

Keeping Each Other Safe: An Assessment of The Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans' EPIC Program As A Potential National Model

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Police Quarterly

0(0) 1-27

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DOI: 10.1177/1098611117710443

journals.sagepub.com/home/pqx



Abstract

This article examines the principles of “active bystandership” and “peer intervention” and considers their application in the context of policing to prevent or mitigate police officer mistakes or misconduct. We begin by exploring the science behind bystandership and the application of the concept to solve a number of national problems in nonpolicing contexts. We then explore the unique dynamics of policing and argue these dynamics make active bystandership training, as part of an overarching implementation of an active bystandership ethos, critical to overcoming entrenched inhibitors to peer intervention. We also discuss the significant risks to officers, agencies, cities, and communities of not creating an ethos of active bystandership among officers. Finally, we consider the New Orleans Police Department’s implementation of a peer intervention or active bystandership program beginning in 2015 (during which time it was under the oversight of federal consent decree) and present some “lessons learned” from that department’s experience.

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Keywords

consent decree, peer support, police reform

Introduction

On July 30, 2005, according to the jury findings outlined in the criminal conviction, New Orleans police officer and Field Training Officer Melvin Williams beat and kicked Raymond Robair so violently he fractured his ribs and lacerated his spleen (Judonna Mitchell et al. v. City of New Orleans, 2016; U.S. v. Moore, 2013). Mr. Robair ultimately died at a local hospital, where Officer Williams and his rookie partner Matthew Dean Moore dropped him off, claiming they found him under an overpass and that he had a history of drug use but saying nothing about the beating. According to expert testimony at the criminal trial, had the doctors known of the blunt force trauma, Mr. Robair's life likely would have been saved (U.S. v. Moore, 2013). Officer Williams ultimately was convicted of federal criminal civil rights violations resulting in Mr. Robair's death and was sentenced to 21 years in prison for the use of excessive force and obstruction of justice. Rookie Moore, just 2 months out of the academy, was convicted of obstruction and lying to the FBI, and was sentenced to 5 years in prison. In sentencing Moore, the federal judge noted he was present during the beating and did nothing to stop it (Judonna Mitchell et al. v. City of New Orleans, 2016).

The Raymond Robair case, and many more like it across the country, traditionally is portrayed as quintessential excessive use of force cases; as lessons in the dangers of poor hiring, poor training, poor supervision, bias, or as blatant criminal misconduct. But these cases also provide a less-talked-about illustration of what can happen when bystander officers fail to intervene to prevent misconduct by a fellow officer, that is, "passive bystandership."

For purposes of this manuscript, we define a *bystander* as a witness who is in a position to know what is happening and is in a position to take action (Staub, 2007). A "passive bystander," then, is someone who fails to take action where the circumstances would seem to require action. While use of force, de-escalation techniques, and other force-related topics are commonplace in police academies, a focus on *how* those who witness the use of excessive force can stop or mitigate it still is not (Attard, 2015; Staub, 2007).

The importance of peer intervention by police officers to prevent misconduct by fellow officers as a key police reform tool recently was considered by the President's Task Force on 21st Century Policing through testimony by the National Association for Civilian Oversight of Law Enforcement:

Police Peer Intervention is a training program that teaches, in a practical and positive way, the powerful influence that police officers have on the conduct and behavior of their fellow officers. The training equips, encourages, and supports officers to intervene and prevent their colleagues from committing acts of serious misconduct

and criminal behavior, particularly those directed against citizens. The basic premise is that police officers themselves, properly trained in ethical decision making and tactics of peer intervention, are an essential and too often overlooked resource in the effort to prevent misconduct by fellow officers. (Attard, 2015, pp. 3–4)

This potential to prevent misconduct is what motivated the U.S. Department of Justice and the City of New Orleans to incorporate the basic tenets of police peer intervention into the New Orleans Police Department (NOPD) Consent Decree in 2012 (Consent Decree, 2013; Staub, 2015; U.S. v City of New Orleans, 2013).

The NOPD Consent Decree followed a lengthy “patterns and practices” investigation conducted by the United States Department of Justice (U.S. v City of New Orleans, 2013). Among other things, the resulting Consent Decree provides that NOPD’s use of force training include “the importance and impact of ethical decision making and peer intervention,” that NOPD must “ensure sufficient recruit academy instructional hours” in the area of “police intervention,” and that “NOPD agrees to involve mental health professionals in officer training on use of force, to address such topics as peer intervention by fellow officers to stop the use of excessive force” (Consent Decree, 2013, p. 294).

The inclusion of peer intervention principles in the NOPD Consent Decree was meant to fill a gap in both law enforcement training and in remedies designed to change the culture of an agency where officers have been found routinely to engage in misconduct or to remain silent when others did so. Specifically, while training and accountability measures frequently address an officer’s duty to report misconduct after it occurs, the NOPD Consent Decree was the first to include a provision focused on *preventing* misconduct by officers by requiring NOPD to train officers on the mechanics of how to intervene to keep another officer from committing misconduct.

While the principles of “active bystandership” and peer intervention are not new, their application to policing in the manner described here is. Few police agencies to date have demonstrated the commitment and resolve to teach peer intervention as a core set of skills and behaviors bolstered by a department-wide cultural commitment. While certainly there always have been and likely always will be officers who intervene in another’s actions to prevent or mitigate misconduct or mistakes, the tools officers need to do so consistently, effectively, and safely rarely are taught in police academies. Without being taught how to use these tools, and in the absence of an active bystandership culture, few of us would be able to muster the extraordinary moral courage required to intervene in the actions of a fellow officer.

The academic literature shows that officers are ready for this change; in a recent nationally representative survey of over 8,000 officers, fully 84% of officers said that officers should be required to intervene when they believe another officer is about to use unnecessary force (Morin, Parker, Stepler, & Mercer, 2017).

The Science of Active Versus Passive Bystandership

The question of why good people fail to act when, in hindsight, our collective moral compass suggests they should have acted, has interested social scientists for decades. Among other contexts, the questions are frequently discussed in connection with the holocaust (Browning, 1992; Staub, 2015). More recently, the tragedies in Cambodia, Yugoslavia, Turkey, and Rawanda stand as very recent reminders that, as Edmund Burke so eloquently stated, the only thing necessary for the triumph of evil is that good (people) do nothing.

While many scholars have studied the fascinating and discouraging history of active versus passive bystandership, few scholars have dedicated their lives to understanding the phenomenon like Dr. Staub. A child holocaust survivor himself, Dr. Staub has spent a lifetime studying and drawing parallels between and among some of the world's most horrific atrocities. What truly sets Dr. Staub apart from other great contributors to the field, however, is his interest in supplementing those historic lessons with conclusions from current-day, real-world experiments.

A few concepts obtained from Dr. Staub's (2003) work are worth explaining here since they bear directly upon the applicability of peer intervention techniques to police agencies:

- First, there are a number of common *inhibitors* to bystander intervention that often are present regardless of context.
- Second, the actions (or inaction) of some people will have a significant impact on the likelihood others will intervene.
- Third, people who do harm take the passivity of others as acceptance or even approval of their actions, which makes increased harm-doing more likely. Further, once there has been a failure to intervene, the continuation of the nonintervention becomes more likely the next time similar circumstances arise.

Each of these discoveries has direct applicability to policing.

Inhibitors

Through much research in this area, psychologists have identified a number of common *inhibitors* to active bystandership (Staub, 2015). According to Dr. Staub and others, (Latane & Darley, 1968) common inhibitors include pluralistic ignorance (i.e., people tend to put on a "poker face" in public and a person is more likely to act as if there is no problem when others around him or her are acting like there is no problem); diffusion of responsibility (i.e., someone else will take action so I do not need to); (Latane & Darley, 1968) ambiguity whether help is needed, for example, lack of words or actions to indicate help is needed

(those in need of help often do not express their need clearly); greater cost of helping, such as physical or emotional effort or danger; concern about negative reaction to intervention (including taking inappropriate actions, looking foolish, lacking the necessary skills to take action, etc.), devaluation of the potential or actual targets (as discussed later, devaluation is a defense mechanism that allows the perpetrator or bystander to dehumanize the target of the wrongdoing); and a feeling that it is best if people take care of themselves (Staub, 2015).

Most of us readily can understand—or at least empathize with—these inhibitors. Anyone with kids in school (or even anyone who was a kid in school) has seen or experienced playground bullying and the many different inhibitors to intervention that keep the kids watching from entering the fray. But whether you are dealing with a middle school students contemplating standing up to a bully on the playground or a young police officer contemplating telling a supervisor he or she should “calm down,” these inhibitors can be extremely powerful. And the more hierarchical the organization, the more strongly many of these inhibitors exist.

Actions of Others

One should not underestimate the power of those with the first opportunity to intervene to prevent or mitigate a problem. If he or she takes action, others will follow. If he or she stands by, others are more likely to remain passive. Dr. Staub’s experiments with an unwitting subject sitting next to a confederate in a room when sounds of distress come from the next room are telling. If the confederate said, “may be that is another experiment, I don’t think it has anything to do with us,” about 25% of the actual participants helped. If the confederate said “that sounds bad, I will go and get the person in charge, you go into the other room to see what is happening,” 100% acted. The simple step of verbally defining the meaning of an event and appropriate action can make a huge difference in leading to action (Staub, 1974; Staub, 2014).

Relatedly, Dr. Staub and others have discovered that inactions by others beget further inaction. While news headlines may suggest otherwise, most humans are imbued with a preference for fairness and justice (Lieberman, 2013). It also seems, for most humans at least, that acting unfairly causes stress, anxiety, or unhappiness (Lieberman, 2013; Shalvi, Gino, Barkan, & Ayal, 2015; Shue, Gino, & Bazerman, 2011). This stress, in turn, prompts a number of different defense mechanisms that make it easier for the actor to cope with the stress. Common defense mechanisms include distancing, devaluing, and dehumanizing (Shu, Gino, & Bazerman, 2011). Dr. Staub described distancing and devaluing in the context of school bullying (Staub, 2007):

Watching other people be harmed or suffer is painful. To avoid feeling bad for the target, they distance themselves from the person being harmed. Passive bystanders

also need to make their failure to act more acceptable to themselves, so they devalue those who are harmed, seeing them as different, bad, strange, stupid, outsiders, “them” not “us.” However, not all bystanders do this, and some passive bystanders feel guilty, bad about themselves. This could happen during or right after the event, or later in their lives. (p. 14)

Distancing, devaluing, and dehumanizing go hand in hand (Shu et al., 2011). Passive bystanders subconsciously defend themselves by adopting a “they must have deserved it” perspective (Bandura, Underwood, & Fromson, 1975). These self-defense mechanisms—distancing, devaluing, and dehumanizing—can metastasize and start being used to justify not only inaction but also affirmative bad action (Staub, 2010).

Other Applications of Active Bystandership

The application of active bystandership principles to modern problems is not new. The principles of peer intervention have been explored and applied in a number of contexts, including in efforts to curtail drunk driving, sexual assault, school bullying, medical errors, and in-flight mistakes. We describe three examples here.

Drunk Driving

By now, we all know friends do not let friends drive drunk. But this axiom was not always quite so axiomatic. The Ad Council in cooperation with the National Highway Traffic Safety Administration adopted the *Friends* campaign in 1983 in an effort to stem the tide of drunk driving deaths sweeping the nation at that time. According to the Ad Council, “more than 20,000 people were being killed each year in alcohol-related crashes” (Smokey Bear and Friends Don’t Let Friends Drive Drunk, 2014, p. 1). The campaign was highly effective (National Institute of Health, 2006). The Ad Council reports that

[d]uring the life of the campaign (1983-1999), the number of fatalities due to alcohol-related crashes dropped from 21,000 to 12,500 and even as of 2013, more than two thirds of American adults report having stopped a friend from driving while under the influence, speaking to the enormous impact of this intervener strategy. (Fisher, 2014)

What makes the program so interesting for our purposes is that it targeted the intervenor not the perpetrator. The Ad Council described its approach this way:

The campaign took the unique approach of targeting the intervener-first with the tagline, “Drinking and Driving Can Kill a Friendship,” which eventually evolved to the widely recognized “Friends Don’t Let Friends Drive Drunk.” (Fisher, 2014)

In 2014, the “Friends Don’t Let Friends Drive Drunk” campaign was added to the Advertising Walk of Fame alongside Madison Avenue. Even today, years after the program’s roll out, more than 84% of respondents report being aware of the tag line (Lee & Kotler, 2015).

In-Flight Mistakes

Retired American Airline pilot, Dr. Robert Besco, wrote an interesting article titled “To Intervene or Not to Intervene? The Co-Pilot’s Catch 22” (Besco, 1995). After invoking 16 plane crashes where “subordinate flight crew members had detected serious problems in the performance of the Captain,” Dr. Besco went about exploring the unique problems of passive bystandership in the cockpit and offered a four-step solution called PACE. Dr. Besco (1995) described the approach as follows:

The “P.A.C.E.” operational methodology presented here is designed to assist subordinate crew members in resolving the basic question of the junior airman: “To Intervene or Not to Intervene?” The “P.A.C.E.” system has unraveled “The Co-pilot’s Catch 22; You are damned if you ignore the Captain’s mistakes and you are damned if you do something about them.” (p. 1)

According to Dr. Besco (1995),

‘P.A.C.E.’ procedures have been developed from case studies of voice recorder transcripts of National Transportation Safety Board aircraft accident reports. The ‘P.A.C.E.’ methodology provides the skill and knowledge to implement new, operationally relevant components into Crew Resource Management training for each individual organization. (p. 1)

Dr. Besco (1995) described the challenges of being an active bystander as follows:

This paper examines the question of what subordinate crew members can do when they must challenge the unacceptable performance of a Captain. Such a critical situation can be very difficult for junior crew members, particularly if they are still in their new-hire, probationary period. If the organization is one that sanctions fear, intimidation, and reprisal, crew members might be very reluctant to suggest to an established Captain that mistakes are being made. (p. 1)

The parallels between the challenges faced by cockpit crews and those faced by police agencies are readily apparent.

Medical Mistakes and Misconduct

In 1999, according to a report by the National Academy of Sciences' Institute of Medicine, somewhere between 44,000 and 98,000 people die every year from preventable errors in hospitals (Donaldson, Corrigan, & Kohn, 2000). But that number may be way too low. According to a more recent study in the *Journal of Patient Safety*, 440,000 people die every year from preventable medical errors (James, 2013). While some dispute the precise numbers and various commentators argue with the studies' methodologies, most will agree the number is high (Makary & Daniel, 2016).

The medical profession is like the policing profession in many ways. Hospitals operate in the context of a clear hierarchy, with doctors sitting high atop the pyramid and others operating in an environment of either actual or perceived intimidation (Smetzer & Cohen, 2005). As in policing, mistakes or misconduct by doctors often goes unchecked and unreported. One survey, conducted by the *Institute of Safe Medication Practices*, found that 40% of clinicians have kept quiet or remained passive during patient care events rather than question a known intimidator, according to a patient safety alert from the Joint Commission (Institute for Safe Medication Practices, 2004). Other studies have found passivity by bystanders when faced with doctor mistakes as well (Stavert, 2013).

To combat passive bystanders in the hospital, surgical unit, and doctor's office, some hospitals have adopted their own bystander intervention program. As one advocate for one program described it,

our collective status quo has allowed, and perhaps promoted, a mindset where witnesses to disruptive behavior look the other way, justify the behavior or offer support to victims off the record. The rules for a 'code of silence' are generally implicit and involve complicated combinations of tradition, fear and power mixed with a lack of knowledge, skills and support. (Boynton, 2012, pp. 3-4)

According to proponents of the program, an active bystandership program combats institutional pressure to remain silent. This goal could be written just as aptly about police departments (Boynton, 2007):

The unwritten rules and fears that keep us silent are extremely powerful. Worries about job loss, retribution, or uncertainty about appropriate behavior are very real factors in maintaining silence. Silent witnesses, regardless of intention, give more power to bullies and more fear to victims. When bad behavior occurs in workplaces and no one speaks up, there is a sense of acceptance for the inappropriate conduct. This acceptance inadvertently condones the bullying and isolates the victim. (pp. 3-4)

Others studies have identified a similar problem (see Muha, 2014).

The authors of one study, *A Renewed Call To 'Do No Harm'* (Shapiro, 2011), identified several steps to address the problem of clinician misconduct and passive bystandership, including, among other things, engaging leadership at the highest levels, framing the problem as one that has consequences for everyone, creating a committee to develop solutions that include making it safe to speak up in the face of disruptive behavior, and engaging in a robust internal marketing campaign (p. 6). Notably, these are the same principles that one sees employed in the fight against bullying, sexual assault, cockpit errors and are the same principles that infuse NOPD's active bystandership program.

Risks to Officers—and the Cities That Employ Them—Of Not Incorporating Active Bystandership Into Policing

There are many reasons creating a police culture of active bystandership—including providing active bystandership training to officers—is both the right and prudent thing for any police agency to do. First, not supporting a culture of active bystandership expose individual officers, and the police agencies and jurisdictions that employ them, to potentially significant legal liability. Second, there is good reason to believe there are consequential health risks and personal costs not only for those officers who commit misconduct but also for those who passively observe it. Third, and perhaps most importantly, the very efficacy of policing, including its ability to prevent rather than cause harm, may require imbuing an agency with a culture of active bystandership.

Legal Risks of Not Incorporating Active Bystandership Into Policing

Individual officers, and the law enforcement agencies that hire, train, and supervise them, face potential legal liability should the officer observe another officer violate someone's legal rights and fail to intervene to prevent that violation.

Officer bystander liability is premised on the idea that officers' obligation to uphold the law and protect the public is particularly salient where the person committing the harm is another officer. As stated in the context of an excessive force case from over 40 years ago:

[O]ne who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge. (*Byrd v. Brishke*, 1972, p. 11)

This duty is, thus, distinct from, and arguably more powerful than, officers' duty to protect individuals from harm by nonofficer members of the public

(DeShaney v. Winnebago Co. Dept. of Social Services, et al., 1989; Mark v. Borough of Hatboro, 1995; *Farmer v. Brennan*, 1994).

Every federal circuit has held that officers have a duty to take reasonable steps to intervene to prevent another officer from violating an individual's constitutional rights. Courts in fact have been remarkably consistent in holding that officers have a duty to intervene to prevent harm by another officer, and have long ago held that this right is "clearly established," at least in the context of excessive force and some searches. Courts generally frame the requirement as a law enforcement officer having "an affirmative duty to intercede on behalf of a citizen whose constitutional rights are being violated in their presence by other officers" (O'Neill v. Krzeminski, 1988, p. 11).

Where officers fail to exercise this duty, they may be held liable pursuant to 42 U.S.C. § 1983. Liability pursuant to Section 1983 can subject an officer to significant financial liability, as well as the possible loss of employment (Anderson v. Branen, 1994; *Cotto v. City of Middletown*, 2016). Officers also *may* be held criminally liable under 18 U.S.C.A. § 242, for willfully failing to intervene to protect a person from an unconstitutional use of force (United States v. Reese, 1993). An officer's failure to intervene may also subject an officer to liability in state court (Com. v. Adams, 1993).

What types of harm do officers have a duty to intervene to prevent? At a minimum, officers have a duty to take feasible steps to prevent excessive force (Sanchez v. Hialeah Police Department, 2009; *Priester v. City of Riviera Beach, Fla.*, 2000; *Boyd v. Benton County*, 2004). The law is less settled regarding officers' duty to intervene to prevent an unlawful arrest, unlawful search, or other constitutional violations (Livers v. Schenk, 2012; *Walker v. Jackson*, 2013). Some courts have held that the duty to intervene does apply to these contexts, and doctrinally, there is no reason not to apply the duty to these circumstances (Anderson v. Branen, 1994). Courts further have held that officers have a duty to intervene even where the officers committing the constitutional violations are their superiors (Putman v. Gerloff, 1981), or where they are from different agencies (Tanner v. San Juan County Sheriff's Office, 2012). Supervisors have an *additional* responsibility to take steps to prevent illegal acts by their subordinates (Randall v. Prince George's County, 2002).

Courts have recognized that in some instances there will be no reasonable opportunity for an officer to intervene. In such cases, an officer of course will not be held liable for not intervening. For instance, in some cases, there simply will not be time or opportunity to intervene to prevent another officer from violating someone's rights. In other cases, there will be no reason or opportunity for an officer to know or believe that a constitutional violation is occurring (Noga v. Potenza, 2002; *Ensley v. Soper*, 1998).

It is important to keep in mind, however, that a single incident may involve both misconduct that is preventable and observed, and misconduct

that is not. Thus, there are incidents during which an officer may have a duty to intervene to stop some aspect of another officer's conduct (e.g., some or all of an officer's use of unreasonable force), even where the officer has no duty to intervene in another aspect of the officer's conduct (e.g., an unlawful search that preceded the use of force, where the officer had no reason to believe that the search was unlawful; *O'Neill v. Krzeminski*, 1988).

Under *Monell* and its progeny, a law enforcement agency or related entity (e.g., city or county) also may be liable if it fails to train officers on their duty to intervene to prevent constitutional misconduct, or how to carry out that duty (*Monell v. Dept. of Social Services*, 1978). The fact that the duty to intervene has been long established and consistently followed indicates not only that qualified immunity is unlikely to be a successful defense (particularly as it applies to excessive force) but also that courts may be less hesitant to hold law enforcement agencies liable for failing to train and supervise in a manner that enables and requires officers to intervene to prevent constitutional rights (*Ricciuti v. N.Y.C. Transit Authority*, 1997). Similarly, a failure to intervene, especially if it appears to be commonplace rather than the exception, may also be evidence that observed constitutional violations are systemic rather than aberrational, giving rise to liability in cases brought by the United States pursuant to 42 U.S.C. § 14141.

In addition to insulating jurisdictions and officers from suits for failing to intervene, creating a culture of active bystandership also can reduce legal risk more directly, for example, by reducing the *number and severity* of incidents of excessive force and other constitutional violations. When it works as it should, active bystandership prevents misconduct from occurring in the first instance. Thus, jurisdictions that successfully implement active bystandership would be expected to see a drop in both the number of misconduct-related lawsuits, as well as in the dollar amount of lawsuit payouts and other costs related to lawsuits (such as legal fees).

As the earlier discussion shows, the law clearly indicates a need for agencies to implement training and related measures aimed at ensuring officers can and do abide by their duty to intervene to prevent constitutional misconduct by fellow officers. As discussed later, fulfilling this legal duty likely requires more than simply providing training in active bystandership since, to be effective, an agency must more broadly inculcate active bystandership throughout the agency culture (Police Executive Research Forum, 2016).

Risk to Officer Well-Being and Agency Efficacy

There are many reasons beyond minimizing legal risk that creating a culture of active bystandership is the right thing to do—not only for the public but also for an agency's own police officers.

Saving Officer Careers and Officer Lives

It is evident that the creation of a culture of active bystandership can save lives and careers. We know individuals can be reluctant to intervene to promote proper conduct even where this failure can result in serious injury, or even death, to the individual committing misconduct and the bystander-colleagues themselves. Many officers can tell you of a time they or a partner did something dangerously wrong and no one stepped up to call the officer on it—instead just hoping it would turn out okay. Usually it does, but tragically, not always. This may not be a frequent occurrence, but when we think about the emphasis put on police protecting one another from attack by others, despite (or perhaps resulting in) the relative rarity of such an occurrence, does it not make sense to put at least as much emphasis on measures that could prevent avoidable police injury or death resulting from bystander-colleagues not intervening?

Making bystander intervention the norm also will save officers' careers. One of the luminaries in the field of police bystander intervention, former Minneapolis Police Department training sergeant Michael W. Quinn (2011), was motivated to write a book encouraging officers to speak out after

seeing some of the good men and women I trained losing their careers and wasting their lives because of bad decisions: decisions that might have been different if their partners, or trainers, had done the right thing and stopped them before it was too late. (p. 6)

The authors of this article can tell you similarly that many officers will recount with gratitude the partner or sergeant who called them on bad behavior at the outset of their career and will more gravely recount the truncated careers of officers whose colleagues failed to step up to help correct or prevent bad behavior.

Health Risks and Personal Costs of Committing—and Observing—Misconduct

Some of the research literature indicate that law enforcement officers generally experience higher mortality rates and long-term health problems than other occupations and the general public, and there is some evidence that this disparity may be related to officer involvement in critical incidents. Posttraumatic stress disorder (PTSD) is linked to participation in, or observance of, critical incidents (Mumford, Taylor, & Kubu, 2015), and PTSD, in turn, is thought to underlie a host of officer problems, from compromising physical and mental health, to increasing alcohol and substance abuse, to damaging familial and personal relationships (Charles, 2011).

While most law enforcement officers of course cannot (and should not) avoid critical incidents entirely, there is reason to believe that these critical incidents

will be experienced and self-appraised more negatively, and thus take a greater toll on officers, if the officer believes that force was used unnecessarily or inappropriately, or that the incident otherwise involved officer misconduct. One study, for example, found that one of the four key factors determining the traumatic stress of an event is whether there is “an element of disruption of the officer’s values or assumptions about his/her environment or those who live in it” (Nielson, 1986, p. 369). Another study of officer suicide included interviews with family members of officers who committed suicide and found a correlation to a negative view of their vocation, with one family member reporting that the officer who had committed suicide “hated cops,” and another “wanted to leave policing” (Rouse et al., 2015). It is of course impossible to know whether observing officer misconduct was the reason for hating colleagues or wanting to leave the profession, but it should be cause for further inquiry. Many other studies of law enforcement officers and PTSD similarly emphasize the extent to which the effect of a traumatic event is exacerbated when the event contradicts the officer’s assumptions about how the world does, and should, work (Green, 2016). This dissonance may help explain the statement in the Mollen report that, “[a]lthough most honest cops will not report serious corruption, we despise corrupt cops and silently hope that they will be removed from the ranks” (City of New York Commission Report, 1994, p. 56).

The risk of harm caused by observing misconduct in the context of critical incidents may be increased where an officer experiences such incidents repeatedly (Green, 2016). As noted on the website of Badge of Life, an organization advocating for officer mental health:

[W]e need to recognize the important role of cumulative events in police work—the daily wounding of the soul over years, over decades—that can result in PTSD. Such events include the constant exposure to death, the screams of the innocent, the struggles during “routine” arrests, the mistakes, the pursuits, and many other factors.

And as Michael Quinn (2011) affirms,

[e]ach stinging battle with the Code [of silence] will either be an inoculation of the spirit and an opportunity to grow stronger or a crippling injury to your integrity. Regardless of the outcome, there will be vivid images you can’t erase from your memory. There will always be the mental and physical scars to remind you of your battles. (p. 26)

There are also indications that some officer suicides may be related to officer involvement in problematic critical incidents, including related issues of PTSD and resulting lawsuits (Clark, 2016). This is a significant consideration, especially when one considers that more law enforcement officers die of suicide than are

killed by gunfire and traffic accidents combined (Clark, 2016). According to some studies, over the past several years the number of officer suicides has ranged between about 100 and 140 per year (policesuicidestudy.com). Other sources put the number of officer suicides at over twice that number (policeone.com/health-fitness/articles/137133-Police-Officer-Suicide-Frequency-and-officer-profiles). Some studies have singled out “legal problems” as a “major contributor” to stress for officers who completed suicide, with one study putting legal problems as second only to “relationship problems,” as a risk factor for suicide (Rouse et al., 2015). Of particular import to the role of the police agency, one study found that, given the nature and intensity of police work, an officer’s colleagues may be aware of an officer’s mental or physical health struggles before that officer’s own family (Rouse et al., 2015).

Perhaps of greatest significance to the topic for this article, however, is the finding that “colleagues felt unprepared to intervene with coworkers they believed to be impaired” (Rouse et al., 2015, pp. 101–102). Participants in the study noted the “historically closed nature” of policing and “a desire to protect coworkers.” This finding underscores the importance of teaching active bystandership to prevent misconduct—after all, if officers are unsure how to intervene to protect an officer from hurting himself or herself, we can expect it to be difficult for an officer to intervene to prevent harm to an arrestee or other stranger. This finding also indicates that imbuing a police culture with active bystander principles, skills, and tactics may help officers step up to help each other in ways beyond those originally anticipated.

While more research into the link between police misconduct and officer mental and physical well-being clearly is warranted, what we know already indicates that officers will benefit from being trained in active bystandership, and working within an agency that supports those principles.

Restoring Community Confidence in Policing

Perhaps the most important consequence of not providing a culture of active bystandership is that it undermines a police agency’s ability to serve its public effectively and ethically. The link between effective policing and policing that engenders community trust and confidence becomes more apparent every day. At the same time, we are increasingly aware that this community trust has been broken in too many cities across our country. Active bystandership can be a potent tool in restoring community confidence in police, thus allowing police to more ethically and effectively serve the public they are sworn to protect.

In his book, “Walking with the Devil,” Michael Quinn recounts the executive director of the Urban League of Minneapolis telling him how black teenagers *hate* the police because *some* officers lie, use excessive force, and target people of color, and that as a result these young people have lost faith

in the police department. Quinn (2011) goes on to say that, “[t]his hate doesn’t just stem from seeing bad cops do bad acts. More than anything, it grows out of the community’s frustration with the good cops who do nothing to stop it” (p.106). This sentiment resonates with the authors of this article, who have spent decades talking with individuals and communities, in New Orleans and across the country, who have lost faith in their police departments. For these individuals and groups, the official position that police misconduct is the result of the acts of a “few bad apples” is belied by the incidents they have observed where officers fail to step in and stop abuse, and where the department investigation of the incident is rendered useless by an impenetrable code of silence.

One only has to imagine an officer caught on video stepping in to take over a tense situation where his partner is clearly about to lose it; or an officer pulling her partner off a arrestee before the partner continues to use force that would be excessive, to begin to see how such actions could transform the public’s view of “the police.” With a culture that nurtures and supports active bystandership, these are the kinds of viral videos that could replace the far more damaging ones that circulate today, too often showing officers using force that is clearly excessive, while other officers, at best, do nothing to stop it.

How to Adapt Active Bystandership Principles to Policing

As discussed later, to be successful, active bystandership programs must be adapted to the dynamics of each particular context. Policing shares many of the same *inhibitors* to active bystandership present in other professional contexts and adds several more. These inhibitors, and suggestions for overcoming them, are addressed later.

Close Shared Identity With Fellow Police Officers

Policing encourages officers to band together and supports one another without question. Officers work long hours alongside their colleagues, face extremely dangerous and stressful situations together, and as a group endure abuse and hostility from members of the public (Paoline, 2003). They know that at any moment, if they have not already, they may have to rely on another officer—who may be a complete stranger but for the uniform—to protect their life. These ties can even overshadow racial differences among officers: hence the metaphor “more blue than black,” which, while probably an overstatement (Pew Research Center, 2017), is nonetheless illuminating. As Michael Quinn (2011) puts it, “publicly confronting [a fellow officer] about criminal or unethical behavior is like testifying against your spouse” (p. 6)

Information About Threats to Officers Underemphasizes the Most Common Dangers

As discussed later, suicide, poor physical health, and traffic accidents are a more common threat to officers than the officer losing his or her life to violence at the hands of a criminal. Yet in training and popular culture, there is almost exclusive emphasis on officers losing their lives at the hands of a criminal. Officer-safety training is of course critical, and likely one of the reasons that officers are so unlikely to be killed in the line of duty. But the underemphasis of the most common threats to officers does them a disservice by masking the need for officers to be prepared to step in or speak up to keep another officer from committing violations that can have disastrous consequences for the fellow officer's physical or mental health, or their livelihood and family relationships.

Fear of Retaliation or of Being Ostracized

Most of us would think twice about speaking up to prevent wrongdoing at work if we feared being retaliated against, or ostracized by, our coworkers for doing so. This fear is particularly rational for officers, who work in a climate that, historically, has been replete with retaliation against officers who have reported or sought to prevent misconduct, and where one may need to rely on one's colleagues to protect one's life (Mason, 2010). This fear may be more pronounced among minority (including women) officers, many of whom may already feel (or be) marginalized, or feel a need to prove that they identify as officers first and foremost (Morin, Parker, Stepler, & Mercer, 2017).

Police Hierarchy: Formal and Informal

Just as policing's paramilitary aspects emphasize the importance of a shared identity, as discussed earlier, police also enforce a hierarchical command structure that, as in the military, can make it particularly challenging for officers to speak out or intervene where they are outranked (Cruickshank, 2013). While the paramilitary structure of policing is often discussed, less acknowledged is the influence of informal leaders who, regardless of rank, can have a profound influence over police culture. Both dynamics have the potential to inhibit or encourage active bystandership (Eaglin, 2015; Reilly, 2012; Milo, 2016).

Incidents Often Unfold Rapidly and Can Be Complex

Unlike other contexts in which active bystandership has been implemented successfully, and as the law recognizes, many police actions are "rapidly evolving" as the caselaw often notes (*Graham v. Connor*, 1989) and may not give an officer

the opportunity to prevent misconduct. Foot chases, vehicle pursuits, hot-pursuit searches of dwellings, or the combative arrestee are just some examples of these types of circumstances. And yet, as anyone who has been an officer or worked with police will tell you, these adrenaline-raising incidents are among the situations most likely to result in officer misconduct (Schultz, Hudak, & Alpert, 2010).

Victims of Police Misconduct Are Rarely Innocents

In some respects, the aspect of policing that most distinguishes it from other contexts in which active bystander programs have been implemented is the nature of the victim of the conduct. The victims of police abuse often appear less sympathetic or innocent than the victims of bullying, the unconscious patient on the operating table, or the passengers of an airplane. This may fundamentally alter the equation for an officer who must quickly determine whether and how to intervene. Of course, this is a dynamic present in many aspects of policing, and police leaders must be able to inculcate a culture of respect and service notwithstanding it.

Strategies for overcoming these inhibitors include teaching officers that intervening can be one of the most important things they ever do to protect another officer—or themselves. Hearing from officers who have had another officer call them out for bad behavior, and who are better officers for it; or hearing from officers who have been fired because of misconduct committed by another officer (which they then felt compelled to help cover), may have particular resonance for officers. Agencies also must be unwavering in their support for officers who intervene to prevent misconduct, and just as unyielding in their pursuit of discipline against officers who retaliate against officers who intervene. This requires strong anti-retaliation policies, a values-system that permeates all ranks and includes officer integrity and public service at its center, and well-functioning accountability systems.

Law enforcement agencies also should look at their policies and training related to force, foot and vehicle pursuits, and searches (and likely other topics as well), to see where they can safely and feasibly slow down a situation to allow officers more time to consider their actions, and allow colleagues more opportunity to intervene as necessary to prevent misconduct (Jackman, 2016). Moving toward force de-escalation, crisis intervention training, and changes to practices related to foot chases and vehicle pursuits are practices already underway in many departments. These and other departments should consider the potential for police and training changes to encourage a culture of active bystandership.

Law enforcement agencies seeking to implement successful active bystander programs also may need to take steps to humanize community members to police officers—especially those against whom officers are more likely to use

force, search, or arrest. While these individuals may not in most cases be innocents, only rarely are they the incorrigibles they are often made out to be. Many times, they are simply people trying to feel safe and make a living, often in the face of challenges most of us will never have to face. Regardless, officers have a sworn duty to protect their rights. Officers may need to have opportunities to get to know, outside the enforcement context, people who live in the places they police. They may also need to be taught about their own potential to hold implicit biases and, perhaps explicit stereotypes, and how these can impact officer decision making. Having individuals who have been victims of excessive police force, or even members of the public who have been traumatized by observing abuse by officers, may help remind officers of the potential human impact of police misconduct and further incentivize them to step in to stop it.

As the earlier discussion underscores, creating a police culture in which bystander intervention is the norm rather than the exception requires more than running officers through a training program. It requires creating a culture that incentivizes and teaches officers how to intervene to prevent misconduct, and that supports them when they do. Such a culture starts with who a department recruits and how they train those recruits; adopting seizure and force policies that encourage officers to slow things down when possible; ensuring that the entire chain-of-command, from the first line supervisor to the Chief, not only support but also demand that officers intervene to stop misconduct; an employee-wellness program that overcomes the barriers to officers seeking needed physical and mental health care; and a disciplinary system that reinforces the agency's values of intervention and public service.

Consideration of and Lessons Learned From the New Orleans Model

The New Orleans Consent Decree comprises 127 pages and 492 paragraphs of obligations, guidance, and best practices aimed at ensuring “police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States” (Consent Decree). The Consent Decree Department required NOPD to “implement new policies, training, and practices throughout the Department, including in the areas of use of force; stops, searches, seizures, and arrests; discriminatory policing; community engagement; and much more (Consent Decree).” Each of these areas received a good amount of public attention. With somewhat less fanfare, the Consent Decree also incorporated a requirement to implement peer intervention principles in the areas of recruit training (para. 266), use of force training (para. 109), dealing with those in need of mental health service (para. 294), and supervisor training (para. 315).

To implement a department-wide peer intervention program (which the Department calls EPIC, for Ethical Policing is Courageous), the NOPD

Superintendent appointed a working group and directed them to come up with a practical, meaningful, and effective peer intervention program that not only would meet, but also would exceed, the requirements of the Consent Decree (Westbrook & Howell personal communication, 2015). The working group included patrol officers, supervisors, and command staff, and a number of *outsiders*, including a civil rights lawyer, a community activist (who describes himself as a “very unlikely member of any police working group”), a mental health professional, and others (NOPD).

Going into the first meeting, the officers on the working group, for the most part, were concerned EPIC was just another way to discipline officers, that it was a rat-on-your-fellow-officers program, and that it was being championed simply because of the Consent Decree. Each perception was incorrect, but each was strongly held.

The working group slowly broke down misperceptions and came to recognize that they really had in their hands a simple, straight-forward, unobjectionable means to give officers the tools to protect themselves and protect the community at the same time. Several of the myths the work group had to confront follow:

Myth 1: “This is just another discipline program.”

Some of the NOPD officers from the start were convinced “peer intervention” meant they were obligated now to step in and prevent misconduct and that they would be disciplined for failing to do so. Putting aside the fact that every police department in the nation requires officers to take action to stop officer misconduct, the idea of a formal program scared many.

To combat this misperception, the working group decided EPIC would not impose any new requirements on NOPD officers. Instead, EPIC simply would teach officer how to intervene safely and effectively if they chose to do so—and remind officers of the existing law that already puts nonintervening officers at significant legal risk. By focusing on teaching peer intervention as a learnable skill—no different from learning how to put on a bullet resistant vest, use a firearm, or apply handcuffs—NOPD was able to offer a very strong response to this myth.

Myth 2: “This is just a ploy to get us to rat on one another.”

Whether they say it or not, police officers are not inclined to *rat* on their colleagues (Trautman, 2000). While there is no lack of focus on this blue wall of silence, it is unfair to view this as a problem unique to policing. Most professionals are hesitant to *rat* on their peers (CNN). Police agencies for years have tried to combat the blue wall with ethics training, reason, logic, discipline, carrots, sticks, and every other tool imaginable, with only modest success. NOPD took a different tact. Instead of focusing EPIC on the blue wall, NOPD focused

EPIC on teaching officers how to avoid putting themselves in the untenable position of having their back up against that wall in the first place. As one of the experts NOPD brought in to advise the working group put it: “Having to choose between doing the right thing and losing the trust of your colleagues or staying silent and putting yourself at personal legal risk is a horrible position to be in.” EPIC is targeted at keeping officers out of that horrible dilemma by teaching them to help their fellow officers do the right think in the first place.

Myth 3: “We do this anyway. Why do we need a formal program?”

While police officers no doubt intervene to prevent or mitigate wrongdoing, there is no reason to believe police officers intervene in their peer’s actions any more than the rest of us do. And research makes it clear most of us intervene far less than we think we do. Thus, the numbers alone suggest the need for more formalized training. But perhaps more importantly, an attempted intervention does not necessarily translate into an effective intervention. By teaching proper intervention techniques, officers will be able to take action more effectively, more consistently, and more safely.

Myth 4: “We don’t engage in excessive use of force so why do we need this?”

Despite NOPD’s notorious history, NOPD officers generally view themselves as not engaging in activities requiring intervention. The working group dealt with this in a very practical and strategic manner. Rather than focusing the EPIC training on the very public and obviously over-the-top incidents of excessive force covered by the national media, the working group focused NOPD’s training on incidents that are far more realistic to officers—incidents that every officer could see him or herself having to deal with.

For example, the quintessential EPIC scenario is what NOPD calls the “frustrated officer” scenario. In that scenario, a visibly frustrated officer is approaching a driver during a traffic stop. EPIC teaches the second officer how to recognize the signs of frustration, smartly intervene to handle the scene, and do so without alienating his or her partner. From these simple scenarios, NOPD’s EPIC instructors then show how the same principles apply to the more problematic, but less frequently, excessive uses of force.

By attacking the common myths, the NOPD EPIC working group was able to develop a program that was modest in its goals and simple in its execution. The modesty component in hindsight turned out to be a significant key to the department’s success. In speaking with experts, the working group recognized that far too often ethics programs fail because they target the wrong universe of actors (Bazerman & Tenbrunsel, 2011). Ethics programs typically target the bad actors. But such efforts produce only modest results because good people generally do not need to be told to not violate the rules and bad people will give such lessons little

heed. NOPD's EPIC program, on the other hand, is a program neither for angels nor devils. EPIC, as NOPD explains it, is a program "for the rest of us."

This focus, interestingly, leads to a common question NOPD managers receive when discussing the program. "What do you do about those officers who always will hide behind the blue wall of silence?" NOPD's answer is simple: "EPIC is not worried about those officers." The truth is, there always will be officers—just like there will always be lawyers, doctors, athletes, and clergy—not interested in or unwilling to step in to stop wrongdoing. Other programs, like existing discipline programs, will continue to deal with those folks. EPIC focuses on those who would like to do the right thing if they knew what the right thing was, knew how to do it, and felt safe doing it.

While the working group also struggled for some time with the problem of naysayers and those who are intent on doing the wrong thing, it finally was a statement by Dr. Staub that brought the working group to the tipping point. According to Dr. Staub's research, individuals are more likely to intervene to help others simply by being introduced to the concepts of active and passive bystandership, including the concept of inhibitors to intervention. Being introduced to that concept was a breakthrough for the working group and bears repeating. Whether an officer thinks he or she is likely to intervene in the actions of another, simply by taking training and being exposed to the concepts underlying active intervention, that officer is more likely to intervene. That realization helped the working group stop worrying about designing a program that solved all NOPD's problems and instead focus on designing a program that attacked a particular problem.

Another very strong idea the NOPD came up with was to incorporate a successful intervention as a formal mitigating factor in any resulting disciplinary hearing (NOPD Policy 26.2.1). The fact that internal affairs *must consider* a successful intervention as a mitigating factor means the intervening officer very accurately can tell him or herself that he is doing the officer (not just the subject) a favor by jumping in—whether the officer recognizes it at the time or not.

Once the broad outlines of the program came together, the department put together a PowerPoint presentation, a teacher's guide, multiple role-playing scenarios, and even a video using NOPD members to illustrate positive intervention strategies. Currently, more than 70% of NOPD's officers have received EPIC training either at the Academy or through a day-long in-service program. While the department admittedly has a long way to go to ingrain peer intervention in officer thinking to the same extent as putting on a vest or proper handcuff techniques, the department has taken a significant step along that path.

Measuring Effectiveness

One of the most significant struggles NOPD faced in standing up its EPIC program is figuring out how to measure its success. Under the terms of the Consent Decree, NOPD is implementing a wide range of reforms at the same time.

Figuring out whether EPIC is bringing about the intended improvements is no easy task. The working group considered a number of indicia of success but recognized none could be laid squarely at the feet of the EPIC program.

- ***Reduced use of excessive force.*** If EPIC is successful and police officers intervene more frequently and more effectively, then one would expect uses of excessive force to go down. In fact, NOPD has seen a reduction in its uses of excessive force but that reduction cannot solely be attributed to EPIC. At the same time NOPD is rolling out EPIC, it also has created new Use of Force policies, improved its use of force training, created a thriving Use of Force Review Board, and implemented a Body Worn Camera program (Consent Decree). Each of these improvements no doubt contributed to a decreased use of excessive force.
- ***Fewer discipline cases or citizen complaints.*** Here again, there are far too many factors to attribute improved numbers to peer intervention. Although, one certainly could intuit that more peer intervention would lead to fewer discipline cases or fewer citizen complaints.
- ***Increased reporting of interventions.*** Certainly, this metric could fairly be attributed to a program that taught effective peer intervention techniques. But the metric does not materialize in reality because, by definition, a successful intervention means nothing happens, and, thus, there is nothing to report.

While these metrics proved elusive, the working group did come up with a few perhaps less data-driven means to measure the program's effectiveness.

First, NOPD can measure discipline cases where an intervention is used as a mitigating factor. Second, NOPD supervisors and managers are on the look-out for positive interventions when they review BWC videos. While many interventions will not make it onto the camera because they occur before cameras are even turned on and, thus, prevent any problem from happening in the first place, some interventions are captured on video. Third, NOPD plans to survey officers to try to get at whether they have intervened or been intervened upon in the past 10 months. While officers obviously will resist giving details about such incidents, officers may be willing to discuss such events in general terms. Fourth, while the least interesting to those looking for hard data is the number of anecdotes coming from officers in the field. Over the past 2 years, NOPD has seen more officers and supervisors recounting more stories of "EPIC events." While hard to measure with any analytical precision, keeping track of those stories provides additional useful information.

Conclusion

While still in its infancy, the NOPD's EPIC program both builds on past active-bystandership work developed by Dr. Ervin Staub and others and represents a

significant step forward. The aim of this article has been both to show that this program can work (and is working) and to persuade law enforcement officials and others that there are good reasons to consider implementing active bystandership training in their own agencies. Moreover, because most agencies are fortunate enough not to face the same breadth and depth of challenges NOPD has faced in its past, other communities may be able to meet or exceed NOPD's success, thus broadening the number and type of police active-bystandership models for others to emulate. Active bystandership training provides significant promise to law enforcement agencies seeking to increase community confidence in policing as we all work together to keep one other safe.

Acknowledgments

The authors are grateful to Dr. Ervin Staub, Dr. Joel Dvoskin, and Ms. Mary Howell for their thoughtful review and comments on early drafts of this article.

Declaration of Conflicting Interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors received no financial support for the research, authorship, and/or publication of this article.

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