Who's In Your Wallet?

How an early warning and intervention system can prevent problem officers from costing your agency big money in civil litigation expenses.

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April 2010

COMMAND COLLEGE CLASS 46

The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

The views and conclusions expressed in the Command College Futures Project and journal article are those of the author, and are not necessarily those of the CA Commission on Peace Officer Standards and Training (POST).

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Introduction

Every day of the year, thousands of police officers on patrol respond to hundreds of thousands of incidents nationwide. They do their jobs diligently, responding to calls for service and enforcing the rules of society. For the most part, they are largely unrecognized for their efforts unless something goes wrong. A police shooting or use of force incident will often lead on the evening news, be posted on the Internet, and be second guessed by the public ad infinitum.

In fact, the data show, and most law enforcement managers will agree, that a small number of officers will create the majority of their headaches. These officers seem to rack up an undue share of patrol car collisions, citizen's complaints, and adverse actions. Often, everyone in your department will know the name of the "officer most likely to be disciplined." Risk management attorney and retired police captain Gordon Graham used the term "predictable is preventable." [1] Graham recommends that, instead of focusing on post-incident correction, we should devote attention to preventing problems before they occur. An Early Warning and Intervention System (EWIS) can be an effective tool in this endeavor.

EWIS are designed to be corrective rather than punitive. The goal is to identify behaviors which are likely to lead to misconduct. More recently, the use of EWIS has expanded to encompass other goals, such as improving supervisory practices and the public perception of the organization.[2] For example, data from the Los Angeles Police

Department's Training Evaluation Management System (TEAMS) early intervention system is used in that agency's promotional and employee evaluation processes. EWISs have three basic phases including pre-employment selection, identification of problematic employees, and intervention to improve employee performance and/or prevent future misconduct.[3] In this article, we will discuss the current state of EWISs, what the future might hold, and the obstacles an agency may face when choosing such a system to manage the conduct of their employees.

Why Do I Even Need an EWIS?

The public, as well as government officials with oversight of law enforcement agencies, are demanding increased accountability when it comes to agency operations.[4] To function effectively, a law enforcement agency requires public support, political support, and tax dollars to fund its operations. Incidents of peace officer misconduct can often dramatically impact each of these areas.

The 2009 New Years Day officer-involved shooting of an un-armed man by a BART Police Department officer resulted in civil unrest in the community, murder charges against the involved officer, the early retirement of their chief, and the introduction of laws seeking to create a Citizens Oversight Committee for the agency.[5] The 1999 LAPD Rampart scandal cost the City of Los Angeles more than $75 million in civil litigation expenses alone.[6] The California Highway Patrol spent more than $12 million in 2009 solely to compensate for damages related to emergency vehicle collisions. Compare these expenses to the $5 million the Los Angeles Police Department paid for their TEAMS II EWIS.[7] Certainly, an agency and community can elect to continue to pay exorbitant sums to litigants for officer misconduct and inefficiency. A

more astute choice, though, would be to implement an EWIS to mitigate many of these costly future incidents. To quote a line from an old TV commercial for oil filters, "You can pay me now, or you can pay me later."

Background

EWIS, sometimes called Early Identification Systems, are data-driven management tools used to identify those officers and incidents which have the likelihood to lead to unfavorable media coverage, increased regulatory scrutiny, personnel losses, and civil liability lawsuits. The purpose of an EWIS is to identify behavioral, performance, and situational factors in a computer database records system.[8] For an EWIS to be effective, though, the agency must first properly identify the appropriate variables that are causing or creating problems.[9] These variables are based on past experience may include excessive use-of-force incidents, citizen's complaints, internal complaints (i.e. sexual harassment), disciplinary actions, poor performance evaluations, and preventable traffic collisions.[10] Once the officers have been identified by the EWIS, management intervenes to change their behavior.

These systems have emerged as popular tools to enhance police accountability. Studies have shown that actions by police employees, whether intentional misconduct or unintentional error, have been the primary cause of those incidents which are likely to lead to a lawsuit.[11] For instance, in 2006 the California Highway Patrol settled a civil case involving several officers and a supervisor who a jury decided had retaliated against a business owner after he had filed a citizen's complaint.[12] In Oakland, CA, The City Attorney's 2009 annual report noted the city pays an average of $5.7 million per year to settle lawsuits against the police department including use of force claims.[13] These types

of judgments can severely impact the already strained budget of most law enforcement agencies. An effective EWIS can be an integral part of any law enforcement agency's risk management program. Although early warning and intervention systems have gained a greater popularity due to incidents such as the LAPD Rampart Scandal, the concepts of early identification of potentially problematic officers are not new to law enforcement.

History of EWIS

According to the International Association of Chiefs of Police (IACP) Psychological Services Section, pre-employment psychological screening of law enforcement applicants dates back to as early as 1917.[14] Polygraph testing and psychological surveys were used to screen applicants for behaviors that were likely to lead to inappropriate behavior or dishonesty. During the 1980s these tests became standard for most law enforcement applicants.

Once employed, most agencies traditionally relied on close supervision to identify problematic employees. In 1981, the U.S. Commission on Civil Rights recommended that all police agencies create some form of an early-warning system to help identify problematic employees. The recommended systems would focus primarily on those officers receiving a high number of citizen's complaints.[15] By 1999, 27 percent of local law enforcement agencies serving populations of 50,000 or more had established some form of EWIS, with citizen complaints still being the primary indicator of future misconduct.[16] A 2000 United States Department of Justice study found that the Miami Dade, New Orleans, and Minneapolis Police Departments had substantially fewer citizen complaints and use-of-force incidents after implementing an EWIS.[17]

Additional support to employ EWIS came from the 1992 Report of the Independent Commission on the Los Angeles Police Department (LAPD), also known as the Christopher Commission Report.[18] The Commission was created to investigate the Rodney King incident and underlying issues resulting in the arrest and subsequent riots. In their report, they determined the LAPD had a "culture of misconduct" and recommended the development of an EWIS to identify problem officers. Due to several reasons, including lack of political support from the city, the recommendations were never implemented and a few years later the agency suffered another setback in 1999 with the Rampart corruption scandal. This led to a US Department of Justice investigation and subsequent consent decree providing for federal oversight of the agency.[19]

Current State of EWIS

Many current EWIS are relatively basic, and may be merely a manual or automated tracking of only a small segment of the information available. For example, some agencies use the number of citizen complaints as an indicator for the need for management intervention. Some are more complex, including the Los Angeles Police Department's Training Evaluation Management System (TEAMS) created as part of a federal consent decree after the Rampart scandal.

TEAMS is a computer database which captures officer's personnel histories in the areas of pursuits, use of force, officer-involved shootings, benefit usage, training, commendations, citizen's complaints, traffic collisions and discipline. The system analyzes the data in search of consistent patterns or systematic relationships between variables, commonly referred to as data mining. TEAM's goal is to identify those risk

factors that indicate officers are likely to continue a pattern of police misconduct. For example, if an officer were to receive three sustained citizen's complaints in one year, he or she would be flagged for re-evaluation or re-training in the area of deficiency.

Other law enforcement agencies have been using advanced technology to monitor their employees. For example, the London Metropolitan Police Department (Met) requires all 31,000 of its personnel to wear an Automated Personal Location System (APLS) global positioning device to track their movement.[20] Met officials assert the devices will allow for improved officer safety as well as allowing supervisors to monitor the movement of their subordinates. Newer devices can monitor the vertical position of an officer, indicating if he or she has been assaulted and knocked to the ground.[21] The police union initially expressed concerns over personal privacy and a belief the system would be used for disciplinary purposes, but have now accepted the monitoring and agree that it has improved officer safety and of police services.[22]

TASER International, best known for its electronic discharge control devices, has developed a lightweight head mounted camera system called the TASER Axon.[23] The Axon allows the capture of video and audio from the viewpoint of the officer as opposed to the traditional dash mounted in-car camera systems. It uses Bluetooth technology to digitally transmit the image to a storage device, which can be downloaded for in-car viewing or transmitted to a remote location for viewing by others (including the officer's supervisor). The San Jose Police Department became the first agency in California to begin testing the device in November 2009, with results of that study still pending. The Axon has, though, already helped clear a Fort Smith, Arkansas, officer who was involved in an officer-involved-shooting in November 2009.[24]

The Los Angeles Sheriff's Department has been testing unmanned aircraft using drone surveillance technology developed during the Iraq War.[25] The small radio controlled aircraft carries a camera which will downlink to a viewing/recording device on the ground. The device is designed for criminal surveillance, but its images can also be used to monitor the actions of officers. This would allow either real-time or post-incident analysis by agency officials. The reality is these are only small segments of the types of data now readily available for analysis. Using these emerging technologies and collecting non-traditional data may provide an even more effective EWIS.

What the Future Holds

The future of early warning and intervention systems looks even more intriguing. New technology, as well as collection of additional data such as biofeedback monitoring or historical GPS tracking, will aid law enforcement managers to identify performance issues as well as behaviors which may lead to disciplinary action or litigation. At the Georgia Institute of Technology in Atlanta, scientists have created a "smart shirt" that can monitor a person's vital signs.[26] This application could be used to monitor an officer's breathing, heart rate, and blood pressure to determine risk factors such as fatigue, overexertion, or medical problems which could lead to making poor decisions or result in injury.

Other risk-factors are often monitored pre-employment but are seldom monitored once an employee is on the job. These include examination of financial information including credit records, a search of public records for divorce or other legal proceedings, or a check of the US Treasury Department's financial database which could indicate

money laundering activities.[27] This type of monitoring may have identified some of the LAPD officers caught up in the Rampart scandal.

Functional Magnetic Resonance Imaging (fMRI), a relatively new technology which measures changes in blood flow in the brain related to neural activity, can be used to determine if the test subject is being truthful.[28] While still in the testing phases, the application of fMRI for law enforcement use, including determining an employee's truthfulness, are enormous. It is not uncommon for prosecutors to maintain "Brady Lists" (referring to a US Supreme Court case) of officers who have been disciplined for dishonesty.[29] District Attorneys are sometimes reluctant to prosecute criminal arrests made by officers on a Brady List.[30] Used appropriately, fMRI could clear the officer of wrongdoing, or provide an indication that agency intervention is needed for an officer who being less than truthful.

On-duty emergency vehicle operations are another activity that could benefit from technological advances. According to the California Commission on Peace Officer Standards and Training (POST), traffic collisions involving on-duty emergency law enforcement drivers have been steadily rising over the years.[31] The traffic collision rate for California law enforcement officers is significantly higher than the national trend. In many of these collisions driver error either caused or contributed to the collision.

A number of law enforcement vehicles are currently equipped with some form of Global Positioning Satellite (GPS) monitoring system. Many private sector employers use GPS to monitor unsafe driving practices through the use of intelligent tracking systems which monitor speed and location of their vehicles.[32] With the California Vehicle Code requiring active supervision of pursuits[33] this technology has the potential

to provide valuable evidence demonstrating your officer was in compliance, and taking corrective action when they are not. Unfortunately, the system's cost (about $200,000) in these draconian budget times have precluded its implementation

Using an EWIS

Once the raw data is collected by EWIS, the agency will need to analyze it to determine its relevancy. Data mining will allow your agency to identify those behaviors and employees which are likely risk factors leading to civil liability. The TEAMS early warning and intervention system used by the Los Angeles Police Department is an excellent early platform; however, it may not be robust enough for true risk management. It will take several years of data collection and analysis to determine the variables and their relationships needed to design a functional artificial-intelligence based system[34] for large law enforcement agencies.[35] The Future of EWIS is only limited by your imagination…and your budget.

Obstacles

Whether your agency already has an early warning and intervention system that needs to be improved, or you are looking to build one from the ground up, there are certain obstacles that will be faced. These may include resistance from key stakeholders including your employees and the Police Officer's Association (POA).

Employees are often skeptical of change, especially when they perceive something will intrude on what is essentially their private lives. Law enforcement personnel, however, are accustomed to a greater level of transparency in their private affairs than the general public.[36]

As was the case in The Met, the primary concern of employees is usually the fear the system will be used primarily as a disciplinary tool to take administrative action against them. During a panel discussion on EWIS, John Markey, a law enforcement labor representative, expressed concerns that supervisors may conduct random audits of in-car camera systems based on a personal dislike of an employee rather than an identified incident of misconduct. Your POA will need to be educated on the benefits of the system to their members, including the ability save a member's reputation, and possibly career, by allowing the agency to identify behaviors that may lead to adverse action; and take steps to mitigate those types of behaviors.

To build an effective EWIS, your agency should consider incorporating several components into their system. These components could include:

- Functional MRIs to determine truthfulness during pre-hire and internal investigations
- Video and audio monitoring of an employee's activities
- Global Positioning Satellite tracking including real time monitoring of patrol vehicle operations as well as historical recording or patrol car/officer movement
- Use of force, liability claim, and lawsuit incident tracking
- Tracking of personnel actions including incident reports, counseling sessions, written evaluations, internal/external complaints, and formal disciplinary actions.
- Tracking of arrests where no criminal charges are filed by the District Attorney indicating the possibility of a lack of probable cause and/or unlawful search and seizure. (NOTE: A criminal conviction in many cases precludes the person arrested from filing a lawsuit for a violation of civil rights)

- Tracking of Pitches Motions and Brady files
- Monitoring of social networking and other electronic media sources
- Checks of public records including lawsuits, bankruptcies, tax liens, and civil judgments for current employees.

Conclusion

Who's in your agency's wallet? It depends on your level of desire to keep plaintiff's counsel out of it. At what point do law enforcement managers decide that enough is enough? At what point do they determine that it is more beneficial to identify problematic officers and take steps to correct their behavior than to pay civil damages for that officers misdeeds? Will it take public outrage at an officer involved shooting? Maybe a pursuit crash which kills an innocent family? Or how about the Justice Department deciding how you are going to run your department?

Current EWIS have shown promising results. As technology progresses the types of data and methods to analyst that data will increase exponentially. EWIS have the capability to allow law enforcement managers to identify problematic officers, take steps to prevent misconduct before it happens, and save your agency money.

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