the evidence indicates that it is more likely than not that a violation occurred or did not occur.

I. Dispositions for Formal Complaints:

- **Sustained:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
- **Not Sustained:** The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
- **Exonerated:** The incident occurred as alleged; however, the investigation revealed that the officer's actions were justified, lawful and proper.
- **Unfounded:** The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when the individual member(s) or employee(s) named were not involved in the act or acts that may have occurred.
- **No Finding:** The complainant withdrew the complaint, failed to disclose promised information to further the investigation, is no longer available, or the investigation revealed that another agency was involved and the complainant has been referred to that agency. Additional reasons may include: lack of signature on the Boland Admonishment; officer resigned from the SJPD before the investigation was closed; the officer's identity could not be determined.

II. Dispositions for Procedural Complaints:

- **Within Procedure:** The initial investigation determined that the subject officer acted reasonably and within Department policy and procedure given the specific circumstances and facts of the incident and that, despite the allegation of misconduct, there is no factual basis to support the allegation.
- **No Misconduct Determined:** The initial investigation determined that the allegation is a dispute of fact case wherein there is no independent information, evidence or witnesses available to support the complaint and there exists another judicial entity which is available to process the concerns of the complainant.

III. Disposition for Command Review Complaints: Involves allegations of minor transgressions by an officer, which may be handled informally through the officer's chain of command. This process does not imply that the subject officer has or has not committed the transgression as described by the complainant.

IV. Inquiry: A complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. Officer's names are not tracked in cases classified as inquiries.

V. No Boland: A complaint closed within 30 days from the date the case was received due to the complainant failing to sign the Boland Admonishment. California Penal Code §148.6 requires that complainants sign a Boland Admonishment form informing them that they can be prosecuted for a misdemeanor violation if they knowingly file a false complaint. *Due to a U.S. Supreme Court Decision in May 2006, complainants will no longer be asked to sign the Boland Admonishment.*

VI. Withdrawn: A complaint is withdrawn at the complainant's request or by failure of the complainant to return a signed Boland Admonishment.

Chapter Four

I. Introduction

This chapter provides information and data about complaints alleging that a San José police officer used unnecessary or excessive force. It also provides information about officer-involved shootings and death in custody cases in 2005. Because use of force complaints present some of the most serious issues of potential police misconduct, the IPA is required to audit all use of force complaint investigations conducted by Internal Affairs (IA).

An investigation of a use of force complaint must examine whether the officer used objectively reasonable force as defined in the SJPD Duty Manual. Police officers are allowed to use force in the performance of their duties in situations in which they are forced to overcome resistant or combative individuals and/or defend themselves or others. An investigation must examine all the facts and circumstances associated with the incident in order to determine whether or not the officer acted reasonably.

II. Use of Force Complaints and Allegations

A. Unnecessary Force Complaints Filed in 2005

Illustrations 4-A and 4-B, respectively, show that there were 70 unnecessary force complaints with a total of 112 unnecessary force allegations filed in 2005. The number of unnecessary force allegations can be higher than unnecessary force complaints because each complaint may contain more than one force allegation. There has been a rise in reported unnecessary force complaints: 70 unnecessary force complaints filed in 2005 represent a 13% increase over the 62 filed in 2004 and a 43% increase over the 49 filed in 2003. Of the 70 unnecessary force complaints filed in 2005, 60 were formally investigated, four were classified as procedural complaints, two as complaint withdrawn, and four as "No Boland."

In 2005, the IPA and the SJPD agreed to begin tracking the types of allegations made in inquiry complaints.[9] **Illustrations 4-A** and **4-B** show that there were 12 inquiry complaints containing 13 unnecessary force allegations this year.

[9]See the text box on page 15 for a complete analysis of the statistics and impact of inquiry cases.

Illustration 4-A: Five-Year Overview of Unnecessary Force Complaints Filed

PERIOD	UF Class I Complaints	UF Class II Complaints	Total UF Complaints	Total Number of Complaints	UF % of Total Complaints	UF Class I in Inquiry Complaints	UF Class II in Inquiry Complaints
2001	6	46	52	406	13%	N/A	N/A
2002	9	45	54	403	13%	N/A	N/A
2003	7	42	49	323	15%	N/A	N/A
2004	7	55	62	366	17%	N/A	N/A
2005	4	66	70	429	16%	1	11

Illustration 4-B: Five-Year Overview of Unnecessary Force Allegations Filed

PERIOD	UF Class I Allegations in Complaints	UF Class II Allegations in Complaints	Total UF Allegations Complaints	UF Class I Allegations in Inquiry Complaints	UF Class II Allegations in Inquiry Complaints
2001	16	76	92	N/A	N/A
2002	11	77	88	N/A	N/A
2003	23	60	83	N/A	N/A
2004	12	86	98	N/A	N/A
2005	5	107	112	1	12

Unnecessary force complaints are divided into two categories: Class I and Class II. A Class I unnecessary force complaint includes allegations of unnecessary force that cause serious bodily injury requiring medical care. Class II unnecessary force complaints include the remainder of unnecessary force allegations. In 2005, there were four Class I unnecessary force complaints; the remaining 66 were Class II unnecessary force complaints. The number of Class I complaints, the most serious types of force cases, is lower than Class I complaints filed in the previous four years. Unnecessary force Class II formal complaints and allegations have risen over the last five years. In 2005, unnecessary force issues comprised 112 allegations in 70 complaints (Class I and Class II combined), up from an average over the last four years of 90 allegations in 54 complaints.

B. Unnecessary Force Complaints Audited in 2005

In addition to tracking force data from complaints filed, the IPA also tracks specific force-related information obtained from the audits of completed unnecessary force complaint investigations. In order to determine whether any trends or patterns can be detected from use of force complaints, the IPA tracks: 1) the level of injury caused by the force used; 2) the part of the complainant's body impacted by the force; and 3) the type of force used by the officer. As indicated in **Illustration 4-C**, the IPA audited 45 closed unnecessary force complaint investigations in 2005. There were 12 unnecessary force audits pending at the end of 2005. The lower number of these audits in 2005 is consistent with the overall reduction in closed complaint investigations and the corresponding number of total audits completed, as discussed in **Chapter 3**.

Illustration 4-C: Unnecessary Force Complaints Audited

PERIOD	UF Class I Complaints Audited	UF Class II Complaints Audited	Total UF Complaints Audited
2001	10	36	46
2002	7	49	56
2003	10	63	73
2004	6	67	73
2005	3	42	45

Illustration 4-D provides data about the level of injury resulting from the alleged use of force. There are five categories ranging from "major" to "none." Major injuries require significant medical attention, whereas minor injuries require little or no medical attention. For example, minor injuries can involve minor abrasions, the use of chemical agents, or bruising from tight handcuffs. Over the past five years major and moderate injuries together have remained constant, with seven, 15%, reported in 2005. Minor and no injuries continue to account for the highest percentage of injury levels with 38, 84%, reported in 2005.

Illustration 4-E provides data tracking the part of the complainant's body that was involved with the use of unnecessary force. The IPA tracks this data to determine if any trends exist in force cases. The area of the body that is involved is divided into five categories: head, torso, limbs, multiple body parts and unknown. In each complaint the alleged unnecessary force can impact more than one body area. The IPA closely monitors the number of allegations citing that the complainant's head was afflicted by unnecessary force, as this area has the potential for the most serious injuries to occur. There was a decrease in 2005 in the number of times complainants alleged that unnecessary force was applied to their heads, 11, 16%, as compared to 26, 25%, in 2004.

Illustration 4-D: Five-Year Overview of Complainant's Level of Injury

DEGREE OF INJURY	2001		2002		2003		2004		2005	
	Number	%	Number	%	Number	%	Number	%	Number	%
Major	2	4%	0	0%	0	0%	4	5%	2	4%
Moderate	5	11%	8	14%	11	15%	9	12%	5	11%
Minor	25	54%	37	66%	39	53%	45	62%	33	73%
None	9	20%	6	11%	13	18%	9	12%	5	11%
Unknown	5	11%	5	9%	10	14%	6	8%	0	0%
Total	**46**	**100%**	**56**	**100%**	**73**	**100%**	**73**	**100%**	**45**	**100%**

Illustration 4-E: Location of Force Applications - Five-Year Comparison

LOCATION OF FORCE APPLICATIONS	2001		2002		2003		2004		2005	
	Number	%	Number	%	Number	%	Number	%	Number	%
Head	17	27%	27	35%	33	30%	26	25%	11	16%
Torso	11	17%	18	23%	33	30%	34	33%	30	43%
Limbs	28	44%	23	29%	31	28%	33	32%	24	34%
Multiple Body Parts	7	11%	8	10%	9	8%	7	7%	3	4%
Unknown	0	0%	2	3%	4	4%	2	2%	2	3%
Total	**63**	**100%**	**78**	**100%**	**110**	**100%**	**102**	**100%**	**70**	**100%**

Illustration 4-F provides data about the different types of unnecessary force alleged to have been used in each of the past five years. The IPA collects this information to track the frequency of the types of force used. The number of types of force alleged is greater than the total number of unnecessary force complaints because there can be more than one type of force alleged in the same complaint, and there can be more than one officer alleged to have used unnecessary force. For example, a

Illustration 4-F: Type of Forced Alleged – Five-Year Comparison

TYPE OF UNNECESSARY FORCE	2001 Number	2001 %	2002 Number	2002 %	2003 Number	2003 %	2004 Number	2004 %	2005 Number	2005 %
Baton	7	9%	7	7%	14	10%	18	13%	9	11%
Canines	0	0%	0	0%	1	1%	0	0%	1	1%
Car	2	3%	5	5%	3	2%	2	1%	1	1%
Chemical Agent	1	1%	4	4%	2	1%	4	3%	6	7%
Gun	0	0%	1	1%	1	1%	1	1%	2	2%
Feet	9	12%	8	8%	9	6%	13	9%	4	5%
Ground	6	8%	15	14%	26	19%	16	12%	14	17%
Hands	35	45%	45	43%	56	40%	51	37%	29	35%
Handcuffs	8	10%	13	12%	13	9%	10	7%	5	6%
Knee	4	5%	5	5%	9	6%	13	9%	5	6%
TASER	N/A	N/A	N/A	N/A	N/A	N/A	4	3%	7	8%
Object	1	1%	0	0%	3	2%	3	2%	0	0%
Other	4	5%	1	1%	2	1%	2	1%	0	0%
Unknown	0	0%	1	1%	1	1%	1	1%	0	0%
Total	**77**	**100%**	**105**	**100%**	**140**	**100%**	**138**	**100%**	**83**	**100%**

complainant may allege that an officer or officers struck him with a baton, hit him with fists, kicked him and placed handcuffs on too tightly. This example would account for four different types of unnecessary force alleged against multiple officers in one complaint.

Illustration 4-F indicates that the frequency of different types of force allegations has remained fairly consistent during the past five years. The use of hands, followed by the use of the ground, and use of batons continue to be the three types of unnecessary force alleged most often. With seven allegations, 8% of the types of force allegations filed in 2005, the use of a TASER has become the fourth most frequent type of alleged unnecessary force. There were two death in custody cases in 2005 in which TASERs as well as other types of force were used to subdue the suspects. (See **Illustration 4-K** on page 36.) The IPA and the SJPD closely monitor the use of TASERs by SJPD officers. As discussed above, the SJPD recently developed written guidelines for TASER use following an IPA policy recommendation.

Illustration 4-G provides specific information concerning the disposition for each unnecessary force allegation in external complaints. There were no "sustained" use of force cases in 2005 filed by members of the public. In contrast, 63 of 109, 58% of unnecessary force allegations filed by members of the public were found to be "exonerated," which means that the investigations have determined that the level and type of force used by the officers was reasonable and justified.

Illustration 4-G: Disposition of Unnecessary Force Allegations in External Cases

DISPOSITION	2004 UF Class I	2004 UF Class II	2005 UF Class I	2005 UF Class II
Sustained	0	2	0	0
Not Sustained	0	8	0	11
Exonerated	9	81	11	63
Unfounded	1	7	0	14
No Finding	2	8	0	14
Within Procedure	0	4	1	7
Total Allegations	**12**	**110**	**12**	**109**

III. Officer-Involved Shootings and Death in Custody Cases

The use of deadly force is the most serious type of force that can be used by a police officer. The IPA continues to work with the SJPD to provide careful scrutiny of these cases to ensure that the officers acted lawfully and within department policies and procedures. The overriding goal of this review process is to explore all reasonable measures that could reduce the possibility that an officer would have to use deadly force.

The SJPD Duty Manual Section L-2638 states, *"An officer may discharge a firearm under any of the following circumstances:… When deadly force is objectively reasonable in self-defense or in defense of another person's life."* When a person is injured or killed as a result of an officer-involved shooting, there is always great community concern and many questions arise as to the necessity for the use of lethal force. In recognition of the serious nature of these issues, the IPA closely monitors and reviews the investigations of officer-involved shootings involving SJPD officers and has recently been given additional responsibilities, including responding to the scene when these incidents occur.

Every officer-involved shooting that results in death or injury is subject to an intensive investigation and review process that is outlined in the flow chart in **Illustration 4-H**. As the chart indicates, the SJPD Homicide Unit conducts a criminal investigation that is monitored by the Internal Affairs Unit. The criminal investigation is presented to the county Grand Jury by the Santa Clara County District Attorney to determine whether there is sufficient evidence for a crime to be charged. After completion of the criminal investigation and the Grand Jury review, if there is no "True Bill" for criminal prosecution, IA conducts an administrative review to determine whether the officer's actions were within department policy.

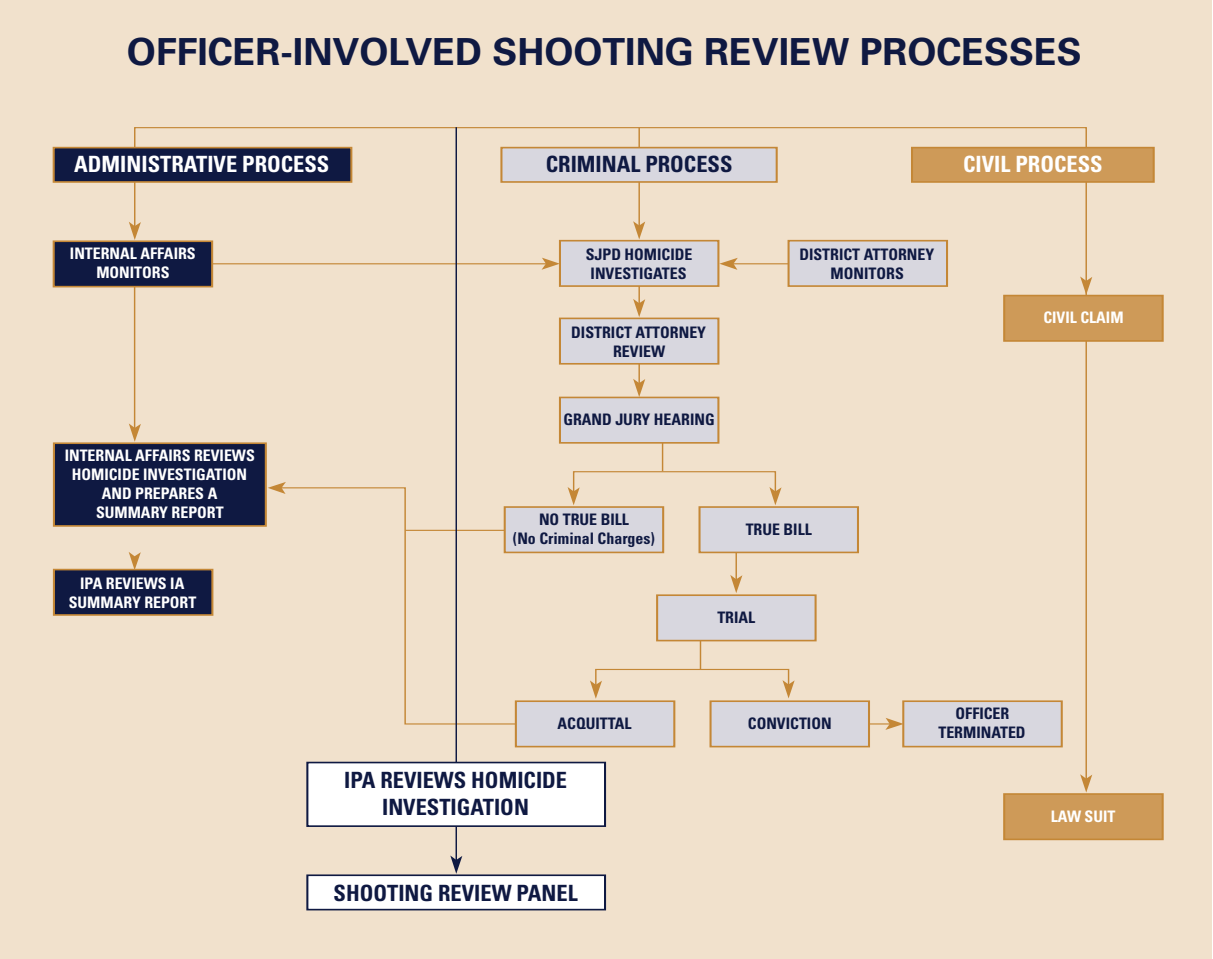
As a result of recommendations made in the IPA 2003 Mid-Year Report and the IPA 2005 Mid-Year Report, the City Council approved adding several policies and procedures to the review of officer-involved shootings cases.[10] The more critical of these recommendations provide the IPA with greater access to monitor the investigation of these cases. They include:

- the IPA will be notified immediately after an officer-involved case occurs so the IPA can respond to the scene and receive a briefing about the case details
- the IPA will be provided a copy of the IA investigative report
- the IPA will be provided a copy of the SJPD Homicide report for policy review.

The final step in the review process is the Officer-Involved Shooting Review Panel, initiated by the SJPD in 1999 following recommendations made by the IPA in its 1998 Year End Report. This panel consists of the Chief of Police and several SJPD command staff, the IPA, and a representative of the City Attorney's Office. The purpose of the Shooting Review Panel is to review the incident to determine if there are any training issues, or if any policy or procedural changes should be considered.

[10] All IPA recommendations made in the 2003 Mid-Year Report and the 2005 Mid-Year Report, as well as other years, are detailed in **Appendix E**.

Illustration 4-H: Officer-Involved Shooting Review Process



A. Officer-Involved Shootings in 2004 and 2005

As indicated in **Illustration 4-I**, there were two officer-involved shootings in 2005. The review process for the first of these cases was completed early in 2006. In both cases, the Grand Jury found that there was insufficient evidence to support a criminal charge. The administrative investigation conducted by IA of the first case found that the involved officer acted reasonably and within SJPD policies and procedures. As part of the administrative review the IPA reviewed the IA administrative report and the Homicide investigation file and found the investigation to be thorough and objective. The administrative review of the second case is still pending.

As indicated in **Illustration 4-J**, the IPA reported in its 2004 Year End Report that there were six officer-involved shootings in 2004. The Officer-Involved Shooting Review Panels for these cases were completed in 2005. Further review and analysis of two of the 2004 cases contributed to the basis for the two new recommendations made in **Chapter 2** of this report. Case #1 from 2004 was considered for the recommendation that the SJPD revise its policy on shooting at moving vehicles and cases #1 and #6 were considered for the recommendation that SJPD continue to train officers to wait for backup, when practical, in potentially violent situations.

Illustration 4-I: Officer-Involved Shootings in 2005

CASE	Ethnicity	Mental Illness History?	Citizen Armed?	Type of Weapon	Citizen Shoot at Officer?	Prior Criminal Record?	CIT at Scene?	Citizen's Injuries	Within Policy?	Other Weapons Used
1	Vietnamese	No	Yes	Gun	No	Yes	Yes	Fatal	Yes	No
2	Hispanic	Unknown	Yes	Baton	No	Yes	No	Fatal	Pending	TASER

Illustration 4-J: Officer-Involved Shootings in 2004

CASE	Ethnicity	Mental Illness History?	Citizen Armed?	Type of Weapon	Citizen Shoot at Officer?	Prior Criminal Record?	CIT at Scene?	Citizen's Injuries	Within Policy?	Other Weapons Used
1	Hispanic	No	Yes	Vehicle	No	Yes	No	Fatal	Yes	Baton/OC
2	White	Yes	Yes	Handgun	Yes	Yes	Yes	Fatal	Yes	L8
3	Asian	Yes	Yes	Gun	No	No	Yes	Fatal	Yes	No
4	Hispanic	No	Yes	Pellet Gun	No	Yes	N/A	Wounded	Yes	No
5	Asian	Yes	Yes	Knife	No	Yes	N/A	Fatal	Yes	TASER
6	White	Yes	Yes	Chair	No	Yes	N/A	Fatal	Yes	TASER

L8 = 40mm rubber bullet launcher OC = Oleoresin Capsicum or Pepper Spray

B. Death in Custody Cases in 2005

There were two death in custody cases in 2005. Both cases involved the use of several different types of force by the involved officers, including batons, OC spray and TASERs. Although, there was no criminal investigation in either case, administrative investigations of both cases are still pending. The IPA will monitor and review this process.

IV. Crisis Intervention Training and Force-Option Simulator Training

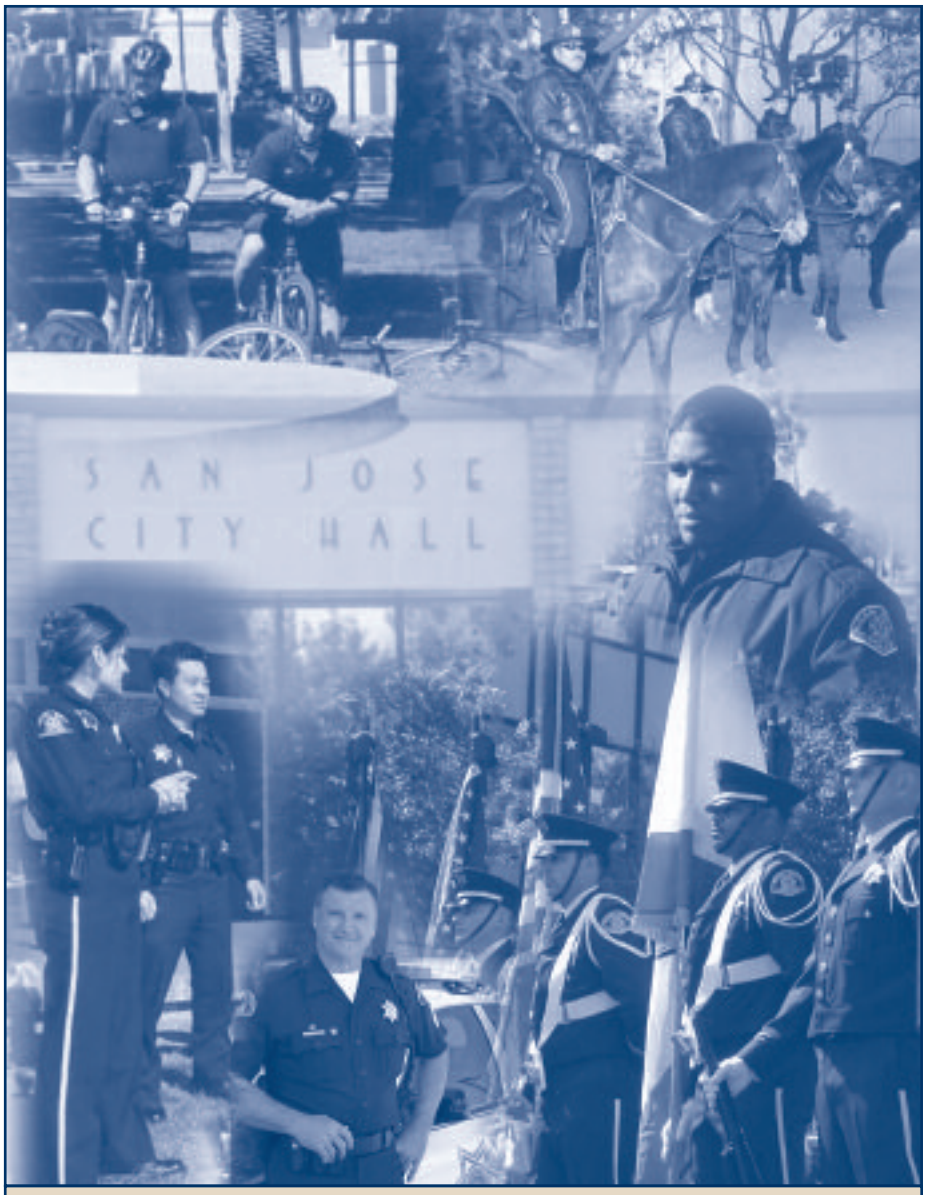
Crisis intervention training teaches officers how to better address situations involving persons who are experiencing some type of mental or emotional crisis, thus reducing the possibility of the officers having to use force to gain control of a situation. In 2005, 46 San José officers received the 40-hour Crisis Intervention Training (CIT) and there are now 318 CIT-trained officers in San José. The IPA continues to encourage and support this type of training for SJPD officers in an attempt to help reduce the need for officers to use force, including deadly force.

Similarly, SJPD continues to require officers to take a 4-hour Force Option Simulator training as part of the "Perishable Skills Training Program." Each officer must take this training every other year. The Force Option Simulator training utilizes state-of-the-art interactive video simulations of real-life scenarios that require officers to react to life-threatening situations. In 2005, 505 officers received this training.

Illustration 4-K: Death in Custody Cases in 2005

CASE	Ethnicity	Mental Illness History?	Citizen Armed?	Police Weapon Used?	Cause of Death?	Within Policy?
1	Hispanic	Unknown	No	Baton, pepper spray, TASER, wrap	Cardiac arrhythmia due to excited delirium due to drug use	Pending
2	Hispanic	Unknown	No	Baton, pepper spray, TASER	Cardiopulmonary arrest, acute cocaine intoxication with psychosis. Contributory cause: Post TASERing and pepper spraying and cardio-vascular disease, obesity	Pending

Chapter Five



The SJPD officers portrayed in this collage assisted the IPA in designing informational materials. They are not subject officers.

SUBJECT OFFICER DEMOGRAPHICS

The IPA tracks information about officers named in complaints, "subject officers," in four categories of cases, formal (citizen-initiated and department-initiated), command review, procedural, and policy complaints to determine if there are trends or particular problem areas. Specific areas of interest include the subject officer's gender and years of experience with the SJPD at the time the incident occurred. Officer information is not identified in cases classified as inquiries,[11] which accounted for 53% of all complaints filed in 2005, or in those classified as citizen contacts. The statistics in this chapter are based on information tracked in 181 cases received. A total of 224 officers were named in 181 complaints in 2005. (More than one officer can be named in a complaint.)

I. Complaints by Gender of Subject Officers

The gender of San José officers named as subject officers in complaints in 2005 is reflected in **Illustration 5-A**. Seventeen female officers, 8%, were named in complaints, which is slightly less than their percentage, 10%, in the Department in 2005. Male officers, who make up 90% of SJPD officers, were named in complaints 207 times, representing 92% of officers named in complaints.

II. Years of Experience of Subject Officers

The years of experience for San José police officers receiving complaints in 2005 is displayed in **Illustration 5-B**. Officers with two to four years of experience continue to be named in the highest number of complaints when compared to their representation in the Department. Officers in the two to four year range make up 11% of all officers in the SJPD; however, they accounted for 21% of all officers named in complaints filed in 2005.

Illustration 5-A: Gender of Subject Officers

GENDER	Subject Officers	%	SJPD Sworn Officers	%
Male	207	92%	1231	90%
Female	17	8%	133	10%
Total	**224**	**100%**	**1364**	**100%**

Illustration 5-B: Years of Experience of Subject Officers

Years of Experience	Gender of Subject Officers Female	Male	Total Subject Officers	%	SJPD Sworn Officers Female	Male	Total Sworn Officers	%
0-1+	0	3	3	1%	9	68	77	6%
2-4+	7	39	46	21%	19	126	145	11%
5-6+	0	24	24	11%	12	86	98	7%
7-10+	2	56	58	26%	28	299	327	24%
11-15+	3	41	44	20%	32	228	260	19%
16+	5	44	49	22%	33	424	457	34%
Total	**17**	**207**	**224**	**100%**	**133**	**1231**	**1364**	**100%**

[11] See the text box on page 15 for a complete analysis of the statistics and impact of inquiry cases.

Viewed another way, 32% of officers, almost one out of three, in this range of experience were named in a complaint. These officers are in their first few years of patrol, after completing the academy and field training. Officers with five to six years of experience comprised 11% of officers named in complaints and make up 7% of the Department.

Forty-four officers, 20% of officers named in complaints, had eleven to fifteen years of experience; however, with 260 officers in this range, this represents a smaller percentage of total officers, 19%. Officers with more than 16 years with the Department were named 49 times in complaints filed in 2005. They represent 34% of officers in the Department and 22% of officers named in complaints, a much smaller ratio than their number in the Department. Officers in this group have the greatest level of experience and have varying positions in the Department.

It is important to note that the types of complaints filed against officers can range from tardiness and improper report filing to unnecessary force, as reported in **Chapter 3**, with the largest numbers of complaints alleging improper procedure and rude conduct. During the audit process the types of misconduct alleged and the demographics of the officers involved are studied to identify possible problems and patterns in behaviors and other potential areas of concern.

III. Subject Officers Named in One or More Complaints

Illustration 5-C depicts the number of times an individual officer has been named in a complaint. During the 2005 calendar year, 188 San José police officers were named one time in complaints. Thirty-six officers were named in more than one complaint. Just two of the 36 officers named in multiple complaints were female, and 34 were male.

Three officers were named in three complaints, and two officers were named in four separate complaints during 2005. One officer was named in six separate complaints, the largest number of complaints against a single officer since 2000.

Illustration 5-C: Subject Officers Named in Complaints

OFFICERS RECEIVING	Number of Officers	Number of Complaints
1 Complaint	188	188
2 Complaints	30	60
3 Complaints	3	9
4 Complaints	2	8
5 Complaints	0	0
6 Complaints	1	6
Total Complaints	**224**	**271**

Complaint Intervention Programs

SJPD has an Early Warning System (EWS) to identify officers exhibiting possible problem behavior, and to take corrective action. The EWS flags officers that receive three formal complaints or a combination of five complaints of any type within a 12-month period. Officers meeting these criteria are scheduled to participate in Intervention Counseling (IC). These counseling sessions involve a review of the complaints filed against the subject officer without regard to the finding. The subject officer is asked to meet with his/her supervisor, the Internal Affairs Commander, and the Deputy Chief in his/her chain of command. During these sessions the command staff has an opportunity to informally talk to the officer about personal or work related topics, provide counseling, and recommend training for the subject officer. Intervention Counseling is not discipline and only the fact that a session took place is recorded.

SJPD has established a Supervisor's Intervention Program to assist supervisors in tracking the history of their subordinates if the team assigned to the supervisor receives three or more complaints within a six-month period. The supervisor meets with the chain of command, the lieutenant up to the deputy chief, to develop strategies for working with officers involved in the Early Warning System.

IV. Ethnicity of Subject Officers

Illustration 5-D details the ethnicity of subject officers, which closely tracks the ethnic breakdown of officers in the Department. White officers constituted 56% of officers named in complaints filed in 2005, 125 of the 224 identified officers, slightly less than their percentage in the SJPD, 58%. Hispanic/Latino officers were named in 54 complaints, 24%, and make-up 25% of the Department. This year Asian American and African American officers were named in a slightly higher percentage of complaints when compared to their overall percentage in the Department. Asian officers were named 23 times in complaints, 10%, compared to their 9% representation in the Department, and African American officers were identified in complaints 15 times, 7%, compared to their 5% representation in the Department.

Illustration 5-D: Ethnicity of Subject Officers

ETHNICITY	Subject Officers	%	SJPD Sworn Officers	%
Native American	2	1%	6	0%
Asian American/Pacific Islander	23	10%	120	9%
African American	15	7%	67	5%
Filipino American	2	1%	31	2%
Hispanic/Latino	54	24%	337	25%
White	125	56%	795	58%
Not Available	3	1%	8	1%
Total	**224**	**100%**	**1364**	**100%**

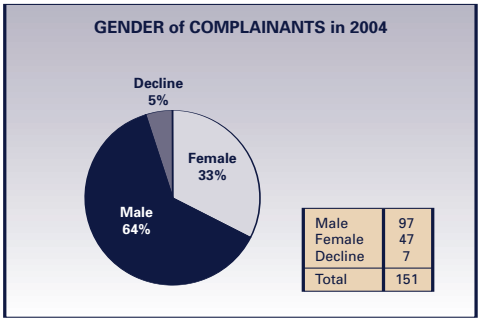
Chapter Six

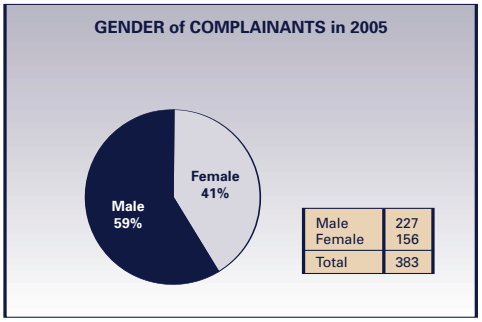
The diversity of San José is one of the City's greatest assets. In an effort to understand how to best serve the community and gain insight into the population served, the IPA and IA request demographic information during the intake process and with a survey sent by mail. All demographic information requested is voluntary and self reported. In 2005, approximately 300 people responded to the questions of gender, age and ethnicity during the intake process. Additional information about education and occupation was requested in the written survey; 113 of 170 surveys mailed to complainants were returned. In 2005, the IPA had gender, ethnicity, and age data available on more than double the number of complainants than in 2004, therefore the ratio may reflect a more accurate accounting than in previous years.

I. Gender of Complainants

Illustration 6-A reflects the gender of complainants in 2005. Of the 383 complaints filed, 227, 59% of complainants, were male and 156, 41%, were female. This represents a slightly higher percentage of female complainants than in previous years. The gender breakdown for the past five years has remained roughly two-thirds male and one-third female. The gender ratio for San José in the 2000 census is: 51% male to 49% female.

Illustration 6-A: Two-Year Comparison of Complainant Gender





II. Ethnicity of Complainants

The ethnicity of individuals filing complaints, including inquiries, are identified in **Illustration 6-B**. In 2005, the ethnicity of complainants was collected at the time of intake as well as through the survey. As a result, the ethnicity of complainants this year was available in 294 cases. This response is almost double those available in previous years.

- African American and Hispanic/Latino complainants filed complaints at much higher ratios than their representation in the San José community according to the 2004 U.S. Census Bureau American Community Survey.[12]
- African American complainants reported 45 complaints, 15%, in 2005; African Americans represented 2% of San José's total population in 2004.
- Hispanic/Latino individuals, representing 44% of complainants responding, filed 129 complaints. Based on the 2004 community survey, 32% of the City's population is of Hispanic/Latino descent.
- White complainants filed 76 complaints, 26% of complainants responding to the survey. San José reported a white population of 34% in 2004.

The ethnicity of other individuals filing complaints is included in the five year comparison below.

Illustration 6-B: Ethnicity of Complainants from Voluntary Survey and Intake

ETHNICITY	2001 Surveys	2001 %	2002 Surveys	2002 %	2003 Surveys	2003 %	2004 Surveys	2004 %	2005 Surveys/Intake	2005 %	% of San Jose Population[12]
African American	45	22%	37	20%	20	12%	23	15%	45	15%	2%
Asian/Pacific Islander	8	4%	6	3%	7	4%	2	1%	11	4%	13.5%
White	58	28%	65	35%	52	31%	42	28%	76	26%	34%
Filipino	2	1%	4	2%	3	2%	2	1%	6	2%	2%
Hispanic/Latino	70	34%	63	34%	72	43%	58	38%	129	44%	32%
Native American	3	1%	2	1%	2	1%	2	1%	2	1%	2%
Vietnamese	1	0%	0	0%	2	1%	0	0%	6	2%	9%
Other	4	2%	5	3%	5	3%	10	7%	16	5%	5.5%
Decline	14	7%	4	2%	6	4%	12	8%	3	1%	0%
Total Surveys and %	**205**	**100%**	**186**	**100%**	**169**	**100%**	**151**	**100%**	**294**	**100%**	**100%**

III. Age of Complainants

The age of complainants was also requested at the time of intake and on the voluntary survey, making a larger sample of responses available in 2005. **Illustration 6-C** reflects the age of complainants who responded. The table uses the four groupings defined in the voluntary survey: under 18; 18-30 which is a spread of 19 years; 31-50, a spread of 28 years; and 60+. Age was available for 99% of all complainants responding. There is not a reliable source of age data with similar groupings for San José residents, therefore it is not possible to determine whether the ratio of complainants in a

Illustration 6-C: Age of Complainants from Voluntary Survey and Intake

AGE	2004 Surveys	2004 %	2005 Surveys/Intake	2005 %
Under 18	8	5%	10	3%
18-30	45	30%	89	30%
31-59	85	56%	180	60%
60+	5	3%	20	7%
Decline	8	5%	2	1%
Total	**151**	**100%**	**301**	**100%**

[12] As reported in the 2004 Census Bureau American Community Survey. This survey, the most recent data available, is limited to the household population and excludes the population living in institutions, college dormitories, and other group quarters.

particular age group is disproportionate to their representation in the San José community. The largest number of complainants this year was in the 31-59 year age group (also the largest grouping of ages), 180 or 60%. The smallest age group of individuals responding was those under age 18. This group made up 3% (10) of the total responses received. In 2005, individuals over age 60 comprised 7% of complainants responding (20 complaints) which is a four-fold increase over the five complaints received from the same age group in 2004.

IV. Education Level of Complainants

Illustration 6-D provides a five-year comparison of the level of education reported by individuals filing complaints. This demographic was collected from voluntary survey responses. In 2005, the percentage of complainants reporting a college education decreased and those reporting education levels of high school and below increased.

V. Occupation of Complainants

Complaints in San José are filed by individuals from all walks of life. **Illustration 6-E** provides a five year overview of the range of occupations of complainants responding to the surveys.

Illustration 6-D: Five-Year Overview of Complainant Education Level

EDUCATION LEVEL	2001 Surveys	2001 %	2002 Surveys	2002 %	2003 Surveys	2003 %	2004 Surveys	2004 %	2005 Surveys	2005 %
Graduate Degree	22	11%	22	12%	24	14%	17	11%	16	14%
College	84	41%	72	39%	73	43%	61	40%	34	30%
High School or Below	80	39%	85	46%	72	43%	63	42%	58	51%
Decline	19	9%	7	4%	0	0%	10	7%	5	4%
Total	**205**	**100%**	**186**	**100%**	**169**	**100%**	**151**	**100%**	**113**	**100%**

Illustration 6-E: Five-Year Overview of Complainant Occupation

OCCUPATION	2001 Surveys	2001 %	2002 Surveys	2002 %	2003 Surveys	2003 %	2004 Surveys	2004 %	2005 Surveys	2005 %
Administration	27	13%	33	21%	31	18%	22	15%	5	4%
Public Employees	5	2%	5	3%	0	0%	1	1%	1	1%
Disabled	10	5%	10	6%	5	3%	5	3%	9	8%
Homemaker	6	3%	5	3%	0	0%	4	3%	3	3%
Laborer	67	33%	58	36%	77	45%	74	49%	44	39%
Professional	18	9%	8	5%	18	10%	6	4%	16	14%
Retired	3	1%	2	1%	5	3%	2	1%	3	3%
Self-Employed	6	3%	1	1%	4	2%	2	1%	3	3%
Student	17	8%	16	10%	11	6%	12	8%	15	13%
Unemployed	13	6%	6	4%	9	5%	4	3%	4	4%
Decline	33	16%	15	9%	12	7%	19	13%	9	8%
Total Surveys and %	**205**	**100%**	**159**	**100%**	**172**	**100%**	**151**	**100%**	**112**	**100%**

Chapter Seven

Outreach to the community is a mandated and essential function of the Office of the Independent Police Auditor. The IPA recognized early on that community outreach and awareness of the IPA, and the services it provides, were crucial to establishing public confidence in the agency. In the past twelve years the IPA has encountered obstacles, resistance, and criticism, but has also made significant inroads in gaining trust, respect, and support from the public, elected officials, and the San José Police Department. The IPA has developed outreach efforts to educate the community about the mission and functions of the IPA, assess the needs and concerns of diverse communities, and make the services visible and accessible to the public.

The unique interactive IPA website has become a vital outreach mechanism. It was immensely popular during 2005, offering IPA outreach materials and reports, and information about civilian oversight. A total of 42,815 visitors visited the site, generating 354,511 hits. (Each file requested by a visitor registers as a hit.) www.sanjoseca.gov/ipa/

I. Outreach Activities

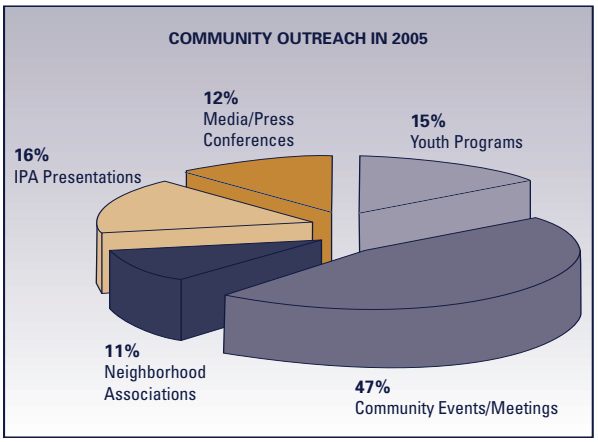
Because awareness of the citizen complaint process is critical in raising public confidence in the IPA and the SJPD, staying connected to the community has been an ongoing priority that has also served to keep the IPA informed of issues important to the people of San José. To maintain effective community

Barbara Attard was joined by Mayor Gonzales and Chief Davis in presenting the 2004 Year End Report

connections, the IPA is committed to providing on-going face-to-face contact with individuals, groups and organizations throughout the city of San José. Outreach efforts include:

- Participating in television and radio programs
- Holding press conferences and press interviews
- Reaching out to youth at schools, community associations and colleges
- Distributing literature about the IPA services
- Participating in community resource fairs
- Making presentations to organizations and neighborhood associations
- Preparing and providing resource information
- Meeting with police officers by attending "briefings" and other meetings, and by taking advantage of "ride along" opportunities

Illustration 7-A: Community Outreach in 2005



TYPES OF COMMUNITY OUTREACH	Events	%	Participants	%
Youth Programs	11	15%	942	20%
Community Events/Meetings	35	47%	2605	55%
Neighborhood Associations	8	11%	490	10%
IPA Presentations	12	16%	645	14%
Media/Press Conferences	9	12%	50	1%
Total Presentations	**75**	**100%**	**4732**	**100%**

The IPA has reached out to neighborhood associations and attended many community events. Through these events and media presentations, the office has reached more than 4,700 community members in 2005. The IPA has increased its outreach efforts 42%, participating in 75 events, up from 53 events in 2004. See **Illustration 7-A**.

The IPA has made an effort to reach the San José community through newspaper and television interviews. In the summer of 2005 the IPA was featured in a segment of *Comcast Cable Television Local Edition* with Terri Hardesty. The interview highlighted the mission of the Office of the Independent Police Auditor and informed the community of the complaint process and the benefits of civilian oversight. In December 2005, the IPA was featured on a community cable television program, *Native Voice TV*.

The IPA was featured in several local newspapers: The Spartan Daily, San José State University, and the Willow Glen Resident, as well as several articles in the Mercury News, El Observador and the Vanguard newspapers. Informational segments about the IPA have appeared in City Councilmember E-Newsletters.

Barbara Attard with Terri Hardesty at the taping of Comcast Cable Televison Local Edition Show

The IPA has made a concerted effort to reach out to the ethnic media. The IPA has had feature stories on two major Spanish television stations. These stories generated interest and calls from Latino viewers who contacted the IPA with questions and concerns.

IPA Staff members Vivian Do and Sandra Avila at a Community Resource Event

II. Independent Police Auditor Advisory Committee (IPAAC)

The IPA established a presence through frequent speaking engagements at community meetings. Because of the City's size and diversity, the office sought additional connections within the community to identify police-related issues and get the word out about the services provided by the IPA. The Independent Police Auditor Advisory Committee (IPAAC) was established in 1999 with the purpose of identifying, mobilizing and coordinating resources to assure maximum public, private, agency and individual commitment to police oversight. Members of the advisory committee include community leaders, grassroots organizers, professionals, and individuals representing the Vietnamese, Mexican/Latino, African American, Filipino, Asian American, Islamic, Sikh, Gay/Lesbian/Bisexual/Transgender, business, nonprofit, and legal communities. The support, advice, and insights offered by the IPAAC have been an integral part of the success of the IPA.

III. Informational Forums

The IPA has organized and/or participated in several community informational forums in the past twelve years. Through these public forums the IPA has been instrumental in defusing situations that have the potential to escalate and undermine public confidence. The IPA has played a key role in bringing the community and police together to discuss controversial issues and has worked to foster relationships with community leaders, while maintaining an objective perspective. The goal of the forums is to provide community members with an opportunity to voice their concerns and to hear from different agencies working in the fields of civil rights, police accountability, and police practices and procedures.

The success the office has had in organizing and participating in these forums is attributed to the support it received from the City, the various agencies involved, and the diverse community organizations that have co-sponsored the forums. These gatherings have been significant because they have served as an outlet for people to vent their frustrations and to express their sentiments and opinions about law enforcement actions. The forums assist the IPA in assessing the level of awareness in the community about police related issues and the IPA office.

In 2005, the IPA participated in five forums, providing an opportunity for the community to express concerns related to police practices and procedures. The forums targeted the Lesbian, Gay, Bisexual, Transgender Community, Downtown Urgency Ordinance meetings, a Town Hall Meeting in District 7, and the Santa Clara County Human Relations Commission's Juvenile Detention Reform Town Hall Meeting.

IV. Youth Outreach

Youth outreach continues to be a priority of the IPA. The IPA recognizes the need to educate youth about police practices and inform them about the services of the IPA. With the support of the City Council, the San José Police Department, and the Parks, Recreation and Neighborhood Services Department, in 2002 the IPA published the first "*Student's Guide to Police Practices.*" The goal of the project is to educate youth about their rights and responsibilities when interacting with police officers. Extraordinarily popular among youth and parents, the booklet contains fundamental information every youth and parent should know about police practices, as well as information on drugs, trespassing, curfew, profile stops, conduct on school grounds, community resources, and information on filing a complaint. The IPA has made the booklet available in English, Spanish and Vietnamese, both in print and on the IPA website (www.sanjoseca.gov/ipa/).

The IPA is in the process of updating and reprinting the youth guide. Recent tracking on the National Association for Civilian Oversight of Law Enforcement's website (www.NACOLE.org) showed there were 800 queries to the IPA *Student's Guide to Police Practices* in March of 2006 alone.

In 2005 the IPA made eleven presentations to youth audiences. Presentations to youth were made at the invitation of city departments, community groups, and faith based organizations. The IPA has partnered and worked with agencies such as San José's Clean Slate Program, the YMCA, Alum Rock Youth Center, San José Conservation Corps and several school districts. The IPA reaches out to youth to emphasize the important role they play in the community and to provide an opportunity for them to voice their concerns about police/community issues and be heard.

V. The San José IPA – A Model of Oversight

San José's Independent Police Auditor model of police oversight is recognized as a successful model in the field of civilian oversight. Cities across the country and internationally continue to invite the Independent Police Auditor to speak to their communities about the IPA model and to provide guidance and assistance in developing new programs. The national recognition the IPA has received is attributed to the success of the office in making substantive recommendations for policy change, as well as providing an alternative forum for citizens to file complaints, the quality with which citizen complaint investigations are monitored and audited, and its continuous efforts to generate community awareness and involvement.

In 2005 the IPA was invited to present the San José model of police oversight at the National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference in Miami, Florida. IPA Barbara Attard was elected President of the NACOLE Board of Directors for 2006. The Independent Police Auditor was selected as the United States' representative to present comparative models of oversight in the United States at an international United Nation's Development Program conference to establish oversight of the police in Brazil.

IPA Barbara Attard and staff members Sandra Avila and Suzan Stauffer met with police accountability expert and Achievement in Oversight award winner, Professor Sam Walker, at the 2005 NACOLE Conference

Chapter Eight

This chapter presents data reflecting the complaints, allegations, inquiries, and citizen contacts received from each of the city's ten Council Districts. **Illustration 8-A** lists the Council Districts and the types of contacts that originated in each district. The distribution indicates the location where the incident occurred, not necessarily where the complainant resides. The category Unknown/ Outside City Limits represents incidents in which the location could not be identified or the incident did not occur within the City of San José. The locations of incidents in inquiries are not always requested, and citizen contacts usually do not involve a location.

Complaints are classified into one of seven categories: citizen initiated, department initiated, command review, procedural, inquiry, policy, and citizen contacts (which are not complaints). Cases may be closed without a completed investigation for two reasons. A complainant may withdraw a complaint, or the case may be closed when the complainant does not file a signed Boland Admonishment. These terms are further defined in the text box in **Chapter 3**, page 19.

In 2005 there was a dramatic increase in the number of cases classified as inquiries.[13] The IPA is taking a closer look at these cases because complaints classified as inquiries receive little or no investigation and the subject officer information is not retained or tracked.

Illustration 8-A: Cases by Council District (Including Citizen Contacts)

COUNCIL DISTRICTS	CI	DI	CR	PO	PR	IQ	CW	NB	CC	TOTAL CASES	%
District 1	3	1	0	1	2	7	0	0	1	15	3%
District 2	7	3	0	0	2	11	1	1	0	25	5%
District 3	39	13	3	1	12	38	4	6	7	123	25%
District 4	4	2	0	0	1	11	0	0	1	19	4%
District 5	15	2	2	0	3	18	0	0	2	42	9%
District 6	7	2	0	0	4	16	0	1	5	35	7%
District 7	10	1	1	0	3	15	2	1	4	37	8%
District 8	5	2	1	0	1	8	1	1	2	21	4%
District 9	2	0	0	0	1	13	0	0	1	17	3%
District 10	4	0	1	0	5	9	1	1	0	21	4%
Unknown/Outside City Limits	9	20	0	0	8	56	2	2	35	132	27%
Total Cases Received	**105**	**46**	**8**	**2**	**42**	**202**	**11**	**13**	**58**	**487**	**100%**

CI= Citizen Initiated Complaint
DI= Department Initiated Complaint
CR= Command Review Complaint
PO= Policy Complaint
PR= Procedural Complaint
IQ= Inquiry
CW= Complaint Withdrawn
NB= No Boland
CC= Citizen Contact

[13] See the text box on page 15 for a complete analysis of the statistics and impact of inquiry cases.

I. Cases by Council District in 2005

Illustration 8-A reports the distribution of complaints and contacts received by the IPA and Internal Affairs in 2005. The chart identifies the council district as well as the classification of the contact received. District 3, which includes the downtown area, continues to report the largest number of complaints. Complaints across the remainder of the city appear to be fairly equally divided.

The large increase in the number of cases Unknown/Outside City Limits, 132 up from 81 in 2004, is a result of the inclusion of inquiries and citizen contacts which often do not identify a location. These categories account for 91 of the unknown cases.

II. Five-Year Comparison

Illustration 8-B shows a comparative five-year analysis of all cases received by Council District. The numbers reported in this table also include citizen contacts. While the distribution of cases appears to have remained fairly consistent, there is a notable increase in the number of complaints in 2005, as discussed in **Chapter 3**.

III. Unnecessary Force Allegations by Council District

Illustration 8-C shows the distribution of unnecessary force (UF) allegations received in 2005 for each Council District. Class I includes allegations of unnecessary force causing serious bodily injury requiring medical care. Class II complaints include the remainder of unnecessary force allegations. Most complaints alleging unnecessary force are classified and investigated as formal complaints. The highest number of unnecessary force allegations received in 2005 was in District 3. This district reported 52 allegations, 42% of the total unnecessary force allegations, which closely mirrors the general distribution of all cases received.

Illustration 8-B: Five-Year Overview of Cases by Council District (Including Citizen Contacts)

COUNCIL DISTRICTS	2001	2002	2003	2004	2005
District 1	17	11	6	16	15
District 2	21	34	35	21	25
District 3	132	162	122	116	123
District 4	21	17	32	21	19
District 5	46	37	47	35	42
District 6	45	39	43	28	35
District 7	35	37	27	21	37
District 8	22	25	8	15	21
District 9	28	18	18	19	17
District 10	18	15	22	23	21
Unknown/Outside City Limits	76	35	39	81	132
Total Cases Received	**461**	**430**	**399**	**396**	**487**

Illustration 8-C: Unnecessary Force (UF) Allegations by Council District

COUNCIL DISTRICTS	UF CLASS I	UF CLASS II	TOTAL CASES	%
District 1	0	1	1	1%
District 2	1	10	11	9%
District 3	3	49	52	42%
District 4	0	4	4	3%
District 5	1	14	15	12%
District 6	0	6	6	5%
District 7	1	15	16	13%
District 8	0	7	7	6%
District 9	0	2	2	2%
District 10	0	5	5	4%
Unknown/Outside City Limits	0	6	6	5%
Total UF Allegations Received	**6**	**119**	**125**	**100%**

Conclusion

This report documents the achievements of the IPA office upon completion of the first year of leadership under Independent Police Auditor Barbara Attard. While the office has undergone many changes, the IPA has maintained the high quality of services the community has come to rely upon. In 2005, the IPA increased its outreach to the community resulting in the office receiving a greater percentage of complaint intakes than has been reported in the past five years.

Two policy recommendations were approved by the City Council in the IPA 2005 Mid-Year Report regarding development of TASER guidelines by the SJPD and improved IPA access to SJPD homicide reports. The TASER guidelines are in line with national standards and will provide the Department and the IPA a framework within which to review future TASER related cases. Access to homicide files for review in the IPA office will enable the IPA to thoroughly evaluate officer-involved shooting cases for policy issues.

The two new policy recommendations set forth in this report, development of an expanded shooting at vehicles policy and continued training instructing officers to wait for backup in potentially violent situations, were the result of review of officer-involved shooting investigations from 2004 cases. Both recommendations are being made with foremost concern for officer and community safety.

As a result of the audit process and review of statistics for the year, the IPA noted an increase in citizen complaints filed and complaints classified as inquiries. IPA concerns about the rise in complaints classified as inquiries have prompted a dialog with Internal Affairs about complaint classification and the long-term consequences of these decisions. Review of these matters will continue and findings will be presented in future reports.

The mission of the IPA is to ensure that citizen complaints of police misconduct are investigated with thoroughness, fairness, and objectivity. The value of such civilian oversight of local law enforcement to the San José community can not be over-emphasized. The IPA is grateful for the opportunity to perform this important function. It is through a cooperative relationship with the San José Police Department and the collaboration of members of the community that the benefits of civilian review are fully achieved.

APPENDIX A

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04

OFFICE OF THE INDEPENDENT POLICE AUDITOR

8.04.010 Duties and responsibilities.

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

A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

   1. The minimal number of complaints to be reviewed annually are:

      a. All complaints against police officers which allege excessive or unnecessary force; and

      b. No less than twenty percent of all other complaints.

   2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.

   3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.

   4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.

B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of Officer-Involved shootings.

C. Community function.

   1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.

   2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.

D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:

   1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.

   2. Analyze trends and patterns.

   3. Make recommendations.

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

(Ords. 25213, 25274, 25922.)

8.04.020 Independence of the police auditor.

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

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

(Ord. 25213.)

SAN JOSÉ CITY CHARTER § 809

OFFICE OF THE INDEPENDENT POLICE AUDITOR

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

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

APPENDIX A

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

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

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

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

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

Added at election November 5, 1996.

§ 809.1. Independent Police Auditor; Power Of Appointment

(a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.

(b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.

(c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996.

APPENDIX B

CALIFORNIA PENAL CODE §832.5 AND §832.7

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

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

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

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

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

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

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

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

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

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

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

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

CALIFORNIA PENAL CODE §832.7

§ 832.7. Confidentiality of peace officer records: Exceptions

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

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

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

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

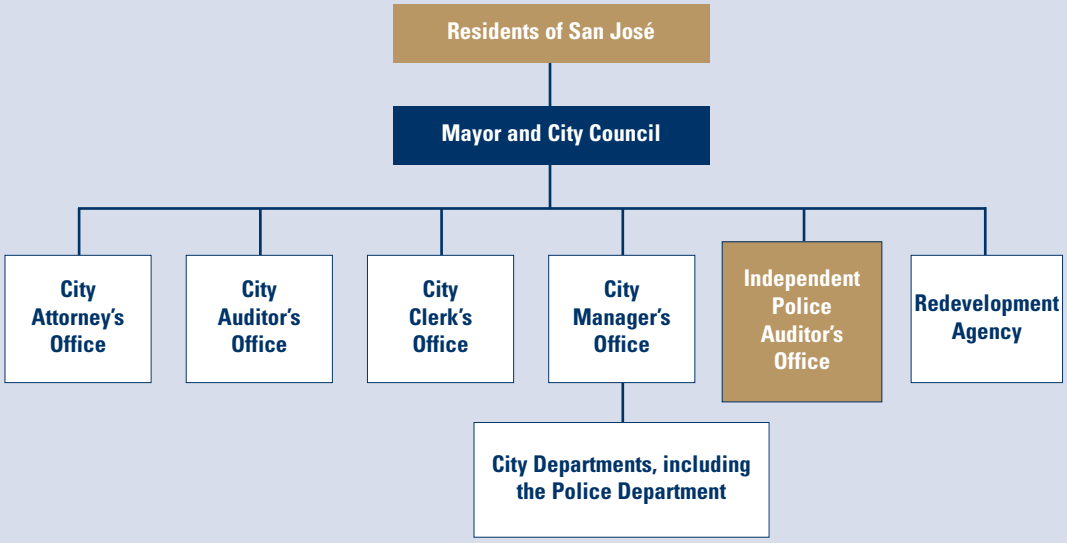
(e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

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

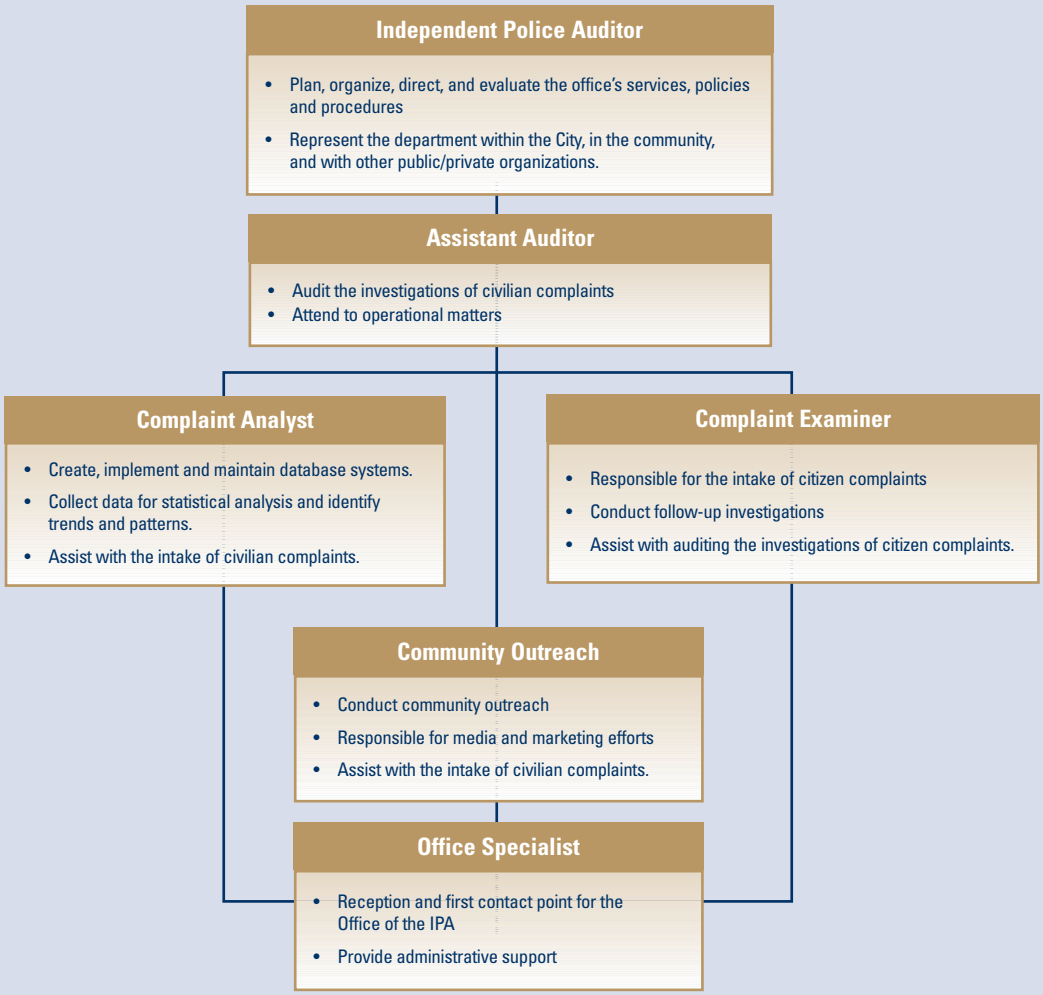
(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

APPENDIX C & D

CITY OF SAN JOSÉ STRUCTURE



OFFICE OF THE INDEPENDENT POLICE AUDITOR STRUCTURE



APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
1993 1st Quarter Report	Create a new system for the classification of complaints.	Adopted	1st Quarter, 2nd Quarter, and 1994 Year End Report
	Standardize the definition of Procedural and Informal Complaints.	Adopted	2nd Quarter and 1994 Year End Report
	Apply Intervention Counseling to all types of complaints.	Adopted	2nd Quarter and 1994 Year End Report
	Establish procedures to address potential bias between Internal Affairs Investigators and complainants and subject officers.	Adopted	2nd Quarter and 1994 Year End Report
	Enact policy to ensure objectivity in the Intake of citizen complaints.	Adopted	2nd Quarter and 1994 Year End Report
1994 3rd Quarter Report	Establish a timetable with goals in which to classify and investigate complaints.	Adopted	1994 Year End Report
	Implement a citizen "Onlooker Policy" that addresses a person's right to witness a police incident.	Adopted	1995 Mid-Year Report
	Standardize the way all investigations are written by IA personnel.	Adopted	1994 Year End Report
	Provide report writing training in "Drunk in Public" cases to include the basis for the arrest. Reports are to be retained on file.	Adopted	1994 Year End Report
	Provide chemical testing for "Drunk in Public" cases to verify if the person was in fact intoxicated.	Not Adopted	
	Send minor complaints to the Bureau of Field Operations to expedite investigations.	Adopted	1994 Year End Report
1994 Year End Report	Establish procedures to insure neutrality in the classification of complaints.	Adopted	1994 Year End Report
	Interview complainants and witnesses within three months of the initiation of a complaint.	Adopted	1994 Year End Report
	Contact complainants at regular intervals through updates and closing letters.	Adopted	1994 Year End Report
	Provide a copy of all SJPD reports relevant to complaint to the Police Auditor.	Adopted	1994 Year End Report
	Require written authorization before conducting a search of a home based on consent.	Not Adopted	
	Enact policy to require that, in cases where an officer's use of force caused great bodily injury, supervisors collect evidence and conduct an investigation into the need for the officer to use such force.	Adopted	1995 Year End Report
	Ensure that handcuffs are double locked to prevent wrist injuries.	Adopted	1994 Year End Report
	Write the complainant's statement in addition to tape recording and provide a copy to the complainant.	Adopted	1994 Year End Report
	Improve IA investigator's interpersonal skills in interacting with complainants.	Adopted	1994 Year End Respot
	Handle complaints classified as Command Review through counseling by the Field Supervisor and contact the complainant (where requested).	Adopted	1994 Year End Report
	Revise letters sent to complainants to include information about the IPA's role.	Adopted	1994 Year End Report
1995 Mid-Year Report	Maintain a central log of all public contacts for tracking purposes and to reduce the number of complaints that are lost or misplaced.	Adopted	1995 Year End Report
	Obtain additional office space for IA so that complainants are interviewed in private.	Adopted	1997 Year End Report
	Require the Police Department to offer complainants a choice to file complaints at either IA or IPA.	Adopted	1995 Year End Report
	Implement policy to standardize the format used in subject and witness officer interviews.	Adopted	1995 Year End Report
1995 Year End Report	Create policy to require closer scrutiny when conducting strip searches for misdemeanor arrests.	Adopted	1995 Year End Report
	Revise Off-Duty Employment Practices to provide accountability of the type and number of hours worked by officers off duty.	Adopted	1997 Year End Report
1996 Mid-Year Report	Connect IPA to City of San José's internet network.	Adopted	1997 Year End Report
	Conduct preliminary investigation of complaints closed because they lack a signed Boland Admonishment to determine the seriousness of the allegations.	Adopted	1996 Mid-Year Report
	Retain the name of the subject officer where a Boland Admonishment is not signed (but need not place in personnel file).	Not Adopted	
	Require complaint classification to appropriately reflect the nature of the complaint.	Adopted	1996 Mid-Year Report

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	Design and implement a new computer database system that links the IA and IPA on real time.	Adopted	1996 Mid-Year Report
1996 Year End Report	Implement a process to respond to citizen's requesting an officer's identification.	Adopted	1997 Year End Report
	Establish Class I and Class II Use of Force type of complaints.	Adopted	1996 Year End Report
	Complete Class I Use of Force investigations within 180 days	Adopted	1996 Year End Report
	Complete all investigations of citizen complaints within 365 days	Adopted	1996 Year End Report
	Request that the City Attorney issue an opinion clarifying the IPA's authority to audit DI cases with a nexus to a citizen.	Adopted	1997 Year End Report
1997 Year End Report	Require that officers identify themselves in writing when requested.	Adopted	1998 Year End Report
	When forcibly taking a blood specimen from an uncooperative suspect, do so in an accepted medical environment, according to accepted medical practices and without the use of excessive force.	Adopted	1998 Year End Report
	All complaints not covered under a Cardoza exception should be investigated by the IA and reviewed by the Chain of Command within 10 months, allowing the IPA enough time to request additional investigation, if needed.	Adopted	1998 Year End Report
	Time limits and a reliable tracking system should be implemented in every bureau and City department involved with reviewing a citizen complaint.	Adopted	1998 Year End Report
1998 Year End Report	Expand the IPA jurisdiction to review all officer-involved shootings even if a complaint is not filed.	Adopted	1999 Year End Report
1999 Year End Report	Request the City Council to authorize added staff for the IPA, to increase communication and personal contact with individual complaints and increase community outreach.	Adopted	2000 Year End Report
	Recommended that the City Council grant to the Internal Affairs Investigators subpoena power to compel the attendance of civilian witnesses and to compel the production of documentary or physical evidence.	Adopted	2000 Year End Report
	Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes examining physical evidence and follow up contact with complainants and witnesses.	Not Adopted	
	It is recommended that the SJPD explore the feasibility of implementing a voluntary mediation program within the next six months.	Adopted	2000 Year End Report
	It is recommended that the SJPD design a training course focused specifically on improving day-to-day verbal communications for officers to use in interacting with the public.	Adopted	2000 Year End Report
	It is recommended that in cases where the police erred, i.e. the wrong house was searched, an explanation and/or apology be given as soon as possible, preferably at the onset.	Adopted	2000 Year End Report
	It is recommended that motorists be told the reason for the enforcement action such as why s/he was stopped, searched, and/or detained as soon as possible and preferable at the onset.	Adopted	2000 Year End Report
	It is recommended that the SJPD 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. This will assist the family in obtaining necessary but non-confidential information.	Adopted in practice only	2000 Year End Report
2000 Year End Report	To assure the public that it is safe to file complaints, the Chief of Police should create a policy to prohibit actual or attempts to threaten, intimidate, mislead, or harass potential or actual complainants and/or witnesses.	Adopted	2001 Year End Report
	The Chief of Police should include in all citizen complaint printed materials wording that clearly states, *"Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation, and immediate action will be taken if an officer retaliates against a complainant or witness directly or indirectly,"* or similar words that emphasize the Chief's position.	Adopted	2001 Year End Report
	The San José Police Department Duty Manual does not include a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistle Blower policy for the San José Police Department.	Not Adopted but adopted in practice	2001 Year End Report

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
2000 Year End Report	The Chief of Police should continue to develop Ethics and Integrity Training to reflect and align police practices with ethical standards expected by the citizens of San José.	Adopted	2001 Year End Report
	The Chief of Police should expand the fields in the racial profiling data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Not Adopted	
	Develop a uniform definition of and process for tracking all "Racial Profiling" allegations in all instances where the complainant alleges that his/her vehicle stop or police contact was racially motivated.	Adopted	2001 Year End Report
	The San José Police Department should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking, and analysis of "Racial Profiling" and all other types of citizen complaints.	In progress	2001 Year End Report
	The San José Police Department's Internal Affairs Unit should formally investigate allegations of officers refusing to identify themselves under an Improper Procedure allegation.	Adopted	2001 Year End Report
	Continue to identify alternate, less lethal weapons, and make them more readily accessible.	Adopted	2001 Year End Report
	Provide specialized training in handling suspects armed with non-automatic projectile weapons.	Adopted	2001 Year End Report
	The Crisis Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with history of mental illness.	Adopted	2001 Year End Report
	Increase recruiting efforts to hire more officers with bilingual skills. Examine the current strategies and marketing material used for recruiting.	Adopted	2001 Year End Report
	The Disciplinary Review Panel, which determines if a complaint should be sustained and the type of discipline to impose, should document the basis for their findings to enable the IPA to conduct an audit of this phase of a citizen complaint investigation.	Not Adopted	
2001 Year End Report	A study should be conducted to assess the feasibility of expanding the front lobby to alleviate the crowded conditions that exist.	Adopted	2002 Year End Report
	A separate waiting area should be developed for designated services such as sex offenders waiting to register, criminals waiting to self-surrender, and other people that would pose a threat to the safety of others waiting in the lobby area of the main police station.	Not Adopted	
	An interview room should be made available for desk officers to obtain statements from walk-in victims and/or witnesses of crimes that affords privacy.	Adopted	2002 Year End Report
	Additional courtesy telephones should be installed in the Information Center.	Adopted	2002 Year End Report
	Monitors should be installed in the lobby of the San José Police Station displaying information such as activities, services, and meetings taking place in the Police Administration Building.	Pending	
	Access to public restrooms should be made available to the public from within the San José Police Station lobby. This would eliminate the requirement to sign-in with desk officers, go through the security gate, and provide access to restricted areas of the police department.	Not Adopted	
	A receptionist should be placed in the San José Police Station lobby to provide assistance and information to the general public.	Pending	
	Customer service training should be developed and provided to officers assigned as desk officers working at the Information Center located in the lobby of the SJPD.	Adopted	2002 Year End Report
	Information Center Sergeants should have the front desk as their primary responsibility and they should be provided office space where they can monitor the activities of the Information Center.	Adopted	2002 Year End Report
	The Chief of Police should implement incentives to attract officers to work at the Information Center.	Pending	

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	Include in police job descriptions and recruiting material those skills necessary to effectively implement community policing such as communication, conflict resolutions, and interpersonal skills.	Adopted	2002 Year End Report
	Design and implement recruiting strategies that depict and address family related issues.	Adopted	2002 Year End Report
	Revise the policies governing transfer opportunities for SJPD sergeants to require that openings be posted, and that the application and selection process, provide all candidates an equal opportunity for the assignment.	Adopted	2002 Year End Report
	Continue to develop and provide training in communication and interpersonal skills as ongoing CPT.	Adopted	2002 Year End Report
	Train all SJPD staff members, especially those who are in positions of providing information to the public, about the citizen complaint process, the functions of the IPA and IA Unit, and where a complaint can be filed.	Adopted	2002 Year End Report
	The SJPD should compile vehicle stop data on an annual basis so that a comparative analysis can be made from year to year.	Adopted	2002 Year End Report
	The Chief of Police should expand the fields for data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Renewed and Adopted	2002 Year End Report
2002 Mid-Year Report	Complete the investigation of all citizen complaints within six months.	Not Adopted	
2002 Year End Report	It is recommended that the Chief of Police continue to provide Intervention Counseling for subject officers meeting a set criterion.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police implement procedures to ensure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police direct the Command staff to factor an officer's work assignment and level of proactive policing as part of the discussion held during the intervention counseling session.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police direct the Command staff to incorporate discussion about the allegations and findings of the officer's complaint history to determine if a pattern exists.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police upgrade the SJPD's early warning system to include other indicators such as civil claims and lawsuits.	Not Adopted	
	It is recommended that the Chief of Police in conjunction with the City Manager develop a written policy that addresses the procedure to follow when serious misconduct allegations are filed against top ranking SJPD officers.	Adopted	2003 Year End Report
2003 Mid-Year Report	A written policy should be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting.	Adopted	2003 Year End Report
	The San José Police Department (SJPD) should improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.	Adopted	2003 Year End Report
	The SJPD should prepare an annual report detailing the work of the Officer-Involved Shooting Review Panel and any new recommendations/ policies/ or findings.	Adopted	2003 Year End Report
	The SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.	Adopted	2003 Year End Report
	The IPA should be part of the roll-out team to the scene of an officer-involved shooting. **Amended To**: The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander. The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene. On-scene personnel will then brief the IPA and Internal Affairs Commander as to the details of the incident.	Amended and Adopted	2004 Year End Report

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	The IPA's review of officer-involved shootings, where no citizen complaint is filed, should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints. **Amended To**: The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation. The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure that it participates in these forums.	Amended and Adopted	2004 Year End Report
	The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements. **Amended To**: The City Manager or the City Attorney as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services that cost in excess of $100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.	Amended and Adopted	2004 Year End Report
2004 Year End Report	The IPA supports continued tracking of TASER use by the SJPD, ongoing analysis of updated information about the use of TASERs, and recommends continued reporting of TASER use by SJPD officers.	Adopted	2005 Year End Report
	The IPA and Internal Affairs (IA) should revise intake procedures to comply with California Penal Code §832.7, which requires agencies receiving citizen complaints to provide complainants with a copy of their statements at the time the complaint is filed.	Adopted	2005 Year End Report
2005 Mid-Year Report	The IPA should be issued a copy of all Homicide reports and other documents provided to Internal Affairs (IA) in officer-involved shooting cases. The IPA will secure the reports in a locked file and return them to the SJPD after all analysis is completed.	Adopted	2005 Year End Report
	That the SJPD establish written guidelines for TASER use in the Use of Force chapter of the Duty Manual. **Amended To**: The TASER Usage Guidelines presented to the City Council on November 29, 2005 by the SJPD will be issued to all officers as a Training Bulletin that will become part of the training curriculum. The TASER guidelines will be binding on officers and they will be held accountable to them as they are to policies in the SJPD Duty Manual.	Amended and Adopted	2005 Year End Report