



2005-2006 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

RACIAL PROFILING BY SAN JOSE POLICE DEPARTMENT – PERCEPTION VS REALITY

Summary

The 2005-2006 Santa Clara County Civil Grand Jury (Grand Jury) reviewed allegations from individuals and concerns from community organizations that the San Jose Police Department (SJPD) has a department-wide problem of racial profiling. Concerns were intensified after an incident of violence in the vicinity of a club in the “Entertainment Zone” (EZ) in downtown San Jose in October 2005.

As a result of an extensive inquiry, the Grand Jury believes there are legitimate concerns regarding individual police excesses. It appears there is no systematic sanctioned program of racial profiling being implemented by the SJPD administration.

The Grand Jury makes the following findings and recommendations:

1. It appears there is some level of intentional or unintentional intimidation on the part of individual members of the SJPD. A pilot program should be established so that on all stops (vehicle or pedestrian) the officer should, when feasible, provide an identifying business card to the individual.
2. Many individuals do not report perceived abuses or incidents of racial profiling due to concerns about retribution from the SJPD. An additional conduit for communicating complaints in confidence with the SJPD should be established.
3. The San Jose Office of the Independent Police Auditor (IPA) reviews the results of SJPD Internal Affairs (IA) investigations but does not conduct any independent investigations. The role and responsibilities of the IPA should be expanded to include some level of investigatory powers.
4. The City of San Jose does not have a police Civilian Review Board. A task force should explore and determine if a Civilian Review Board would be an effective additional mechanism for complaint handling.
5. Outreach programs can be an effective way to enhance understanding between persons of all ethnic backgrounds and sources of authority, such as the SJPD. Part of the SJPD training should include continued participation in community outreach programs.

6. The cost to the City of San Jose for ensuring order in the EZ is significant due to police overtime. The SJPD should reassess its current shift schedules to minimize holding officers past their assigned shifts. Reducing the shift length, including overtime, may reduce officer stress, fatigue, and performance degradation.
7. The EZ club owners and the SJPD have differing priorities in maximizing business profits and in maintaining order. The City and SJPD should continue to work to establish a more synergistic relationship with EZ merchants. Consideration should be given to staggering club closing times and having club owners participate in subsidizing patrol costs.
8. The San Jose Youth Protection Curfew Ordinance is not widely enforced. The City, and especially the SJPD, should work with community organizations to encourage parental responsibility in overseeing youth activities and to promote adherence to curfew ordinances.

Background

Allegations of racial profiling are not new and have been filed in jurisdictions nationally and in California by advocacy groups. These groups include the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU), the Asian Law Alliance (ALA), and the National Conference for Community and Justice (NCCJ – formerly the National Conference for Christians and Jews). According to a 2003-2004 Santa Clara County Civil Grand Jury report:

“In the early 1990’s, there was an increased climate of mistrust in police agencies. The Rodney King incident in Los Angeles drew attention to all police agencies and highlighted the possibility of officer misconduct. In San Jose, some citizens demanded that the Council appoint a civilian police review board. As a result, the IPA office was formed to work in conjunction with IA. The position of Independent Police Auditor was confirmed by the City on June 29, 1993 and the office of the IPA opened on September 13, 1993. The Independent Police Auditor is independent of all other City entities and reports directly to the Mayor and the Council. In November 1996, City voters amended the Charter, making the IPA a permanent City office with an auditor appointed for a term of four years. According to the San Jose Municipal Code, the IPA shall have the authority and responsibility to receive, review, and report on citizen complaints filed against officers employed by the SJPD.”

Although the IPA has existed since 1993, few claims of racial profiling have been noted in recent years. Starting in late 2005, the Grand Jury began receiving complaints submitted by individuals against the SJPD regarding racial profiling. These complaints allege profiling, harassment and unnecessary detention by the police in the downtown area of San Jose, primarily on Friday and Saturday nights. These events typically occur

as downtown clubs close for business at 2:00 AM. SJPD preparation for club closings generally begins at about 11:00 PM on these nights and surveillance continues until about 3:00 AM, at which time virtually all visitors have left the "Entertainment Zone". The boundaries of the EZ are generally defined as Highway 280 on the south, Julian Street on the north, Stockton Street on the west and 10th Street on the east, with 1st and Santa Clara Streets being "ground zero".

While complaints come primarily from downtown San Jose, they have also been reported from various locations in the City at other times and days throughout the week. Downtown San Jose, including the EZ, attracts patrons from all over the Bay Area, especially during periods when clubs are open. These effects also change, depending on the timing of cultural celebrations, which clubs are in operation, which are popular, and which acts are headlined. These dynamics complicate determining whether or not there may be systematic profiling of particular racial groups.

The Grand Jury reviewed arrest records citywide, as well as for the EZ, for the reporting period July through December 2005. Arrest statistics reflect arrests of persons in San Jose whether or not they are residents. A summary of the statistics includes:

- In the EZ there were 1,714 arrests during the reporting period. Of the total, 336 (19.6%) were African-American and 770 (44.9%) were Hispanic.
- In San Jose overall there were 15,762 arrests. Of that total, 1,484 (9.4%) were African-American and 8,363 (53.1%) were Hispanic.
- In San Jose there were 69 arrests under Penal Code § 148(A) (resisting arrest) during this period. Of those, 13 (18.8%) were African-American and 36 (52.2%) were Hispanic.

The statistics are disproportionate compared to the census-based African-American (2.0%) and Hispanic (31.7%) populations of San Jose (see Appendix A). This may simply reflect the fact that many club patrons come from areas outside of San Jose and/or that the club attendance does not conform to the racial demographics of the City.

The San Jose Police Chief, in a community outreach meeting with the NAACP on March 23, 2006, indicated that pure arrest statistics are deceiving in that officers respond to calls regardless of race. He defended the SJPD, noting its diversity and the sensitivity and cultural awareness training that officers are required to undergo. The Chief stated, "The overwhelming majority of our officers do get it." However, he also stated, "That doesn't mean we don't have to be vigilant of those who don't get it." While vehicle stops are frequent during EZ activities, he cautioned against reading too much into the arrest statistics because fewer than 10% of overall arrests are the result of vehicle stops.

Discussion

The Grand Jury conducted interviews with complainants, community organizations, members of the SJPd, the Palo Alto Police Department, the San Jose IPA, California State officials, the County Public Defender Office, the Director of the San Jose Downtown Association, and business and club owners. Members of the Grand Jury visited the EZ on several occasions during the Friday and Saturday night peak hours for first-hand observations. The Grand Jury also evaluated selected arrest records and statistical information provided by the SJPd Chief of Police and the IPA.

The Grand Jury interviewed 13 individuals via telephone conference calls or in-person interviews to understand specific accusations of racial profiling and/or abuse. The inquiry included a review of Police Department policies, practices and procedures that are in place to protect the public and to ensure that individual civil rights are not violated. The review included statistics regarding police arrests, as well as demographic information associated with some aspects of police activity. The Grand Jury reviewed sensitivity training associated with initial and periodic reinforcement training of new and experienced SJPd officers.

POLICE STATISTICS AND THE COMPLAINT PROCESS

The Grand Jury observed that police statistics provided for the reporting period do not indicate the number of “vehicle stops” and “pedestrian stops” which resulted in neither a physical arrest nor a citation. The Grand Jury requested information about stops in the EZ, but the SJPd stated they were unable to provide these data. This lack of documentation may obscure information about racial profiling. In interviews with individuals who have alleged racial profiling, the Grand Jury found that stops with no arrest or citation are commonplace and create an impression of police harassment and racial profiling. This perception creates a significant negative impact in both the African-American and Hispanic communities.

Complaints received by SJPd IA (also known as Professional Standards and Conduct) are reviewed for legitimacy. During this process, the complainant is contacted to see if they want to pursue a formal investigation. The Grand Jury is concerned that complainants may be convinced prematurely not to pursue a formal investigation. An inquiry is defined as a complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. The IPA keeps careful track of the classification of complaints reported to the IPA and IA offices. Any trends in case classifications or dispositions are reported to the City Manager and Council on a mid-year and annual basis. In 2004, of the 335 external complaints, 35.2% were (re)classified as inquiries. This rate is a concern to the Grand Jury. Information received by the IPA on inquiries does not include the names of the officers involved in the incidents and could thereby mask excesses by specific officers.

An additional concern is the requirement for the complainant to sign the Boland Admonishment (California Penal Code § 148.6) in order to have a complaint investigated. The form indicates that the complainant has been informed that it is a

misdemeanor to file a false complaint against a police officer. The Grand Jury learned that this section of the Penal Code was recently held to be unconstitutional, as a violation of the First Amendment and equal protection clause, in the decision of *Hamilton v. City of San Bernardino*, C.D. Cal. 2004, 325 F. Supp.2d 1087. This opinion is being appealed to the Federal Appellate Court. The outcome of this appeal may influence the SJPD requirement that this form be signed by a complainant.

GRAND JURY INTERVIEWS WITH COMPLAINANTS

As a result of interviews with 13 individuals who believe they were harassed or racially profiled during vehicle stops or pedestrian stops, the Grand Jury has concerns about possible excesses on the part of individual SJPD officers. The Grand Jury has omitted details of these incidents to protect the identities of those involved.

- It appears that “suspicious” vehicles/drivers are sometimes stopped for what seem to be minor violations, such as a license plate light being out or failing to signal 100 feet before making a turn. In reviewing a number of these situations, the stop appears to have been a pretense to conduct a “fishing expedition” search to ascertain if the driver or passengers might be involved in other illegal activities, such as possessing drugs, firearms, etc.
- In some instances, where there is no visible problem, individuals may be asked to step out of the vehicle and allow a search of the vehicle when there is no evident probable cause for such a search. If the individual contests such action, it appears an officer’s authority may be used to imply that the driver is impeding a legitimate investigation and, in some instances, to threaten arrest if cooperation is not granted.
- In several situations where an individual requests the officer’s name and badge number, it appears that the officer views this as a confrontation and may result in a further verbal escalation and/or threat of arrest.
- Individuals have also been stopped while walking in downtown San Jose. Some complainants, for example, were accused of loitering (Health and Safety Code § 11530 et seq.) while waiting at a light rail station or bus stop during commuting hours. In some cases, individuals were patted down, handcuffed, and subsequently released. The impact of such treatment on the individual can be traumatic and give reason to believe that the SJPD does racial profiling.

In addition to these cases of likely excess, it appears there was at least one occasion of possible overcharging. In this case, multiple felony/misdemeanor charges were made and the individual was incarcerated for approximately two months. The case was ultimately resolved with only an infraction. Some allege that excessive charges are written up to cause higher bail assessments, to facilitate plea bargaining, or to dissuade individuals from wanting to visit the downtown area in the future.

DISCUSSIONS WITH THE SJPD AND IPA

Various complaints provided to the Grand Jury were reviewed with the SJPD administration. It was apparent that they do not condone such abuses and are determined to identify, counsel, and/or take appropriate action against any officer who is involved in abuses of authority. The Chief of Police has promoted ongoing outreach programs with various community action organizations to solicit specific inputs so he can be in a position to take action. Moreover, he indicated that he has received few specific complaints of racial profiling.

The Grand Jury learned that some complainants, intimidated by the bureaucracy or fearing retribution, may fail to complain to police authorities. This appears to be a primary reason that the SJPD continues to take the position that they are not aware of specific racial profiling accusations.

The IPA is only partially effective in resolving this impasse. The process used by the IA and the IPA in handling a civilian complaint incorporates four basic steps: the intake process, classification, investigation, and audit of the complaint. These procedures rely on IA for investigations. IPA currently only performs an audit function. As noted in the IPA Policies and Procedures:

“... A fundamental principal that IPA operates under is that a separate investigative body is not necessary because Internal Affairs will investigate citizen complaints in a fair, objective, and thorough manner. Therefore, maintaining these standards is a primary focus of the IPA.”

Procedures exist for cases in which the IPA disagrees with the assessment of the IA, but they are cumbersome and are ultimately resolved by referral in writing to the City Manager. The IPA has no independent investigatory authority.

In some other cities, a police Civilian Review Board offers another review option. An independent Civilian Review Board affords citizens an opportunity to air grievances, express concerns, and voice recommendations.

To patrol the EZ, hundreds of police officers and their cars are deployed, many on overtime, to cover special events and typical Friday and Saturday night activities. It is estimated that the overtime costs of this policing will be about \$840,000 during fiscal year 2005-2006. These costs result primarily from evening shift officers being held over to cover the 11:00 PM to 3:00 AM period – the clubs close at 2:00 AM.

Another issue which might contribute to tension between police and citizens is the length of the officers' shifts. Long shifts are known to produce stress, fatigue, and performance problems in many situations and overtime further exacerbates this issue.

OTHER FACTORS – THE SITUATION IS COMPLEX

The following additional information is provided for further insight into the problems facing the SJPD:

- There may be a perception that the SJPD is engaged in racial profiling, when in reality they are simply responding to a reported potential incident. The EZ features a large number of clubs which in some cases attract a specific minority group. After a night of entertainment, which may include use of alcohol and/or other substances, there is a possibility for altercations to which the SJPD must respond. In some cases, this results in confrontations with minority individuals.
- The EZ is also an attraction for individuals who may not be San Jose residents. Many individuals visit San Jose from other cities in the Bay Area, such as Oakland, Richmond, Milpitas, San Francisco, East Palo Alto, and as far away as Seaside. At the conclusion of a typical Friday or Saturday night, the clubs in the EZ, some of which may cater to particular ethnic groups, close at approximately the same time. Typically hundreds, if not thousands, of patrons exit the clubs at such times. The SJPD, in attempting to ensure a peaceful conclusion to the night's festivities, is organized to make sure that all patrons depart the various parking lots and do not loiter. The SJPD encourages an orderly exit out of the immediate EZ. This results in traffic being directed, without driver option, out to roads such as Highway 87, and in pedestrian traffic being controlled to prevent problems on the street. These control steps can be perceived as racial profiling, even though the primary SJPD objective is to keep peace and ensure that everyone departs the downtown San Jose area in an organized and calm manner.
- The Grand Jury noted, in its interviews with individuals alleging racial profiling, that a primary reason for individuals visiting the EZ is that they perceive San Jose to be a safe place. This creates a perplexing contradiction in that some of those alleging racial profiling also acknowledge that they continue to come to San Jose because they feel they will have a safe experience. On the other hand, many complainants indicated that their experiences have dissuaded them from ever wanting to return to San Jose.
- The City and SJPD are working with downtown club owners in an attempt to reduce congestion from simultaneous club closings. They have encouraged "soft closing" by staggering closing times and cutting down alcohol consumption as closing time approaches. To date, these efforts have been unsuccessful, in part because owners do not want to lose sales. Furthermore, longer departure times from the EZ may result in police incurring more overtime expense.

- The SJPD is working with downtown club owners to ensure that club patrons are of legal drinking age. The Grand Jury observed many young people, attempting to enter downtown clubs, are being “carded” by club personnel.
- The San Jose City Youth Protection Curfew Ordinance (§ 10.28.020) states that minors under the age of sixteen must be off the street from 10:00 PM to 5:00 AM and that minors under eighteen must be off the street from 11:30 PM to 5:00 AM. There are exemptions for minors under eighteen, which are itemized in Ordinance § 10.28.110. It is difficult for the SJPD to enforce these ordinances because of the large number of youths in the EZ.
- The SJPD has attempted to work with organizations such as the NAACP and ACLU to encourage individuals who believe they have been mistreated to come forward in confidence. The Chief of SJPD states that should conventional channels fail, he is willing to meet with any individuals who feel they have been mistreated by his department.

In discussions with the NCCJ, the positive effects of youth outreach programs, in which police officers participate, were emphasized. These programs provide direct person-to-person contact between youth and authority figures and have proven to be successful in promoting mutual respect and understanding of cultural diversity. For example, the Camp Everytown program (formerly Camp Anytown) has functioned for 50 years and is recognized as an effective youth violence prevention strategy. Former SJPD Police Chief, Bill Lansdowne, referring to youths stated: “It gives them the idea that who they are is important, not which group they belong to.”

Conclusions

The Grand Jury believes there is no formal racial profiling program sanctioned by the SJPD. However, the Grand Jury does believe, based on direct observations and interviews with complainants, that there are individual instances of police excess which must be addressed by City management and SJPD, from the Chief down to the patrolling officers.

Finding 1

It appears there is some level of intentional and/or unintentional intimidation on the part of members of the SJPD. This is exhibited in many ways such as vehicle and pedestrian stops for relatively minor violations. In many cases these result in searches or pat downs without probable cause. Requests for police identification (name/badge number) are sometimes perceived by officers as confrontations which can contribute to escalating tension in a given situation.

Recommendation 1

The Grand Jury recommends that a pilot program be established so that in all contacts the officer provides, when feasible, a business card to the civilian which includes officer name and badge number. In addition, the card should include contact information for the SJPd, the Internal Affairs Office, and the Independent Police Auditor's Office. This would reduce the likelihood of confrontation when an officer is asked to provide this information.

Finding 2

Many individuals do not report perceived abuses or incidents of racial profiling due to concerns about retribution from the SJPd.

Recommendation 2

In addition to formal channels such as Internal Affairs and the Independent Police Auditor's Office, the Grand Jury recommends that an additional conduit for communicating in confidence with the SJPd be established. This might take the form of high-level SJPd officers serving as focal points for minority concerns. The Grand Jury recommends identifying officers whose ethnic backgrounds might make individuals more comfortable making complaints. This could encourage bringing to light specific concerns in confidence and without fear of retribution.

Finding 3

The IPA provides an alternate way for citizens to report police harassment or abuse. At present, citizen complaints are shared between the IPA and IA. Regardless of where a complaint is filed, any formal investigation is done by IA. The IPA only audits the results of investigations by IA and either agrees or disagrees with them. The IPA does not conduct independent investigations. In cases of unresolved disagreement between the IPA and IA, the IPA can request further investigation by writing to the City Manager.

Recommendation 3

The Grand Jury believes that the IPA's role and responsibilities should be expanded to allow a level of investigatory powers in addition to its current audit responsibilities. The Grand Jury recommends that a review of similar police audit functions in other large cities be initiated. This should identify models which could be used to augment the IPA mission.

Finding 4

The City of San Jose does not have a police Civilian Review Board, as exists in some other large cities.

Recommendation 4

A task force should be convened to explore and determine whether or not a Civilian Review Board would be an appropriate additional mechanism for citizens to report cases of racial profiling or other abuse.

Finding 5

Outreach programs can be effective in promoting understanding between persons of all ethnic backgrounds and sources of authority such as the SJPD.

Recommendation 5

SJPD training should continue to include participation in community outreach programs.

Finding 6

The cost to the City of San Jose of policing the EZ is significant. During fiscal year 2005-2006, police overtime costs are stated to be about \$840,000. Also, long shifts may contribute to officer stress, fatigue, and performance degradation.

Recommendation 6

Even given labor agreements, the SJPD should reassess its current shift schedules to minimize holding officers past their assigned shifts.

Finding 7

The EZ club owners and the SJPD have differing priorities in maximizing business profits and in maintaining order.

Recommendation 7

The City management and SJPD should continue to work to establish a more synergistic relationship with EZ merchants. For example, club closings might be staggered to ease street congestion. Consideration should be given to having club

owners participate in subsidizing patrolling costs. In no case should police officers be employed by club owners.

Finding 8

The San Jose Youth Protection Curfew Ordinance is not widely enforced, in part because of the large numbers of youths present at peak times in the EZ.

Recommendation 8

The City, and especially the SJPD, should work with community organizations to encourage parental responsibility in overseeing youth activities and to promote adherence to curfew ordinances.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 1st day of May 2006.

Thomas C. Rindfleisch
Foreperson

References

Documents

1. San Jose Independent Police Auditor 2004 Year End Report.
2. San Jose Police Department Arrest Records, July 1, 2005 through December 31, 2005.
3. San Jose Independent Police Auditor Policies and Procedures (<http://www.sanjoseca.gov/ipa/PolicyProcedures.html>, last visited April 19, 2006).
4. 2003-2004 Santa Clara County Civil Grand Jury report, "Inquiry into the City of San Jose Independent Police Auditor" (<http://www.sccsuperiorcourt.org/jury/GJreports/2004/SJOfficeIndependentPoliceAuditor.pdf>, last visited April 20, 2006).
5. United States Census Bureau 2004 American Community Survey demographic profile for San Jose, CA (<http://factfinder.census.gov/>, last visited May 1, 2006).

Interviews

1. November 22, 2005 through March 22, 2006, Thirteen interviews with complainants making racial profiling claims.
2. November 23, 2005, President, San Jose/Silicon Valley Chapter of the National Association for the Advancement of Colored People.
3. December 1, 2005, February 3, 2006, and March 27, 2006, Three Interviews with Community Activists.
4. December 12, 2005, January 6, 2006, March 6, 2006, and March 24, 2006, Chief, San Jose Police Department and Staff.
5. December 21, 2005, San Jose Downtown Club Owner.
6. January 20, 2006, San Jose Downtown Association.
7. February 6, 2006, and April 10, 2006, San Jose Independent Police Auditor.
8. February 10, 2006, and March 14, 2006, Santa Clara County Office of the Public Defender.
9. February 15, 2006, National Conference for Community and Justice.
10. February 17, 2006, Palo Alto Police Chief and Staff.

Interviews (continued)

11. February 18, 2006, American Civil Liberties Union of Northern California, San Jose Office.
12. March 17, 2006, Asian Law Alliance.
13. April 10, 2006, Office of the Vice Mayor of the City of San Jose.

Meetings Attended

1. March 23, 2006, San Jose/Silicon Valley Chapter of the National Association for the Advancement of Colored People.
2. April 19, 2006, Task Force on Problems in Downtown San Jose at San Jose City Hall.

Appendix A

2004 Population Statistics for San Jose

The overall population breakdown for San Jose by ethnic group is shown in the table below, derived from the United States Census Bureau 2004 American Community Survey demographic profile for San Jose, CA (<http://factfinder.census.gov/>).

Ethnic Group	Population	%
White	294,175	33.7%
Hispanic or Latino	277,044	31.7%
Asian	256,632	29.4%
Multiple races	19,542	2.2%
African American	17,651	2.0%
Native Hawaiian/Pacific Islander	4,149	0.5%
American/Alaskan Native	3,091	0.4%
Other race	<u>1,598</u>	<u>0.2%</u>
Total	873,882	100.0%