

THE HIGH PRICE OF SILENCE:

An analysis of the potential cost avoidance from a meaningful active bystandership program in municipalities

*By Steve Hansen and Jonathan Aronie

For decades, psychologists have studied why some people are willing to intervene to prevent harm to others and others are not. This research, much of it pioneered by UMass professor emeritus Dr. Ervin Staub, has identified a plethora of powerful invisible forces that keep even well-intentioned people from intervening in another person's potentially harmful conduct. These "inhibitors" as they are called — forces like fear of retaliation, fear of being wrong, lack of confidence, a mistaken belief that someone else will act — have been studied extensively and they affect most everyone to some extent.

Nurses are hesitant to correct doctors even in potentially life-threatening situations. Co-pilots are reluctant to correct pilots. Workers shy away from correcting supervisors. And, as we all have seen in way too many viral law enforcement videos, police officers are loathe to intervene in the conduct of other officers — even where something terrible is about to happen.

Research and experience, however, demonstrate that one can be taught to intervene to prevent harm (or at least have a better chance of preventing harm). While there are multiple programs across the country working to build cultures of active bystandership, one in which we are particularly familiar is the Active Bystandership for Law Enforcement (ABLE) Project.

THE ABLE PROJECT

In 2020, following the killing of George Floyd, Georgetown University Law Center and global law firm Sheppard Mullin launched a national program to educate and empower bystander officers to intervene in a colleague's conduct to (i) prevent misconduct, (ii) reduce mistakes, and (iii) promote officer health and wellness. The ABLE Project built upon the success of an earlier program called EPIC (Ethical Policing Is Contagious), developed by the New Orleans Police Department working hand-in-hand with a collection of NOPD officers, New Orleans community members, and national experts (like Dr. Staub).

The ABLE Project was an immediate success, finding support within the civil rights and law enforcement communities. Thanks to the generosity of multiple corporate donors and the forward-thinking of some of the most prominent police chiefs and sheriffs in the country, ABLE now is in more than 420 law enforcement agencies employing more than 174,000 officers and deputies, more than 20% of all law enforcement in the U.S. ABLE also attracted the positive attention of multiple organizations dedicated to improving the profession of policing in the U.S., including the FBI, the FBI National Academy Association, the DOJ Office of Community Oriented Policing Services, the International Association of Campus Law Enforcement Administrators, and multiple national and regional insurance pools.

We have been working with the ABLE Project since its origin. Jonathan is the co-founder of the program and Steven, through his role as Chief Executive Officer of the Utah Local Government Trust, has led the effort to bring ABLE to Utah's 150+ law enforcement agencies. From our respective vantage points, we have seen the program work. We have seen it save lives and save careers. And the data coming out of multiple studies support our optimism. This all prompted us to wonder: Might a meaningful active bystandership program see similar success beyond policing? We set out to find the answer.

OUR STUDY

The success we have seen in law enforcement prompted us to wonder whether a program like ABLE could be as beneficial to non-law enforcement agencies as it is to police departments and sheriffs' offices. To get our arms around this question, we needed data. Fortunately, data is one thing the Utah Local Trust has lots of. As the largest insurance pool in the state of Utah, the Trust handles claims for more than 227 municipalities, representing more than 1,717,370 community members.

Quantifying the impact of an active bystandership program is no easy task because when it works, nothing happens. It's hard to measure the absence of harm. But we can quantify situations where active bystandership might have prevented a harm. Specifically, we decided to quantify claims paid by the Trust over a one year period where there was a colleague "bystander" seemingly in a position to prevent the action that led to the claim.

As an initial matter, we need to explain what we mean by a claim that might have been prevented by active bystandership. In analyzing the data, we looked for situations where another employee — a "bystander" — was on the scene and seemingly in a position to prevent or mitigate the action that caused the harm.

In law enforcement, opportunities for active bystandership often are quite obvious. The viral videos involving George Floyd, Tyre Nichols, and Tyreek Hill are three examples among many others. But the opportunities to prevent harm are not limited to such graphic examples of passivity. In many cases, simple human error and less consequential misconduct go unchecked even though someone was in a position to prevent it (or at least mitigate it). While these situations rarely make the news, they nonetheless can cause real harm — and cost real money.

For example, in one claim we reviewed, an ambulance responding to a call was traveling through an intersection against traffic when it was hit by another vehicle. There was a fellow employee in the passenger seat of the ambulance, but no indication that that employee intervened in the choice to drive against traffic. While not a situation involving intentional harm, it nonetheless is possible that a timely word from the passenger might have prevented the accident.

OUR METHODOLOGY

For our study, we looked at five years of claims data from the Trust's 227 customers involving claims of more than \$50,000. Our universe included general liability, workers comp, auto, and property damage claims. By focusing on claims over \$50,000, we were able to cover 58% of the total dollar value of claims during our study period. We then analyzed the claims to identify situations where a colleague, a "bystander," was on the scene of the event that led to the claim, and might have been in a position to prevent the event. We then added up the total claims with a bystander present and extrapolated that number across all claims regardless of dollar value.

We recognize this study relies upon a number of assumptions. And we are sure an academic could point out flaws in our approach. We get it.

Our analysis is not a perfect surrogate for a detailed academic analytical assessment of bystandership opportunities. That was not our goal. We simply wanted to get some preliminary sense of whether a program like ABLE might benefit non-law enforcement agencies. Nothing more; nothing less. We are hopeful that this initial dive into the data prompts others, including academics, to devise new and more clever ways to determine the potential benefit of a broader application of meaningful active bystandership training within municipalities.

FIRST, OUR LAW ENFORCEMENT FINDINGS

Before getting into the broader data, which really is the subject of this discussion, let's take a quick look at what the data show regarding law enforcement related claims. As noted above, we looked at claims above \$50K going back five years. Our sample included 54 law enforcement claims, or 18% of the total claims analyzed. The total incurred cost of those 54 claims was \$8.1 million.

Here are the highlights from our law enforcement review:

- 1 out of the 3 Auto Liability claims in the study presented bystander potential. That one claim alone cost the Trust over \$1 million.
- Of the 18 General Liability claims in the sample, 16 had bystander potential. In 14 of those, the bystander was another police officer. These 16 claims cost the Trust more than \$2.7 million.
- 12 claims involving bystander potential still are in active litigation and, thus, we were not yet able to assess those costs.
- Of the 33 law enforcement-related workers' compensation claims in our sample, 14 had bystander potential. The total cost of these 14 claims came to \$1.4 million.
- In total, the claims with active police bystander potential resulted in 653 lost or less productive workdays. That is the equivalent of 2.5 work years (based on full time equivalency).

These data highlights are telling, but not unexpected. They also grossly underestimate the cost of passivity since our study looked only at costs paid out by the Trust. We did not consider the collateral consequences, such as loss of community trust in law enforcement, property damage resulting from community unrest, or negative impacts on recruiting and retention.

NOW, ONTO OUR BROADER FINDINGS

While the law enforcement claims data did not surprise us, our interest really was focused on whether similar opportunities for bystandership exist beyond policing. The data strongly suggest that there are. The data revealed a large number of claims where a bystander may have had the chance to take action to prevent the harm.

Here are the highlights from our broader review:

- 28% of the claims reviewed had bystander potential (that is, as explained above, a seeming opportunity for another employee to prevent the source of the claim).
- 29% of the total incurred claim value (\$45,597,777) had bystander potential.
- Most of the opportunity for cost avoidance came from General Liability claims (\$5.8 million of claims in our sample).
- 48 claims with bystander opportunities resulted in legal action, such as a lawsuit or workers' compensation application for hearing.
- Employees with Workers Compensation injuries that had active bystander opportunities resulted in a staggering total of 12.4 years of Modified Duty, 8.8 years of lost work, and 21.2 years of lost or under-productive workdays.

When we extrapolated our sample to claims under \$50K (9,788 claims in our sample), the results were no less instructive:

- The total incurred cost of claims with bystander potential was \$10,726,000
- Employees with Workers Compensation injuries that had active bystander opportunities resulted in 22.7 years (5,892 days) of modified duty, 7.7 years of lost work, and 30.4 years of lost or under-productive work.

Stepping back and looking at the data more broadly, we found the following:

- Our analysis identified 2,590 claims with bystander potential resulting in a total loss of \$23,835,000.
- The insurance line with the most observed opportunities for bystanders to make a difference is 3rd party liability claims.
- 60% of the studied liability claims included a second involved employee. Interestingly, 90% of those claims had at least one bystander available, and almost three quarters of those had more than one bystander.
- A full 25% of the workers' compensation claims happened with available bystanders who could have prevented or mitigated the injuries to their fellow employees. Those claims represent an incurred value of over \$4,715,000.
- The lost time totals for both studied and extrapolated claims resulted in the equivalent of 52 lost (or under-performed) work years among Utah Trust members during the 5 year period.

These findings do not surprise us. With most professions being impacted by the powerful (but often invisible) psychological and social inhibitors to active bystandership, there is no reason to think that municipalities would be any more immune from the phenomenon than other professions.

WHAT IT ALL MEANS

The ABLE Project is currently making a difference nationwide by reducing harm to community members and protecting officers, their families, and their careers. ABLE also reduces unnecessary risk and expense to municipalities. We see the same potential for savings and benefits beyond law enforcement.

Operationalizing the Active Bystandership principles, common to most losses, can save taxpayers millions of dollars, at the same time reducing the often higher cost of consequential damages associated with loss and injury. Local, State, and National governments can direct these savings to needed projects to build communities and infrastructure. The alternative is paying defense and settlement costs for claims that didn't need to happen. We are seeing it work with law enforcement thanks to the ABLE Project, and we remain convinced similar principles will yield similar results across municipalities.

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