

“OUR FAILURE TO CAREFULLY
REVIEW REPORTS, TO EXAMINE
EVENTS CLOSELY TO IDENTIFY
PATTERNS AND TO PROVIDE
EFFECTIVE OVERSIGHT AND
AUDITING CREATED THE
OPPORTUNITY FOR THIS CANCER
TO DEVELOP AND GROW.”

Quote by: L.A. Police Chief Bernard C. Parks

Source: Los Angeles Times, March, 1, 2000

Chapter Two

I. “Early Warning System”:

A. Introduction

The San José Police Department’s “Early Warning System” (EWS) is designed to identify possible errant behavior by officers, and to take corrective action. The EWS is intended to be a proactive attempt to address real or perceived unacceptable behavior before it becomes a serious problem that can result in: injury to an officer or citizen, criminal prosecution, and/or civil liability. The EWS flags officers that receive three Formal complaints or a combination of five complaints of any type within a 12-month period. Officer’s meeting this criteria are scheduled to participate in Intervention Counseling¹ (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 of the bureau the subject officer is assigned to. 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” a form of discipline and only the fact that a session took place is recorded.

Intervention Counseling is one of several types of counseling that SJPD officers have available to them. Officers involved in a shooting or other high stress enforcement action are encouraged to participate in the Critical Incident Stress Debriefing. This type of counseling session also involves the officer and his/her chain of command and may include the Police Chaplain. In addition, officers can receive professional counseling

through the City of San Jose’ Employee Assistance Program which is available to all city employees.

Subject officers qualify for Intervention Counseling every time they meet a set criterion. The EWS allows for post-intervention monitoring of each subject officer. In addition, the Independent Police Auditor (IPA) tracks the number, type, and disposition of subsequent complaints for officers that received counseling and statistical information is compiled and included in the IPA’s public reports.

The process of tracking complaints by subject officer is at the core of the San Jose Police Department’s (SJPD) Early Warning System. The lack of such a system has been identified by police critics as one reason why police departments fail to identify and intervene in the misconduct of police officers, especially those with a long history of misconduct. In 1981, the U.S. Commission on Civil Rights recommended that all police departments create an early warning system to identify officers who were frequently named in complaints or who demonstrated identifiable patterns of inappropriate behavior².

Most police administrators agree that early warning systems are necessary and an effective management tool. However, concerns voiced by some officers are that this type of tracking system negatively impacts proactive policing, results in a decrease in the number of self initiated contacts, and that the fear of receiving complaints increases the risk to officers’ safety. The IPA sought answers to these very serious allegations by conducting an analysis of the subject officer’s self-initiated contacts, subject officer’s perceptions, and an analysis of subsequent complaints to determine the existence and degree of correlation to the EWS.

¹Intervention Counseling (IC) is part of the early warning system which identifies and/or corrects possible errant behavior. Officers that receive three or more Formal complaints or a combination of five or more complaints of any type within a 12-month period are referred for intervention counseling. This counseling is non-punitive and is an opportunity to have a meaningful dialogue between the subject officer and his/her chain of command.

²Who is Guarding the Guardians? Washington, DC: U.S. Commission on Civil Rights, (1981):81.

B. Methodology

In seeking to distinguish between intuitive reasoning and reasoning based on empirical data, the Independent Police Auditor (IPA) collected and analyzed statistical and experiential data. The use of empirical and experiential data is intended to provide an objective and unbiased evaluation of an identified concern. The IPA used standard auditing techniques and incorporated steps used in the Scientific Method style of research. The IPA used the following eight steps in a developmental chain of procedures:

1. Selection of the problem/issue to be evaluated.

The issues that the IPA selected to study involved:

- a. Allegations of a work slowdown due to officers' reactions to the San Jose Police Department's (SJPD) early warning system and their mandatory participation in Intervention Counseling.
- b. The impact on the performance of an officer who was counseled as a result of being selected through the SJPD's early warning system.
- c. A determination on whether officers that were counseled experienced an increase or decrease in complaints.

2. Review existing research and applicable policies and procedures.

The history, implementation, policies and procedures of the SJPD's Early Warning System and the Intervention Counseling Program were researched and used to identify the variables for this study. In addition, the IPA utilized a very informative study conducted on early warning systems. This study was published and appeared in a National Institute

of Justice publication where Professor Sam Walker, a leading authority in civilian oversight, was a key participant³. Also examined was the publication, "Turning Necessity into Virtue," Pittsburgh's Experience with a Federal Consent Decree⁴.

3. Develop a hypothesis or research question.

The hypotheses tested were:

- a. The SJPD's Early Warning System does not result in a decrease of self-initiated contacts.
- b. Intervention Counseling triggered by the SJPD's Early Warning System did not negatively impact the subject officers.
- c. The SJPD's Early Warning System and the Intervention Counseling resulted in a decrease in subsequent complaints for the officers that were part of this study.

4. Determine an appropriate methodology/research design.

All officers receiving Intervention Counseling in the year 2001 were identified. Data detailing the number of self initiated contacts made by these subject officers during the six months before and six months after the counseling session was analyzed. The counseling date was used as the midpoint for gathering data, the period studied covered from 8/1/00 to 6/30/02. Personal interviews were conducted with 30% of the subject officers that participated in Intervention Counseling. An analysis was conducted of the complaint history within one year of the date the officers attended Intervention Counseling.

5. Identify the variables and collect the relevant data.

There were approximately 30 variables identified for analysis in this study. The selection of these variables was based on the IPA's experience and best estimate of what information was needed in

³Early Warning Systems: Responding to the Problem Police Officer, National Institute of Justice, (July 2001) U.S. Department of Justice.

⁴"Turning Necessity into Virtue," Pittsburgh's Experience with a Federal Consent Decree, Robert C. Davis, (September 2002), Vera Institute of Justice.

order to prove or disprove the hypotheses. Some of these variables included determining the total number of days worked before and after Intervention Counseling, and then subtracting all the time the officers were not at work. Also analyzed were the number and type of self initiated contacts made within a one year span; the officer's years of experience, the type, nature, and finding of prior and subsequent complaints; interviews with officers and command staff participating in the Intervention Counseling sessions. Other variables included the unit, team, and shift the officer was assigned to before and after Intervention Counseling.

6. Analyze the data and interpret the results.

Significant variances, patterns, and groupings in the data emerged requiring additional data, which was provided by the SJPD's Research and Development Unit. The data was transposed into charts and numerical graphs that illustrated patterns. A survey was prepared and a random sample of subject officers that participated in IC during the 2001 year, were interviewed. Their responses to a set of predetermined questions were synthesized. Other experiential data was obtained by interviewing the last two Internal Affairs Commanders.

7. Present the results in appropriate form.

Logical deductions from the numerical and experiential data were extrapolated. The IPA based its conclusions and recommendations on the totality of the information examined.

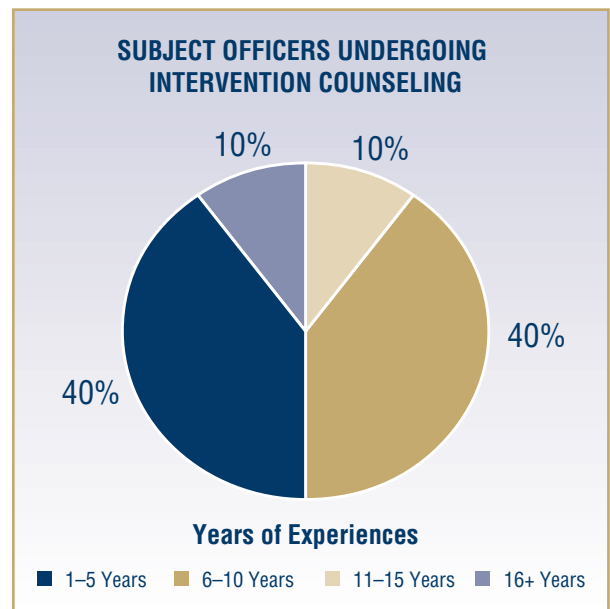
8. Replicate the study (when necessary).

This study will be replicated and reported in future IPA reports.

C. Analysis

There were 23 different officers that were identified through the early warning system as having the required number of complaints to qualify for Intervention Counseling in the 2001 calendar year. Three were excluded from this analysis because two officers resigned and one was terminated during this period. Two of the three officers that were separated from employment with the San Jose Police Department had a history of sustained complaints. There is no indication that the departure of the third officer was because of complaints in fact, that officer did not have sustained complaints nor received any complaints subsequent to his Intervention Counseling.

This study analyzed data for the period of six months prior and six months after the subject officer's Intervention Counseling (IC) date. The IC date was used as the midpoint between the broadest possible ranges examined, which were from 8/1/00 to 6/30/02. For example, the data collected for an officer receiving Intervention Counseling on 1/1/01 ranged from 8/1/00 to 7/1/01. The data for an officer receiving Intervention Counseling on 12/31/01 ranged from 6/30/01 to 6/30/02.

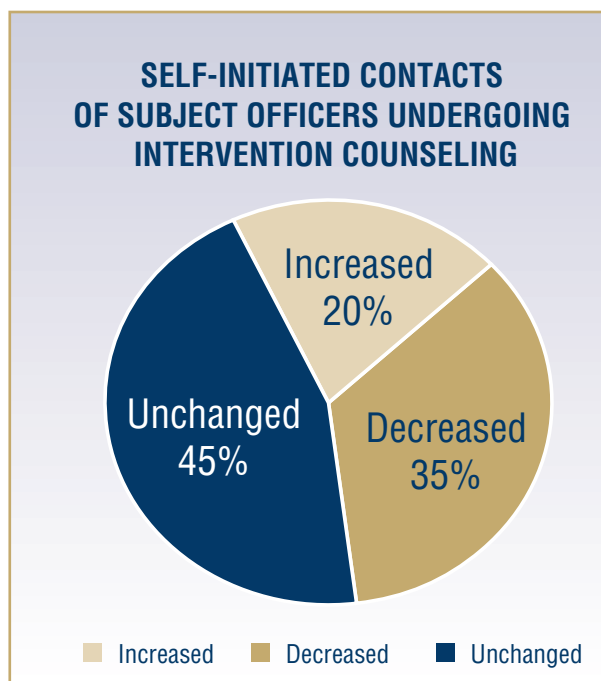


Subject Officers Years of Experience

The first area for analysis involved grouping the twenty subject officers by years of experience. The data indicated that 40% of the subject officers qualifying for Intervention Counseling had five years or less experience, 40% of the subject officers had six to ten years of experience, 10% had eleven to fifteen years of experience and 10% had sixteen and over years of experience. This is consistent with prior IPA findings that indicate that officers with less experience are more likely to be assigned to patrol, have more citizen-to-police contacts, and incur more citizen complaints.

Proactive Policing

Determining if there was a decrease or increase in work productivity after attending Intervention Counseling required an in-depth analysis. A ten-hour, four-day workweek was used for this analysis. Based on six months or twenty-six weeks, the average number of days a subject officer would have worked was approximately 104 days. All vacation, sick leave, compensatory, administrative, and military time off was added and then subtracted from 104 days to arrive at an actual number of days that the subject officer was at work. The number of self-initiated contacts for each subject officer, six months before and after Intervention Counseling was determined. Self-initiated contacts⁵ included those contacts that were designated as Priority Five⁶ and Six⁷. A further breakdown of priority 5 and 6 contacts determined an average number of self-initiated contacts per day before and after Intervention Counseling for each subject officer. A comparison was made of these two sets of numbers to determine if the number of self-initiated calls decreased or increased. Other variables that were considered were any changes in assignments, shifts, and teams.



The results were: 20% of the subject officers had a 100% increase in self initiated contacts, 35% of the subject officers had a 40% decrease in self initiated contacts, and 45% had no change in self-initiated contacts. These figures indicate that 65% of the subject officers did not experience a reduction in the number of contacts they initiated therefore, their proactive policing level did not decrease.

Complaints Subsequent to Intervention Counseling

The next analysis focused on the number of complaints that the subject officers received within one year after attending Intervention Counseling. The twenty officers were grouped according to whether they increased, decreased, or had no change in self-initiated contacts. The following are the results:

⁵All officers are required to call the police dispatch center once they decide to initiated contact with a person or make an inspection of a premise. Contacts that officers make not in response to a call for service are tracked by the dispatchers and are designated a priority five or six type of contact.

⁶Priority five contacts are those contacts that self-initiated site checks conducted at businesses, schools, other locations

⁷Priority six contacts are those contacts that self-initiated contacts involving vehicle and pedestrian stops.

Group with an increase in self-initiated contacts:

Three of the four officers in this group received between one and three subsequent complaints. Only one officer in this group had a complaint with a sustained finding. The type of allegations ranged from Improper Procedure to Use of Force to Unofficer like Conduct. There was no pattern detected in the type of complaints for this group.

Group with a decrease in self-initiated contacts:

Two of the seven officers in this group did not receive any complaints within one year after their Intervention Counseling session. The remaining five officers received between one and three complaints each. There was no pattern detected in the type of complaints for this group. This group had no complaints with a sustained finding.

Group with no change in self-initiated contacts:

Three of the nine officers in this group did not receive any subsequent complaints. Four of the nine officers received only one complaint. One officer received three complaints and one officer received four complaints. There was no pattern detected in this group and only one officer had a sustained complaint.

The fact that some officers in all three groups (increase, decrease, no change) received complaints within one year after receiving Intervention Counseling indicates that there was no significant deterrent effect.

Perceptions of Subject Officers

In addition to analyzing statistical data, the IPA conducted personal interviews of a random sample of subject officers who received the required number of complaints to qualify for Intervention Counseling. While ten officers were randomly selected, only six officers or 30% were interviewed. These officers were asked a pre-determined set of questions. The responses from the

subject officers to the survey questions as well as the IPA observations were synthesized. For some officers the Intervention Counseling took place almost two years from the date of the interview. Below are some of the officer's responses and IPA observations:

- 50% of the officers were familiar with the Intervention Counseling Program (ICP) prior to attending while 50% were not. Of those that were familiar with the ICP, their knowledge was primarily through word of mouth. They did not receive written information to supplement their limited understanding and when pressed to describe what they knew about the ICP, their response was, "Three complaints and you go to see the Chief." Another officer said that all he knew was that it was not a good thing to have to go to IC. One officer said that his Sergeant was not well informed about the ICP either.
- 100% of the officers had a negative reaction when first notified that they were scheduled to attend an IC session. In further discussing their negative reaction, all officers said that their negative perception of the ICP dissipated afterwards and was positively changed. Some stated that it was not what they expected, meaning that it was not punitive or threatening. Another officer said that he was not surprised because he knew that it was his third complaint.
- 100% of the officers said that the Command Staff treated them courteously during the IC session. All of the subject officers praised the Deputy Chiefs that participated in their session and described them as being very understanding and encouraging. Some suggested that the session be conducted without the Internal Affairs Commander or their Sergeant present. Others expressed relief that their Sergeant was present. When asked if they would rather have

the counseling session with a group of their peers, the response was no because it would not be taken “seriously”.

- 100% of the officers felt comfortable expressing their point of view during the IC session. Officers stated that they were given ample time to talk in a positive atmosphere where there was no threat of discipline and without a recorder taping their comments. Officers stated that they felt listened to. Another comment was that the officer felt like a victim because he had to restate the circumstances that gave rise to the complaints even though he had already had to explain them to Internal Affairs investigators. Another officer stated that he felt better after the session and no longer felt threatened by the ICP.
- Only one officer felt that the IC session was not conducted in an objective manner. After further inquiry, the officer explained that it wasn't that the IC session wasn't objective but that he felt that the process was not objective because of the perceived stigma that officers, “messed up” even though the complaints were exonerated.
- Only one officer felt that he experienced a decrease in self-initiated calls. However, most of the officers did say that this was a real concern because the more contacts made the greater the probability of getting a complaint. Other comments made were that if an officer had to go to IC again, the second meeting wouldn't be as nice. A few officers stated that getting complaints would not deter them from being proactive and “taking care of business”. Another stated that it had a positive impact

that resulted in greater work productivity. Another comment was that a change in self-initiated calls would depend more on the type of assignment. Another officer said that it might affect the decision of officers to initiate stops.

- 50% of the officers felt that attending IC because they received three complaints was unfair. Concerns expressed were that they felt branded as “troublemakers” while others said that they realized the need to have such a program in place. Many questioned the need for counseling after three complaints if the complaints were different in nature or did not reveal a pattern of bad behavior. Another officer stated that there could be circumstances where one complaint could justify counseling. Another officer said that the counseling helped him, “grow up” because it forced him to learn different tactics and communication skills.

Other comments and suggestions offered by the officers interviewed were the following:

- The ICP could be improved by taking a closer look at the complaints for trends and patterns.
- Get rid of the program altogether.
- Prefer that the IC be with the Deputy Chief only.
- Count only sustained complaints.
- Factor productivity of the subject officer in determining the number of complaints before ICP is necessary.
- Overall ICP is a good program.

CHAPTER TWO | NEW RECOMMENDATIONS

Intervention Counseling Program Analysis

SO No.	Years of Service	IC Date	Self-Initiated Contacts				% Change (+ / -)	Complaints				Time off (sick/vac/com)(By days)				Unit Assgmt	Team Assgmt	Watch Assgmt	Unit Transfer	Team Transfer	Watch Transfer	Date Transferred		
			Prior to IC Date		After IC Date			After IC	Before IC	After IC	% Change	Unit Assgmt	Team Assgmt	Watch Assgmt	Unit Transfer								Team Transfer	Watch Transfer
			Total	Daily Avg	Total	Daily Avg																		
INCREASE IN SELF-INITIATED CONTACTS																								
1	10	1/1/01	15	0	203	2	1253%	3	18	16	-11%	FB	CC	01	FO	38	02	3/18/01						
6	8	2/15/01	87	1	433	5	398%	2	17	11	-35%	FO	99	04	FO	24	03	3/17/01						
8	11	2/20/01	220	3	310	4	41%	2	13	13	0%	FO	88	02	FO	45	03	3/17/01						
19	4	9/4/01	326	4	397	5	22%	0	27	20	-26%	FO	031	01	FO	099	02	9/29/01						
DECREASE IN SELF-INITIATED CONTACTS																								
16	10	4/4/01	319	4	2	0	-99%	0	18	28	56%	DT	Military	01	DT	Military	01	6/10/01						
17	7	7/10/01	168	2	112	1	-33%	1	24	18	-25%	VE	003	04	VE	002	04	3/6/02						
9	7	2/20/01	156	2	126	1	-19%	3	27	18	-33%	MT	06	02	MT	08	02	3/17/01						
23	4	12/17/01	189	2	113	1	-40%	0	23	24	4%	FO	016	02	FO	014	02	3/16/02						
4	4	2/13/01	442	4	278	3	-37%	1	4	14	250%	FO	20	03	FO	64	02	3/17/01						
10	8	2/21/01	368	4	318	3	-14%	2	12	9	-25%	CZ	CMD	04	FO	85	04	9/29/01						
18	4	8/31/01	645	7	478	6	-26%	2	10	18	80%	FO	046	03	FO	011	02	9/29/01						
NO CHANGE IN SELF-INITIATED CONTACTS																								
3	27	2/13/01	4	0	4	0	0%	0	14	6	-57%	PP	222	01	PP	222	01	3/28/01						
14	12	3/13/01	14	0	7	0	-50%	3	15	15	0%	AJ	AS	01	FO	27	01	8/31/02						
20	20	9/27/01	36	0	30	0	-17%	1	10	14	40%	MT	DEZ	04	CZ	CMD	04	3/16/02						
5	6	2/14/01	89	1	107	1	20%	0	19	17	-11%	FO	72	03	FO	67	03	3/17/01						
11	5	2/26/01	140	2	195	2	39%	1	20	23	15%	FO	75	01	FO	95	01	9/29/01						
21	4	12/10/01	174	2	154	2	-11%	1	19	35	84%	FO	016	02	FO	014	02	3/16/02						
12	7	2/27/01	248	3	263	3	6%	5	13	22	69%	VE	001	04	VE	001	04	1/10/02						
13	5	3/5/01	308	3	232	3	-25%	0	11	15	36%	FO	84	02	FO	100	04	3/17/01						
2	5	1/30/01	603	6	529	6	-12%	1	12	27	125%	FO	93	03	FO	95	02	3/18/01						

SO No: Subject Officer number assigned to maintain confidentiality

IC Date: Date that subject officer went to Intervention Counseling

Priority 5: Self-initiated site checks conducted at businesses, schools, other locations

Priority 6: Self-initiated contacts involving vehicle and pedestrian stops

Complaints After IC: Complaints that subject officer received within one year after going to Intervention Counseling

Unit Assgmt: Unit Assignment

Team Assgmt: Team Assignment

Date Transferred: Unit that subject officer transferred to different unit after receiving Intervention Counseling

Unit Transfer: Unit that subject officer transferred to

Team Transfer: Team that subject officer transferred to

Unit Codes Abbreviation:

AJ: Assault Juvenile

CZ: Cruise Management Detail

DT: Drug Task Force

FB: Financial Crimes/Burglary

FO: Field Operations Patrol

MT: Metro Unit

PP: Pre-Processing Center

VE: Violent Crime Enforcement

Team Codes Abbreviation:

AS: Assaults

CC: Curfew Center

DEZ: Downtown Entertainment Zone

CMD: Commander

D. Conclusion

Through this study, the IPA sought to determine if there was evidence to support the perception that the Early Warning System (EWS), a system that tracks the number of complaints an officer receives and then intervenes by providing counseling, results in a work slowdown, negatively impacts the officers, and/or decreases the number of subsequent complaints. The analysis of the data revealed that 65% of the subject officers' proactive work did not decrease and of the group that experienced a positive impact, their combined number of self-initiated contacts increased 100%. Officers in all three groups studied received complaints subsequent to attending Intervention Counseling. Though not every applicable variable that could have impacted these issues was identified, the data studied was sufficient to make general findings about the hypotheses studied.

The prevailing comments from the officers interviewed indicated that the EWS could be improved, but most also acknowledged that this system is fair and necessary. One of the officers interviewed captured the sentiment behind the officer's suggestions for improving the EWS and ICP, he said, "The Deputy Chief and everyone present were real nice but what did I learn, my complaints had nothing in common." The officers interviewed had two primary suggestions for improvement: (1) that the subject officer's overall work productivity be used as a performance indicator and (2) that the complaints counseled on reveal some pattern of behavior. These suggestions are sound and according to the Internal Affairs Commander are already in practice. The Internal Affairs Commander and the Deputy Chief of the Bureau the subject officer is assigned to, meet prior to conducting these counseling sessions to review the subject officer's work and complaint history.

An enhancement to this process could include obtaining the number of self-initiated contacts as an indicator of the officer's work productivity. Those officers that are very proactive would obviously have a higher probability of getting complaints since the number of contacts with the public would be greater than those officers that initiate very few contacts. Without acknowledging this reality, it will be difficult to dispel the belief that in order to avoid getting complaints, officers should avoid initiating citizen contacts.

All of the officers interviewed said that they had an initial negative reaction when first notified that they were scheduled to attend Intervention Counseling. This negative reaction appeared to stem from a lack of information about the nature and contents of the counseling session. All of the officers indicated that their negative perception of the IC dissipated afterwards and was positively changed. SJPD officers and supervisors need to be better informed about the goals and benefits of the early warning system to defuse the notion that this system is necessarily detrimental to officers.

The SJPD'S early warning system currently relies only on citizen complaints to identify officers for intervention while most police departments use a combination of performance indicators. While no standards have been established for identifying which officers should participate in early warning programs, factors that can help identify these officers include: citizen complaints, firearm-discharge reports, use-of-force reports, civil litigation, resisting-arrest incidents, and vehicular pursuits and accidents⁸.

A comprehensive early warning system allows command staff to monitor officer productivity and to spot officers whose performance differs significantly from their peers⁹. Early warning systems are

⁸Early Warning Systems: Responding to the Problem Police Officer, U.S. Department of Justice, National Institute of Justice, (July 2001), page 2.

⁹Turning Necessity into Virtue, Pittsburgh Experience with a Federal Consent Decree, Robert C. Davis, (September 2002), page 62.

a check on supervisor's actions as much as they are a way to identify problem officers. Even when problem officers identified by an early warning system are known to supervisors, the advantage is that the system forces supervisors to take action or justify their inaction. This leaves little room for playing favorites or for abuses in discretion.

Early warning systems can be extremely complex, high-maintenance administrative operations that require close and ongoing human attention¹⁰. While a complex system may be viewed as more desirable, there are also serious drawbacks with these type of systems. The SJPD has utilized their EWS very effectively and a reason may be the simplicity in which the information is gathered and tracked. The more complex the system, the less reliable the data can become because of the greater need for human resources to update, maintain, and learn how to use it. A cumbersome system can lead to a reduction in the actual use by command staff and ultimately in a loss of confidence in the entire process.

Incorporating existing indicators such as civil claims and lawsuits could enhance the SJPD's early warning system. While there is some overlap because some police conduct can generate all three actions: complaints, civil claims, and lawsuits; the addition of these two external sources of information would not create an undue burden since this information is already available to the SJPD. The information contained in complaints, civil claims, and lawsuits can collectively provide a more comprehensive resource in evaluating conduct.

The IPA acknowledged the importance of addressing officer's perceptions about a work slow down resulting from the SJPD's use of the early warning system. However, the SJPD should not lose sight

that anecdotal accounts only raise inferences of what may or may not be true; arriving at the "truth" with any accuracy can only be revealed through a series of objective analysis. The analysis conducted by the IPA of the EWS should be repeated on a regular basis to determine fluctuations in officer's proactive policing.

E. Recommendations

1. It is recommended that the Chief of Police continue to provide Intervention Counseling for subject officers meeting a set criterion.
2. It is recommended that the Chief of Police implement procedures to insure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.
3. 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.
4. 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.
5. 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.

¹⁰Early Warning Systems: Responding to the Problem Police Officer, U.S. Department of Justice, National Institute of Justice, (July 2001), page 6.

II. Complaints Against High-Ranking Officers:

A very sensitive and important concern that needs to be addressed involves conflicts, real or perceived, that arise from internally investigating allegations of misconduct against high-ranking¹¹ San Jose Police Department command officers. For purpose of this discussion, high-ranking officers include the Assistant Chief and the Chief of Police. While these types of complaints are not common, nevertheless they, have the propensity of having very serious and far reaching negative consequences.

Over five years ago, the Independent Police Auditor, the former City Manager, and the former Chief of Police agreed that if allegations of misconduct were made against the Chief or Assistant Chief of Police that it would be the City Manager who would determine if the allegations gave rise to a misconduct complaint. If they did, the complaint would be investigated by personnel outside the San Jose Police Department. The completed investigation would then be audited by the Independent Police Auditor. This oral agreement was made as a result of the investigation of a complaint, which was filed against a high-ranking officer, was internally investigated, and resulted in much controversy and animosity between all parties involved. This agreement was not memorialized in writing.

The recent indictment of the top command staff of the San Francisco Police Department is a reminder of the need to have a written policy. This policy should also address conflicts of interest that could arise when misconduct allegations are filed against an officer who because of his/her rank or familial ties may be given preferential treatment. The purpose of having policies in place to address potential conflicts is to inform, guide, and depersonalize sensitive operational decisions that officers are forced to make when a conflict arises. As stated earlier, allegations against top ranking officers are rare but when they occur, they have the potential for devastating consequences. It is therefore important to take proactive steps to anticipate and thwart such situations.

Recommendation:

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. This policy should include clear guidelines that specify what constitutes a serious allegation, the process to notify the City Manager, address conflicts that could arise during the handling of such complaints, and the process for notification to the Independent Police Auditor to monitor and audit these complaints.

¹¹For purposes of this report, top ranking officers include the Assistant and the Chief of Police.