



VirTra - Virtual Interactive Coursework Training Academy™ (V-VICTA™)

***DUTY TO INTERVENE: NO SUCH THING AS A
PROFESSIONAL BYSTANDER***

VirTra



DUTY TO INTERVENE

Understanding Law Enforcement's Duty to Intervene

UNDERSTANDING THE DUTY TO INTERVENE



- YouTube video: “Understanding Law Enforcement’s Duty to Intervene”
 - <https://www.youtube.com/watch?v=pAqNUojGPj4>





THE ISSUE: PUBLIC PERCEPTION

- Law enforcement is looked at under a microscope more than ever.
- For the first time in 25+ years, America's confidence in police has dropped to 48%.
- Officers use force too much and too often.
- Officers should be able to “de-escalate” without shooting.
- 69% of people see recent police killings as a broader problem; 29% say they were isolated incidents.

THE ISSUE: NATIONAL SPOTLIGHT WHEN THINGS GO BADLY



- Rodney King (1991)
 - Beaten by LAPD officers.
 - One officer found guilty; sparked 1992 riots.
- Walter Scott (2015)
 - Fled from traffic stop, shot 5 times.
 - Officer sentenced to 20 years in prison.
- George Floyd (2020)
 - Minneapolis officer kneeled on Floyd's neck for nearly 9 minutes.
 - One officer charged with 3rd degree murder, other three charged with failure to intervene.

WHAT IS FAILURE TO INTERVENE?



“An officer who purposefully allows a fellow officer to violate a victim’s Constitutional rights may be prosecuted for failure to intervene to stop the Constitutional violation.”



WHERE DOES IT APPLY?

- Courts rule that duty to intervene shall occur when there is unreasonable and/or excessive force.
- Court standards vary slightly during the following situations:
 - Unlawful search
 - Unlawful arrest
 - Other constitutional violations
- Be familiar with circuit court decisions that apply to your agency.



HOW DOES IT APPLY?



- To prosecute an officer for failure to intervene:
 - The officer was aware of the Constitutional violation.
 - The officer had an opportunity to intervene, but chose not to.
- To show an officer knew what was going on:
 - Was the officer present before force was applied?
 - Was the officer in direct contact with the subject and/or offending officer during the contact?
 - Was the officer able to see/hear the level of cooperation and resistance displayed by the subject?

HOW DOES IT APPLY? PT. 2



- To show that an officer had an opportunity to intervene, these factors may be considered:
 - Physical distance between the officer and the incident.
 - The time that had passed between the officer and the incident.
 - Did the officer fail to take reasonable steps to stop the unreasonable force?
 - How long did the unlawful use of force occur?



WHO DOES IT APPLY TO?

- Duty to intervene applies to every officer of every rank:
 - Officers, detectives, supervisors, officers from different agencies
- Intervention is required regardless of rank.
- A claim that the offending officer is from another agency or jurisdiction does not justify failure to intervene.



DUTY TO INTERVENE

Notable Incidents & Court Decisions



BYRD V. BRISHKE



- One of the first duty to intervene cases.
- After a gunfight at a Chicago tavern, Byrd is shot in the leg and forced to walk despite having a bullet in his thigh, then beaten and injured by multiple officers.
- Byrd's damage claim was based upon the fact that even if some officers did not participate in the violation, they were still liable for failure to protect him from the other officers.



RODNEY KING (U.S. V. KOON)

- YouTube video: “Rodney King Beating”
 - <https://www.youtube.com/watch?v=sb1WywIpUtY>



RODNEY KING (U.S. V. KOON)



- After resisting following a pursuit, King was struck with a baton 33 times and kicked 7 times by officers.
- Sgt. Koon was tried for permitting officers in his presence and under his supervision to strike King unlawfully.
- Initially, four of the officers were charged locally. Koon and another officer were found guilty, the other two were acquitted.



SAMUELS V. CUNNINGHAM



- After fleeing 4 detectives, Samuels was handcuffed and a 5th detective arrived and punched him in his rib, fracturing it.
- Samuels sued all 5 – the one who punched him (Detective Hall) and the 4 bystanding detectives.
- The court concluded that the 4 detectives had no reasonable opportunity to intervene in the punch, nor did they see it coming.
- The claims against Hall proceeded to trial.



GALINDEZ V. CITY OF HARTFORD



- After being placed under arrest, Officer Miller dragged Galindez to an ambulance, causing further injuries.
- Galindez filed a lawsuit against the city, which was left to sit without further investigation.
- The court found that the city of Hartford was complacent and indifferent to the possibility that its officers had used excessive force.
- If an employer fails to appropriately investigate cases, they may also be held liable.



DUTY TO INTERVENE

Why Duty to Intervene Matters



The foundation of the law enforcement code of ethics:

“As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.”

A HIGHER STANDARD



- Society holds officers to a higher standard.
- Courts will always hold officers to a higher standard and base their decisions off of it.
- Officers must hold each other to that standard.



“The police earn public support by respecting community principles. Winning public approval requires hard work to build reputation: enforcing the laws impartially, hiring officers who represent and understand the community, and using force only as a last resort.”

-Sir Robert Peel



KEEP EVERYONE SAFE



- Using force only when necessary.
- Involves more than just physical safety:
 - Mental health
 - Lawsuits
 - Criminal charges

SAVE SOMEONE ELSE'S AND YOUR CAREER



- Stopping an officer before they make a mistake can give an opportunity for them to get appropriate training or help.
- Stopping the incident can also protect your own job – you cannot be a professional bystander.



DUTY TO INTERVENE

Policies



WHY DO POLICIES FAIL?

- Culture
 - Code of silence, seniority, military-style structure, etc.
- Leadership
 - Supervisors must encourage training and for officers to report violations.
- Front-line officers
 - May not be empowered to step in when something is wrong, may be concerned on how stepping in could impact work relationships.



HOW TO MAKE A SUCCESSFUL POLICY

- Must be clear, flexible and forgiving
 - “Would I want this done to me?”
- Practice and leadership
 - Stand with the policy; enforce it, teach it.
- Discipline
 - A policy not practiced is not a policy at all.



DUTY TO INTERVENE

Training



INTERVENTION POLICIES



- Overly broad vs. too rigid
 - Officers still need to be able to do their job safely and be allowed the ability to make decisions as situations unfold.
- Don't usually take into account community recommendations.
 - Educate officers and civilians
- Don't design policy just to avoid liability.
 - The key is preventing an issue in the first place.

COMMUNICATION & EMOTIONAL INTELLIGENCE

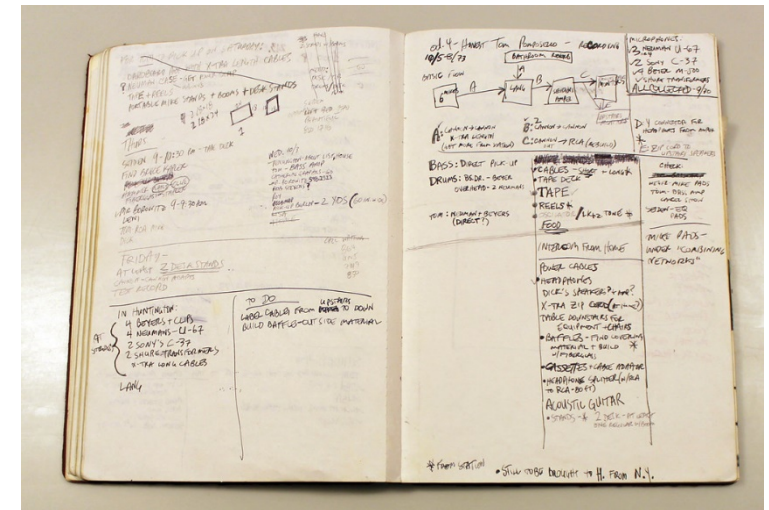


- Emotional Intelligence: The ability to perceive emotion, integrate emotion to facilitate thought, understand emotions and to regulate emotions to promote personal growth.”
- Focus on self-management
 - The ability to control yourself and adapt to the environment.
 - Realize when you’ve become emotionally compromised.
 - Impulse control – stay composed and refrain from aggression.

DOCUMENT ALL TRAINING



- Keep copies of policies, lesson plans, what was taught and who taught it.
- Document the number of training hours.
- Go through and document refresher training.



FORMAL DISCUSSIONS



- Regular discussions about duty to intervene can be considered training.
- Bring up recent related incidents.
- Roll call training:
 - Review video, legal opinions, court decisions.
 - Look at incidents with both good and bad outcomes.

CONTROL TACTICS PROFICIENCY



- Regularly practice arrest and defense tactics.
- Officers with proficient skills are more likely to use less force.
 - Inappropriate application of control tactics may lead to additional force being applied.
 - Officers can become frustrated when compliance is not achieved due to ineffective control techniques.

PRACTICAL INTERVENTION PRACTICE & TRAINING



- Use “hands-on” training for intervention.
- Use role players and simulators to hone officers’ skills.
- Training can be tailored to match an agency’s policies.
- Include events that don’t require officer intervention – don’t just train to the bad.



DUTY TO INTERVENE

Penalties

PENALTIES



- Officers could face federal and/or local charges.
- Can also be personally sued.
- Could face a loss of their job.





DUTY TO INTERVENE

Best Practices

CREW RESOURCE MANAGEMENT (CRM) & THREAT ERROR MANAGEMENT (TEM)



- Developed in the airline industry to assist with communication.
- Allows anyone in the flight crew to take over if correct actions are not taken.
- FAA and DoD now require all air crews to take a CRM course or similar.



EPIC = Ethical Policing is Courageous

- A program that uses peer intervention
 - Immediate and consistent interventions reinforce boundaries.
 - Lets officers know they are not alone, and emboldens fellow officers to step in and help.
- Goals:
 - Understand the benefits of intervening.
 - Recognize when intervention is necessary.
 - Properly, safely and effectively intervene.
 - Protect officers who intervene and those who accept intervention.

NEW ORLEANS EPIC MODEL



- YouTube video: Sergeant Testimonial on EPIC in NOPD
 - <https://youtu.be/AwEOeJkwOxw>





DUTY TO INTERVENE

Application of Intervention



APPLICATION OF INTERVENTION

- Detect the need for an intervention early into the event.
- Look for anger, rage, profanity and poor tactic application.
- If an officer notices a need to intervene, use a 10 code.
 - “Officer Smith, 10-12!”
 - Allows immediate intervention without embarrassing the officer or alerting others.
- If force has already begun, use the 10 code “10-100.”
 - A critical declaration where actions should immediately stop.



QUESTIONS?