Ethics and Professionalism

Part 2 Section C (8 Hours)

TOPIC DESCRIPTION

The oath office police officers take lays the groundwork for instilling ethical behavior, but it doesn't stop there. To help guide officers toward ethical decision making, recruits undergo additional training. This block of instruction includes an introduction to basic ethical terms and theories. Recruits will also examine their own personal values and morals. Those values and morals will then be challenged by a series of ethical dilemmas.

INSTRUCTOR QUALIFICATIONS

Instructors in this topic are expected to be those certified by the Municipal Police Training Council. They should be able to document this by producing a current certificate issued by the Council. This certificate should read the person is certified as a general topics instructor. Further, they should possess a background and experience in the topical area, as documented to the school director. This supporting documentation should remain a part of the course file in the academy, available for later inspection or audit.

If a school director believes an individual who is not certified is otherwise qualified for teaching this topic, they may ask in writing for approval for that person to teach. The Office of Public Safety may, if finding the individual possesses a combination of an advanced degree and unique or qualifying experience, find the individual to be qualified and be approved to instruct. Those that are found qualified are listed as approved instructors, and will have a letter issued to them indicating what topic(s) they are approved to instruct. The school director should keep a copy of the letter in the school file.

School directors should understand the Office of Public Safety can only examine complete applications for instructors that are filed in a timely manner. Generally, this instructor approval often requires time that is in addition to the requirements (45 days by the State Regulation and the Municipal Police Training Council) for police training approval. This time allows for proper review of curriculum, instructors, and the needs for training in a zone. Complete applications are those which include a properly completed Instructor Personal History Form, and documents supporting the facts contained therein.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

TRAINING OBJECTIVES

Upon completion of this section, the student will be able to:

1. Identify values of personal importance.
2. Explain the five steps in the ethical decision-making process.
3. Describe what an ethical dilemma is and the conditions under which they can occur.
4. Explain Noble Cause Corruption.
5. Explain police subculture and its effect on ethical decision making.
6. Define active bystandership.
7. Define passive bystandership.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

CURRICULUM OUTLINE

I Introduction

A. Instructor Introduction

1. Brief description of background and qualifications.

2. Course Objectives

a. Identify values of personal importance.

b. Explain the five steps in the ethical decision-making process.

c. Describe what an ethical dilemma is and the conditions under which they can occur.

d. Explain Noble Cause Corruption.

e. Explain police subculture and its effect on ethical decision making.

f. Define active bystandership.

g. Define passive bystandership.

B. Brief Course History

1. Initial MPTC ethics training developed from NYPD's course.

a. Widespread NYPD corruption in the 1960's and 1970's.

b. NYPD developed an ethics course.

c. New York State Municipal Police Training Council adopted an ethics course based on the ethics training developed by the NYPD.

II Ethics Types and Terms

A. This course now designed to examine the earliest beginnings of ethics, such as natural law, discussed by Thomas Aquinas, who was a Christian theologian, and work by Aristotle on many philosophical and theoretical aspects of ethics, the work by these two professionals is very relevant.

B. We must have a basic understanding of some of the types of ethics, as well as some key definitions concerning ethics.

1. For instance, Aristotle recognized the importance of rationality in humans. He noted that the rationality is involved in activities of reason (intellectual

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

value) and activities involving right reason (moral value) (Aquinas, translated, with Introduction by Regan, 2000, p. xiv.)

a. Natural Law

(1) The idea that principles of morals and rights are inherent in nature and not human-made; such laws are discovered by reason but exist apart from human kind.

b. The Natural Law ethical system

(1) Presupposes that what is good is what is natural, and what is natural is what is good.

(2) It also assumes that morality is concerned with conformity to the natural world. It assumes that there are basic inclinations that form the core of moral principles.

(3) An example is that the preservation of one's own being is a natural inclination and would be considered a basic principle of morality.

(4) Actions that would be considered consistent with this natural inclination would include preserving one's own life, such as in self-defense (Pollock, 2019, p. 28).

(5) The use of deadly physical force by a police officer to protect his or her own life would be consistent with the Natural Law ethical system.

(6) It would also be considered ethical because the actions would be consistent with police department policy as well as local, state, and federal laws, as well as appropriate within the U.S. Constitution.

c. Ethical Formalism: Is a deontological system

(1) A deontological system: is one that is concerned only with the inherent nature of the act being judged.

(2) Even if the results of an intended act results in negative outcomes or consequence, if the act or intent is inherently good, originating from a good will, it is still deemed to be a good act (Pollock, 2019, p. 33).

d. A teleological ethical system judges the consequences of an act.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(1) The results of a bad act, can be defined as good under a teleological system if it results in good consequences.

An example: A police detective has tried for over 8 hours to obtain the location of a one year old child who is believed to have been kidnapped by the suspect who he is presently interviewing. The suspect has repeatedly refused to provide the whereabouts of the child who is believed to be in imminent danger of death if not located within the next 8 hours. The detective has attempted multiple attempts, including providing the defendant with a written guarantee from the District Attorney's Office with their consent, to only charge the defendant with one misdemeanor crime rather than multiple felonies. The detective believes that the only way to obtain the location of the child is through the defendant who knows the location. The detective uses excessive force until he obtains the information and obtains the location of the child. It is determined that if the location of the child had not been determined within one hour from the time it was determined, the child would have died.

Under utilitarianism and the utilitarian doctrine, the child's life was saved, the parents and family members of the child benefited from the child's life being saved, and society overall benefitted from a life being saved. We will discuss this dilemma in much greater detail as the detective's actions, even though consistent with the utilitarian act would not be acceptable or permitted for a number of other reasons and in conflict with other principles, practices, and laws. Many would argue that the ends justified the means in this example, but in policing, we know that this principle cannot be the guiding principle.

(2) This is another way of saying that the ends justifies the means (Pollock, 2019, p. 36). Jeremy Bentham (1748-1832) was a major proponent of **utilitarianism** and believed that the morality of an action should be determined by how much it contributes to the good of the majority (Pollock, 2019, p. 36).

e. Utilitarianism: The ethical system that claims that the greatest good is that which results in the greatest happiness for the greatest number of people (Pollock, 2019, p. 36).

(1) The "utilitarian doctrine asserts that we should always act to produce the greatest possible ration of good to evil for everyone concerned" (Barry, 1985:65, as cited in Pollock, 2019, p. 36)

(2) This concept would dictate that it would be justified or good if an action or actions significantly contributed to the general good, such as society over an individual.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(3) As the course proceeds, we will discuss how this principle cannot be used to justify unethical actions of police officers, as it conflicts with professional ethics.

f. Noble cause corruption

(1) Under this principle, officers engaged in such conduct have argued that they did not personally benefit or gain from their illegal actions and that they did it for the benefit of society.

An example would be an officer who untruthfully testifies under oath and commits perjury by stating a person possessed an illegal handgun (which resulted in an arrest) because the officer believed that this person had committed numerous homicides but could not gather evidence sufficient for an arrest. The officer committing perjury may attempt to justify his or her illegal actions by asserting that the community is now safer for everyone, and that he or she did it for society's benefit. This explanation would satisfy both utilitarianism and noble cause corruption but would nevertheless be unethical, illegal, immoral, and a violation of the rules and regulations as well as the **code of conduct** and **code of ethics** for law enforcement officers.

2. Types of Ethics

a. **Meta-ethics**: the discipline that investigates the meaning of ethical systems and whether they are relative or are universal and self-constructed or are independent of human creation.

b. **Normative ethics**: determines what people should do and defines moral duties based on ethical principles.

c. **Applied ethics**: the application of ethical principles to specific issues.

d. **Professional ethics**: a more specific type of applied ethics relating to behavior of certain professional groups.

3. Ethics is used as an adjective (ethical or unethical) to refer to behaviors relating to a profession.

4. Moral is used as an adjective to describe a person's actions in other spheres of life.

a. As you can see, ethics and morals are very closely related. At one time or another, you may have heard someone say he or she has no morals referring to a particular action or actions concerning the

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

individual in which they displayed unprofessional conduct. The conduct could have been unethical in a workplace setting or involved actions in their personal life.

C. While we could apply all of the above types of ethics to this course, we will primarily be concerned with professional ethics and applied ethics.

1. **Professional ethics:** although specifically applies to the expectations of a police officer relating to their position in policing, can also apply to their off duty conduct and behavior.

2. **Applied ethics**: is the application of ethical principles to specific issues. During this course students, will learn a five-step decision making process in using applied ethics.

a. When police officers practice both professional ethics and applied ethics, they are applying many concepts, values, duties, morals, and organizational rules and procedures, codes of conduct, and laws. These will be discussed in greater detail throughout the course.

b. When police officers practice these areas discussed above, they will be able to perform their duties in a professional and ethical manner at all times.

c. This is only the beginning of the additional knowledge that you will gain in this course, which will assist you in solving the ethical dilemmas that you face here in this course and in your careers. You can even apply the knowledge you learn in this course in your everyday, personal life. In other words, take this course serious and apply the knowledge from this point forward.

D. Ethics in the law enforcement profession

1. Police officers are held to a higher standard of behavior by society, because they are stewards of the public trust and are empowered to apply force and remove constitutional privileges when lawfully justified. They take an oath of office, are expected to comply with professional codes of ethics, and are subject to various laws, rules, and regulations.

2. Police misconduct grabs headlines.

3. Police misconduct has consequences – instead of protecting society by cutting corners, embellishing, withholding exculpatory evidence, or not telling the whole truth, unethical officers actually might free society's predators.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

E. To the law enforcement agency

1. Subculture – unaddressed misconduct can lead to a subculture where ethical breaches become pervasive and accepted

2. Liability – even one act of police misconduct exposes an agency to considerable liability

3. Undermines authority – ethical lapses by peace officers or their agency administrators damages their reputation in the community, and a law enforcement agency and its members must be viewed as fair if the community is going to consider them to be a legitimate authority

F. To the law enforcement officer

1. Ethical misconduct can lead to:

a. Loss of job

b. Loss of pensions

c. Loss of future employment

d. Civil liability

e. Criminal charges and prison time

f. Damaged reputation

g. Damaged relationships

h. Loss of self-respect

2. Circumstances don't create character, they reveal character.

III Group Dynamics and Workshop Method of Learning

A. Group Dynamics

1. Over time, an individual expresses and experiences a diversity of attitudes, beliefs, opinions, and concerns.

2. In comparison, a group of people offers a wide variety of human expressions at one point in time.

3. There is a four-stage process in which individuals in a group evolve from separate entities to that of a cohesive, interacting, and productive group.

a. Forming - individuals form liaisons, similarities are noticed, various differences become non- threatening, positions are taken.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

b. Storming - individuals disagree, differences are noticed, personalities conflict, distance is maintained emotionally.

c. Norming - the dust settles, reality sets in, individuals recognize each other's worth, differences are mostly resolved.

d. Performing - task is approached, the job is tackled, cooperation is given to get things done, respect is maintained

4. Group success depends upon active participation by all members. Each person must actively participate for effective results.

5. Effective discussion proceeds to a conclusion, or series of conclusions, with discipline and efficiency:

a. Group must clarify what is the question or topic for discussion.

b. Discuss question or topic until a resolution or conclusion is reached. Keep written notes.

c. Reach agreement on a recorded resolution or conclusion.

B. Workshop Method of Learning

1. Goal is to stimulate participants to think in a broader more objective manner.

a. This method of learning pushes students to be creative and responsible in their own learning.

b. Students should be active and engaged during the course.

c. This will be accomplished by working in groups.

d. Students will complete a combination of role plays and ethical dilemma scenarios.

(1) Mutual interaction aids in facilitating change in student thinking.

(a) Students should be open and honest during the process.

2. Ground Rules

a. What is discussed during the course is between the students and instructors

(1) Different ideas and opinions lead to creative discussions

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(2) Keep the following in mind while working in your groups:

(a) Listening;

(b) Honesty & frankness;

(c) Courage to show feelings;

(d) Understanding;

(e) No resentment;

(f) Presume we could be wrong;

(g) Keeping it within the family

(h) Courage to express ethical values, even when others do not agree;

(i) Respect;

(j) Perseverance

3. Attitudes, intentions, and behavior may vary from person to person since they are based upon individual experiences, beliefs, interests, feelings, values, opinions and perceptions.

a. Perceptions/Opinions:

(1) Two people can view the same “object" and each see a completely different image, with each being correct.

(2) Exercises:

(a) Exercise # 1: Drawing of Old and Young Woman

i) Have students examine the drawing and ask them what they see.

b. Behavior

(1) Perceptions and opinions, as well as values and beliefs, impact upon attitudes and intentions, and ultimately, behavior (actions).

(2) Attitudes are mental positions or emotions towards a fact or state:

(a) Impacted by values or beliefs.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(b) Create the basis of intentions.

(c) Social norms and situational constraints also impact attitudinal behavior.

(3) Individuals can incorrectly perceive situations and/or form incorrect opinions and act inappropriately.

(4) Due to misconceptions and cynicism, an officer may genuinely believe that the public is generally not law abiding, with the majority being "undesirable."

(5) The officer tends to act in accordance with this mistaken belief and begins to treat most people in a “less than positive" manner.

(6) The majority of the public is law abiding. This officer simply never comes into contact with these people, thus getting the impression that most people are "bad."

(7) The nature of law enforcement can create misconceptions and incorrect opinions

c. Facts, Opinions and Communications

(1) Often the facts of a situation are "elusive" and not easily exposed.

(2) Perceptions, opinions and communications can work against the facts.

(3) Very little in law enforcement is truly "black and white," a great deal is grey. “This is what often presents difficulties in decision making for officers.

(a) Examples: Discuss the following examples:

i) Life is always better than death.

ii) Killing is always wrong.

iii) One should never break the law

d. Problem solving, when properly approached, allows for creative thought vs. traditional thought.

(1) Once believed unsolved problems are then easily solved.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

e. *Creative problem-solvers* allow their imaginations to wander, make deliberate jumps in their thinking, and welcome chances.

f. *Creative problem-solvers* come to solutions by venturing beyond the rules and established precedents.

g. *Conformist or traditional problem-solvers* stay within boundaries of a problem, proceed in an orderly way from point to point, and support each step by the preceding one.

h. *Conformist problem-solvers* rarely find the answer from painstaking and rigid procedures

(1) One goal of this training is to have participants experience the process of creative problem solving and adapt it as their own.

(a) Exercises:

i) Exercise #2 -Nine Dot Problem

a) Instructions: “Connect all nine dots with four straight lines, without taking your marker off the paper. Any change in direction creates another line.”

b) Failure to find the solution to this problem demonstrates self-imposed restrictions.

ii) Exercise #3 Box on Paper

a) Instructions: “Fill the page with a drawing.”

b) This problem also demonstrates self-imposed restrictions, as most people will not go outside of the box.

i. Assumptions – acceptance that a fact or situation is true.

(1) However, individuals can easily misinterpret meanings of words or symbols due to:

(a) Lack of clarity.

(2) Different social and cultural backgrounds.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(3) Personal perceptions and biases.

j. Ice-Breaker Exercise

(1) Pair-up participants and give them 15 minutes to interview each other regarding backgrounds (anything goes).

(2) Do not tell them why!!

(3) Upon returning, have each participant orally report to the entire group concerning his/her findings about the person interviewed.

(4) This not only acquaints participants, but allows people to begin to communicate individually and as a group.

(5) It also shows that it is not easy for everyone to speak out. This is particularly difficult (stressful) when something negative may be said about a fellow officer

IV Personal Values and Ethics

A. The instructor will place students into groups and give each group a name.

1. Students will remain in their groups for the remainder of the course.

2. Make every attempt to place friends or members of the same department into separate groups.

3. The makeup of these groups is to remain for the duration of the course.

4. A "group moderator" is appointed by the instructor prior to directing groups to discuss dilemmas or exercises.

a. If possible, use a different group moderator for each exercise

b. Group moderator responsibilities

(1) Keeping the group focused on the exercise

(2) Ensure all members participate

(3) Making notes of any discussions

(4) Presenting information to entire class upon completion of exercises.

B. Morals

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

1. Values that are incorporated into a system of beliefs that define right versus wrong, good versus bad
2. Often prescribed by something beyond one's self – a higher being or higher authority (e.g., government, society)

C. Integrity

1. Adherence to moral and ethical principles
2. Specifically, maintaining consistency between
    a. Personal convictions (i.e., what one believes)
    b. Stated values (i.e., what one says he/she believes)
    c. Operational values (i.e., what one actually does)
    d. Ethical principles (i.e., what one should do)
3. A person of integrity is a person who will do the right thing at all times and in all circumstances
    a. Whether or not anyone is watching
    b. No matter what the consequences will be
4. Seven virtues required for integrity
    a. Seven virtues required for integrity
        (1) Prudence
            (a) Practical wisdom
            (b) The virtue of deliberation and discernment
            (c) The ability to unscramble apparent conflicts between virtues while deciding what action, or lack of action, is best in any situation
        (2) Trust – subsumed by the three primary relationships of a peace officer
            (a) Citizen-to-Officer
            (b) Officer-to-Officer
            (c) Officer-to-Supervisor

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(3) Removal of self-interest

(a) Important in light of the possibility of citizen's exploitability

(b) Without it, citizens become a means to

i) Advance an officer's power, prestige, or profit

ii) Advance goals of the department other than those of "protect and serve"

(4) Courage – a golden midpoint between the extremes of cowardice and foolhardiness

(5) Intellectual honesty

(a) The acknowledgement that one does not know a fact and admitting ignorance to that fact

(b) Unbiased, honest attitude

(c) Personal beliefs do not interfere with the pursuit of truth

(d) Acknowledgement of other's contributions

(e) Lack of this virtue in police work can be fatal to your career

(6) Fairness – being just or impartial

(7) Responsibility – possessing a sense of obligation; a duty owed to another

(a) Intends to do the right thing

(b) Has a clear understanding of what the right thing is

(c) Is fully aware that other alternatives exist

(d) Does not try to evade this responsibility by finding excuses for poor performance or bad judgment

D. Case Example – (Instructors are free to use their own examples)

1. Officer Keith Herrera – Chicago PD.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

a. Play the video of Officer Herrera and discuss with the class

(1) What were Officer Herrera's motives?

(2) What influences effected Officer Herrera's behavior?

(a) Possible answers

i) Influence by senior, role model officer (Officer Finnegan)

ii) Greed

iii) Entitlement

iv) Police culture and/or sub-culture

v) Special unit sub-culture (expected and accepted criminal behavior by SOS members)

vi) Police cynicism

vii) Lack of morality

viii) Lack of personal values

ix) Lack of personal ethics

x) Lack of good judgment

xi) Lack of professional and organizational ethics

xii) Character flaws

xiii) Lack of integrity as a person and police officer

(b) What did Officer Herrera's actions cost him?

i) Loss of freedom: received a brief prison sentence (NY Daily News, 2018)

ii) Shame and embarrassment to family (his mother worked for the police department)

iii) Loss of job (fired from Chicago PD)

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

iv) Will never have the opportunity of obtaining another position as a police officer

v) Difficulty in obtaining new employment (worked in a car dealership after serving his prison sentence)

vi) Loss of peace of mind

vii) Loss of credibility

viii) Loss of ethical demeanor

ix) Loss of reputation

x) Loss of character

E. Values

1. Everyone has a set of values on which they base their decisions and actions.

2. In this session, the participants will be listing their own values which they have adopted since childhood.

   a. These values play an integral part in their everyday decision making.

F. Exercise: Scale of Values (Allow 15 minutes for this exercise)

1. Instructions: Advise groups to develop a list of their 10 most important values in the order of their importance; with number 1 as the most important through 10 as the least important. This will be completed with the general group consensus of opinion. These lists should be written on large easel chart paper (if available) or on boards (if available). Students have this exercise in their student manual.

2. These will be left visible as a reminder for all students of the values that they stated were important to them.

3. Upon the completion of the groups discussing their values and how they arrived at the order of them, the instructor should engage students in a discussion that focuses on various factors and influences that can compromise these values. These include:

   a. Organizational culture (peer pressure; bullying)

   b. Friendships

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

c. The thin blue line

d. Concern about being labeled “a rat”

e. Concern about being professionally and socially isolated

4. The instructor must effectively discuss that none of these factors or influences are justifiable reasons for failure to act within the expected and acceptable ethical guidelines.

a. Additional questions to ask the students

(1) Will the officers involved in the unethical conduct financially support your family?

(2) Will the unethical officers find you a comparable job with the same level of stability and financial security which you will enjoy as much as you do being a police officer?

(3) Will the involved officers pay your mortgage if you lose your job and go to prison?

(4) Will you totally regain any of the values that you identified as being important to you?

b. Instructors are encouraged to ask additional questions that may add value to the discussion.

5. This is one of the key components of this training. The values of the individual officer will be continuously challenged during their decision making in the ethical dilemmas exercises, the role-playing exercises, and other areas of the course, including group and class discussions. They will also be challenged during real-life ethical dilemmas that they will face in their careers.

G. Values discussion

1. Discuss the importance of values:

a. Without values, our communities and country would be uncontrollable

b. The majority of citizens are law abiding and adhere to their society’s value system as well as their own values and morals.

c. There would not be enough police officers to protect the citizens and the communities if most did not adhere to values.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

d. A strong sense of values creates an atmosphere of professionalism, respect, and a positive atmosphere, a satisfying life, and a peace of mind, including in the work place and at home.

e. A lack of values, especially as police officers, can create an unprofessional atmosphere, lack of respect for one's self and others, an unsatisfying life, and a lack of peace of mind. This can negatively impact the individual officer and their entire family. This can lead to:

(1) Depression

(2) Psychological and physical well being

(3) Chronic Stress

(4) Lack of ambition

(5) Health concerns for the individual officer and their family (i.e.: lack of appetite, poor dieting, hypertension, diabetes, weight gain or weight loss, etc.)

(6) Loss of employment

(7) Loss of family

(8) Loss of freedom

(9) Loss of sense of accomplishment

(10) Loss of drive

(11) Loss of future opportunities

(12) Loss of many other things that are valued by the individual

f. Once an individual compromises their ethics, values, morals, and character, it is nearly impossible to regain these. There are no "do-overs" in policing. Your decisions and the results can be long lasting, including throughout an officer's career.

(1) Case law:

(a) Giglio v. United States, 405 U.S. 150 (1972). The requirement to disclose evidence about the credibility of government witnesses which are often law enforcement officers. This material is often referred to as Giglio material and can include

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

material that tends to impeach the character or testimony of a prosecution witness in a criminal proceeding. An officer who has a sustained finding in their personnel folder for any untruthful incident in their career can be devastating.

i) Examples can include:

ii) Sustained internal affairs complaint of deceptive conduct or untruthfulness, even if no discipline occurs;

iii) A finding that the officer withheld information from an internal law enforcement investigation;

iv) Sustained allegations that the officer improperly reported their working hours or overtime;

v) Sustained allegation of theft

vi) A finding that the officer was untruthful in their personal or public life.

vii) Any perjury accusation that has been sustained.

viii) Once an officer has a negative credibility determination against the sustained, the impact for the officer, their agency, and the prosecutors' office can be severe. Prosecutors may decide to decline prosecutions involving cases in which the officer is a witness.

g. Once an officer has a negative credibility determination against them sustained, the impact for the officer, their agency, and the prosecutors' office can be severe. Prosecutors may decide to decline prosecutions involving cases in which the officer is a witness.

V Ethical Dilemmas and Decision Making

A. What is a decision?

1. Decision – a choice between a multitude of possible options.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

B. Having an ethical decision making process is an important tool in the field

1. Recruits will utilize the following 5 step decision making process to complete the ethical dilemma exercise.

   a. This process will continue to assist recruits throughout their careers

2. Steps in the decision-making process

   a. Step 1: Identify all of the facts: It is essential that we know all of the facts when possible.

      (1) Although this will not always be possible, an attempt must be made to determine as much as possible.

   b. Step 2: Identify relevant values and concepts: Understanding the values and concepts are important and may affect the way that facts are interpreted.

   c. Step 3: Identify the most immediate and critical ethical dilemma and all other dilemmas or possible dilemmas:

      (1) This could be, for example, the improper actions of another officer which has caused you an ethical dilemma for which you must take action.

   d. Step 4: Consider all alternatives and the positive and negative consequences of each alternative:

      (1) You must consider the legal ramifications, your oath of office, departmental policies and procedures, your values that you determined were the most important to you, and your training (including and specifically, your ethical awareness training).

   e. Step 5: Make a decision on the most appropriate alternative that will bring about the most desired ethical outcome for you, your agency, the police profession, and the community.

      (1) Recruits can enhance the decision-making process by using PLUS

         (a) PLUS defined

            i) P = Policies – is it consistent with my agency's policies and procedures

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

ii) L = Legal – is the action lawful?

iii) U = Universal – does it conform to the universal principles and values of my agency?

iv) S = Self – does it align with my beliefs of what is right, good, and fair?

C. Ethical Dilemma exercise #1 – Officer Jones (Students will complete these exercises in their groups)

1. You are a police officer in a small-town agency that primarily consists of part time police officers. There are also six to eight-part time dispatchers for the agency who primarily serve in a part time status.

2. You receive a call from the dispatcher on duty who informs you that another part time dispatcher who is currently off duty, is being detained by security staff at the local hardware store in your jurisdiction. You respond and locate the dispatcher and the security officer who wishes to press charges for larceny and requests that you arrest the dispatcher. The dispatcher is a close personal friend of yours and is pleading with you not to arrest her. She has been a loyal employee which you are aware of and is liked by everyone in the department. You are aware that this dispatcher can barely pay her bills and that is also working overtime on a regular basis. She is struggling just to pay for the essentials for her two young children as a single parent.

3. Before you can make a decision on what to do, you see Officer Jones walking the dispatcher out of the store and the security member who called your agency says thank you and continues walking by you. You walk outside the store where you see the Officer Jones and the dispatcher talking. You approach them and the officer tells you “it’s all taken care of”. You ask “What do you mean?” Officer Jones tells you “Don’t worry about it, I told the security staff that she would be arrested and walked out with her”. Officer Jones further tells you “If you have a problem with this and try to do anything about this, I will report you for all of the times you slept on duty when you worked with me and I covered for you.” This is a very small community and the communication between residents and business owners is very strong.

   a. Recruits will use the 5-step decision making process to determine their course of action.

   b. Questions the recruits should be considering

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(1) What would you do in this situation?

(2) What ethical principles were violated?

(3) What types of ethics were violated?

(4) What are your options?

(5) Does your choice of actions violate any ethical principles?

(6) Who should be held accountable for their actions in this scenario?

(7) If you decide to take no action and ignore what has occurred, what are the possible ramifications to you?

(8) How can the actions or inactions taken by the police officers involved as well as the police chief, impact police and community relations? (trust, confidence, resentment)

c. After completion of the exercise each group should discuss with the class the answers to the above questions.

d. Additional questions for the instructor to ask if the recruits do not address them when they present their answers.

(1) Should the shift supervisor be notified? The Chief? If so, when?

(2) Would the fact that Officer Jones threatened to report you sleeping on duty be a factor in your decision to report this incident?

(3) What would be your possible concerns for not reporting this incident?

(4) What are the possible consequences for you for not taking the appropriate action in this example?

(5) Who, in addition to you could suffer from your actions?

(6) What are the positive benefits that could result from you taking the appropriate action in this situation?

(7) What would you do in this situation?

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

e. Unless your departmental policy directs that the Police Chief should be notified first in such cases, you should notify your immediate supervisor if this follows departmental policy.

f. Threats such as this should never be a deterrent for you making ethical decisions. In fact, taking responsibility for improper decisions such as sleeping on duty will enhance your character, record of truthfulness, and ultimately, your credibility and your ethical character.

g. You are human and human concerns would include an array of possibilities such as losing your friendship, having concerns about other members in the agency not support you as a result of your proper actions, and adding stress to your working conditions as a result of the unknown consequences.

h. By not making the correct choice or choices:

(1) You could face departmental charges for failure to perform a lawful duty.

(2) You could face criminal charges for this as well.

(3) You could be suspended

(4) You could ultimately be terminated as a police officer and never be a police officer again elsewhere.

(5) Your family will be affected in some manner.

(6) There is a risk of losing your home, the ability to support your family financially.

(7) There is the potential to lose your family, friends, and colleagues.

i. The ultimate question: Are there any possible explanations to support the actions of Officer Jones?

D. Ethical Dilemma #2 – Fraudulent Time Sheets

1. You are assigned to a gang task force with officers from a variety of other law enforcement agencies, including, federal, state, and local law enforcement officers. As the gang problem has received significant media attention, there is unlimited overtime to conduct investigations. You become aware that certain officers are taking overtime when they are not

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

actually working. You are then assigned to work with a group of officers who have been submitting fraudulent time sheets.

a. Recruits will use the 5-step decision making process to determine their course of action.

b. Questions recruits should be considering

(1) Do you just go along to avoid being thought of as not being on the team?

(2) Do you decline to incur overtime when not properly justified and authorized?

(3) Do you report the situation to your immediate supervisor?

(4) Do you report the situation to your agency?

c. After completion of the exercise each group should discuss with the class the answers to the above questions.

d. Additional questions for the instructor to ask if the recruits do not address them when they present their answers

(1) Who would be notified and when?

(2) What are the concerns for the individual officer who has knowledge of this and does not report it?

(3) What are the possible effects for the agency?

(4) What values, types of ethics, morals, and values would be compromised by making the wrong ethical decision?

E. Ethical Dilemma #3 – Off Duty

1. You are off duty in a local bar with several officers who work with you and are also off duty. You hear one of these male officers (Paul) talking with an unidentified female patron in the bar and overhear the officer identify himself as an agent with the Federal Bureau of Investigation (which you obviously know is untrue). About ten minutes later, the same officer seems to become increasingly intoxicated and suddenly begins recklessly waving his loaded off-duty handgun in the air, but soon places it back in his waistband, where it is concealed. You then hear one of the other off-duty officers who works with you offer the officer who you believe to be intoxicated, a ride home, but he adamantly refuses the ride, gets in his own car and leaves. Several citizens in the bar know that Paul is a police

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

officer and begin talking about all of his actions that are described above. It is now 0300 hours and you and your squad, including Paul, are scheduled to work at 0745 hours. You know that there is no possible way that Paul will be fit for duty at that time, but he shows up for line-up and you see Paul sitting back in a chair with sunglasses on, not speaking with anyone.

a. Recruits will use the 5-step decision making process to determine their course of action.

b. Questions recruits should be considering

(1) Who should be notified and when?

(2) What are the concerns for the individual officer who has knowledge of this and does not report it?

(3) What are the possible effects for the agency?

(4) What types of ethics, morals, and values would be compromised by making the wrong ethical decision?

c. After completion of the exercise each group should discuss with the class the answers to the above questions.

d. Additional questions for the instructor if not addressed by the recruits when they present their answers

(1) What are the concerns associated with this incident?

(a) Misrepresentation of a Federal law enforcement Officer

(b) Being intoxicated while possessing a firearm in a public place

(c) Waiving a loaded handgun in a public place

(d) Driving home, while intoxicated from a public place

(e) Citizens observing the conduct of the officer

(f) Arriving at work while unfit for duty (possibly still intoxicated and definitely impaired from his previous alcohol consumption).

(g) The possibility of not being capable of performing his duties (properly responding to calls, backing up

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

other officers, being capable of using proper judgement in using physical force or deadly physical force).

(h) Jeopardizing the safety of other officers, his safety, and the public's safety.

(2) What actions would you take concerning each of these above actions that you are aware of?

(3) When would you take each such action?

e. The ramifications of an officer misrepresenting themselves as a member of another agency is serious and, in addition to the officer, reflects upon the agency. Peer intervention and notifying a supervisor are options that must be considered.

f. The officer displayed reckless and inappropriate conduct by displaying and waving a loaded handgun in a public bar area with several members of the public present. Peer intervention should have occurred immediately to ensure the safety of all. Notifying a supervisor must be considered.

g. Officers, whether on duty or off duty, have an obligation to uphold the laws that they swore to do in their oath. Letting an officer drive away in an intoxicated condition is not only permitting a crime to occur, endanger the officer's life, and the lives of members of the public, but can end the career of a friend who is a police officer, damage the reputation of the officer, the department and the police profession, as well as place the department in a civil liability state. Peer intervention is essential to prevent the officer from driving in such a condition.

F. Ethical Dilemma #4 – Not So Sociable Media

1. You have been a police officer for approximately 1 year and are extremely proud of both what you do for a living and the agency for whom you work. You reside in a small residential area of the county where you are employed and most if not all your neighbors are unaware of what you do for a living.

2. While on duty one morning you make, a traffic stop of a vehicle for speeding. From the outset of the stop the male operator of the vehicle is particularly vitriolic in his feelings towards police and you specifically. You maintain a professional demeanor despite the man's verbal tirade and proceed to issue him a citation for speeding, explain it to him, and

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

calmly hold up oncoming traffic so that he may re-enter the roadway safely after the stop.

3. Approximately one week later a personal friend who is not in law enforcement makes you aware of a Writebook page – a popular social media platform – that appears to be dedicated to you in your professional capacity. You log onto the publicly-accessible page and are stunned to see that a substantial amount of your personal information is posted including your home address, family members' names and addresses, and personal vehicle plate number and description. The author of the page has even provided an interactive map link so that interested users are provided step-by-step directions your residence.

4. In viewing the publicly-accessible profile of the page's creator, you realize that the person depicted is the same one you had the encounter with during the traffic stop. It is apparent that he is linked to some form of sovereign citizen's movement and that the posting is clearly his attempt to exact revenge for your stopping him and issuing him a citation. Equally disturbing is your subsequent realization that, although potentially creating a dangerous situation for you and your family by releasing the personal information, his actions are protected by the First Amendment to the United States Constitution since he has not advocated for harming you or anyone else and likely compiled the information from publicly-available information gathering web services.

5. Even worse is the fact that his web page is generating a significant amount traffic and comments the bulk of which are decidedly anti-police and some which take aim directly at you. It has been suggested to you by more than one co-worker that the best thing you can do in this situation is to create a fictitious profile on Writebook and begin defending yourself. In fact, you have solid information that some of your fellow officers have done just that. After a particular post on the web page appears that offers directions to your parents' residence you decide that you have had enough.

6. Should you take the advice and begin posting anonymously on social media? What are the potential repercussions?

G. Ethical Dilemma #5 – Noteworthy

1. You arrive at the scene of a motor vehicle collision and quickly determine that the operator of the vehicle might be intoxicated. After conducting your investigation, you ascertain that the operator is in fact intoxicated and place him under arrest. There is no possibility that anyone else could have been operating the vehicle and the defendant's subsequent

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

chemical test shows that his BAC at the time of crash was .24% - three times the legal limit. He also has several prior convictions for driving while intoxicated and is clearly a menace to the motoring public. Prior to clearing the scene, you make a written note in your pocket notebook to remind yourself that the defendant was wearing Nike sneakers at the time you conducted SFSTs and had complained that they were falling apart.

2. Several months later the matter goes to a probable cause hearing during which you are asked by defense counsel if you took any written notes during the investigation and if so whether they had been turned over to the prosecution. You immediately realize that despite having turned over most of the case documents to the prosecutor you neglected to provide the handwritten note you made pertaining to the defendant's sneakers. It is a seemingly trivial oversight and the defendant's guilt is by all appearances overwhelming. In all likelihood, no one would ever know of the note's existence – certainly no one observed you creating it. Admitting that you made an error in this regard however could potentially lead to complications for the prosecution of the case.

3. What do you do?

VI Active Bystandership and Peer Intervention

A. Passive vs. Active Bystandership

1. Research and History

a. The 1964 murder of Catherine Genovese taught us about the bystander effect and diffusion of responsibility.

(1) Kitty Genovese was a young woman stabbed to death in Queens, New York in 1964. Her attacker stabbed her in a parking lot near her apartment building and was frightened away by a man who opened his window and shouted, "Leave that girl alone!" When the man did not come to Genovese's aid, she staggered inside the apartment vestibule, where the attacker returned, stabbed her again, and sexually assaulted her. She died of her wounds.

(2) The New York Times reported, in a front-page story, that thirty-eight neighbors had witnessed the crime and failed to act. One neighbor was quoted as saying he "didn't want to get involved."

(3) This case has been held up as an example of the "bystander effect" or the "diffusion of responsibility," where

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

witnesses fail to take action when others are present because they assume someone else will act.

(4) The “bystander effect” has been noted in other social science studies, but it is very important to acknowledge that the initial claim of thirty-eight witnesses was false. The assertion was made by the police chief at the time, but it does not appear to have a basis in fact.

(5) Subsequent journalistic investigations found that there were two witnesses in Genovese’s apartment building who witnessed the stabbing but did not intervene; it is difficult to say if others also witnessed the crime. Two witnesses did call the police. One woman who was friendly with Genovese came to her side to comfort her and to call for help after the second attack.

b. Experiments by Stanley Milgram taught us about obedience to authority.

(1) Milgram’s 1961 study on obedience to authority was set up under the guise of a study on memory and learning. Forty men volunteered for the study at Yale. Each was assigned the role of “teacher” and paired with a “student.”

(2) The teacher was prompted to ask a series of questions of the student. When the student answered incorrectly or did not answer, the teacher was told to deliver an electric shock of increasing strength. The shocks were not real; the student was an actor who was directed to behave as though the shocks were becoming increasingly painful, to the point of severe distress.

(3) A member of the study staff sat in the room with the teacher to encourage him to continue the experiment.

(4) The shock values were labeled from 15 volts (“slight shock”) through 300 volts (labeled “danger: severe shock”) all the way up to 450 volts (labeled, ominously, “XXX”).

(5) All of the teachers continued administering shocks, with prompting from the study’s staff member, up to 300 volts. Sixty-five percent of teachers continued administering shocks all the way to 450 volts, even after the student complained of heart pains and then fell silent.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(6) Milgram wrote: “I set up a simple experiment at Yale University to test how much pain an ordinary citizen would inflict on another person simply because he was ordered to by an experimental scientist. Stark authority was pitted against the subjects’ strongest moral imperatives against hurting others, and, with the subjects’ ears ringing with the screams of the victims, authority won more often than not. The extreme willingness of adults to go to almost any lengths on the command of an authority constitutes the chief finding of the study and the fact most urgently demanding explanation.”

(7) Would anyone here disagree with the statement that blindly following orders has caused police agencies problems in the past?

(a) “Carrying out orders” is not an excuse for behavior that goes against policy and/or law.

c. Research by Dr. Ervin Staub and several others taught us about the inhibitors to active bystandership.

(1) Dr. Staub identifies inhibitors of active bystandership, including:

(a) Pluralistic ignorance (“I think this is wrong, but no one else seems to, so they must think it’s okay”)

(b) Diffusion of responsibility (“I’m sure someone else will intervene”)

(c) Ambiguity of the need for help (“Everything is fine. My partner can take care of him/herself. He/she will figure it out”)

(d) Danger or cost of helping (“What if my partner decides not to have my back next time we’re in a tough situation? What if he/she tells everyone else I’m a snitch? What if my sergeant has me transferred?”)

(e) Fear of taking action in a public situation (“This will draw a lot of attention to me. What will all these people think? What if I make things worse?”)

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(f) Absence of empathy/seeing some as “others” and devaluing them (“My partner isn’t supposed to do that, but that guy deserves it. Why would I want to help someone like him?”)

2. Good police officers want to do the right thing, but even officers with the best intentions sometimes lack the tools and moral courage to intervene effectively, safely, and without repercussion, when faced with potential police misconduct.

3. The best way for officers to avoid having to report a fellow officer, of course, is to prevent the misconduct from occurring in the first place, thereby protecting both officers from career-threatening reprimands, suspensions, prosecutions and law suits (not to mention the benefits to the citizens).

4. Most officers, at some point in their career, will find themselves caught between two very unsatisfactory choices, or simply frustrated to the point of being about to make a bad decision. While most officers do not perpetrate serious misconduct or crimes, some may be bystanders and observers to the misconduct or mistakes of others.

5. A passive bystander looks on, but says nothing.

   a. Most humans are passive bystanders

   b. We assume someone else will act

   c. The more potential actors, the more likely we are to wait for someone else to act.

6. An active bystander, on the other hand, steps in and makes a difference.

   a. Bystanders have enormous potential influence

      (1) It is hard to resist a coworker who is intent on doing the right thing

   b. Active bystanders step forward, speak up, and take action.

   c. Active bystanders do no wait for others to act first

   d. Active bystandership is contagious

      (1) Once an active bystander steps in, others follow suit

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

7. Research has shown that humans have the capacity to be either active or passive bystanders, and that this decision is often influenced by the behavior of those surrounding them.

8. Research also has identified many critical inhibitors to intervention, inhibitors from which police officers are not immune. The research further shows that passivity, or failure to intervene, creates a tacit acceptance and approval for deviant behavior, which thereby slowly changes the acceptability of that behavior.

9. In other words, the more people allow misconduct to go unchallenged, the more that misconduct becomes accepted as the norm.

10. While we all can point to a time in our life where we did intervene, chances are we all can point to a time in our life where we did not intervene.

11. Interestingly, the research shows the reasons for such non-intervention are no different for officers: fear of being wrong, a feeling of “it’s not my job to step in,” fear of being ostracized, and perhaps most importantly, the belief that loyalty means supporting your colleague regardless of the rightness of your colleague’s actions.

12. These are strong inhibitors to action from which officers are no more immune than other members of the community.

13. Peer intervention is one of the best ways officers can support their fellow officers and support the citizens at the same time.

14. It is a tool for an officer’s own survival and the survival of our citizens.

B. The Impact of Non-Intervention

1. As mentioned previously in this training the risks to officers for failing to intervene are numerous.

   a. It is worth mentioning just some of the potential consequences again:

      (1) Loss of self-esteem and a corrosion of own sense of identity and morality

      (2) Reduction in job satisfaction

      (3) Negative impacts on family and social life

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(4) Increased likelihood of resorting to self-destructive behavior (drinking, drugs, etc.)

(5) Increased risk of depression, including higher likelihood of suicide

(6) Desensitization to the suffering of others; and importantly,

(7) Being held legally responsible for another's misconduct

b. These risks are real and significant. But the officers are not the only ones who suffer from non-intervention.

c. Your agencies and the community face profound negative consequences as a result of non-intervention as well.

(1) The resulting negative impact on community relations with police departments has been widely recognized and documented

(2) As the Bureau of Justice Assistance notes, "Without trust between police and citizens, effective policing is impossible."

(3) The risks of non-intervention are especially profound among communities of poverty and color where police mistrust currently is at its height.

(4) Rebuilding trust between these communities and the police will go a long way to protecting the community and our officers.

(5) Finally, one cannot overlook the very real and direct monetary cost of non-intervention. The courts have made it abundantly clear that officers will be held financially – and sometimes criminally – liable for not intervening to protect the rights of citizens.

(6) In short, any officer who thinks he or she is protecting a colleague by not intervening better think again. The costs of non-intervention can be life changing for all involved.

d. Misguided loyalty

(1) In the past, it was "Even if you do the wrong thing, I'll have your back"

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(a) Is that appropriate loyalty?

(2) Loyalty should mean, “I’m going to help make sure you’re doing the right thing; then, I’ll have your back.”

C. Recognizing Risk Factors

1. What kind of on-duty triggers could set off an officer?

   a. Domestic Violence?

   b. Disrespect?

   c. Crowds?

2. What kind of on-duty triggers might your co-workers/partners have?

   a. Swearing?

   b. Juveniles?

3. What kind of triggers might the community you police have?

   a. People living in extreme poverty are much more likely to be in a situation that escalates due to already feeling marginalized.

4. Common triggers in the field

   a. Foot pursuits and vehicle pursuits commonly lead to problematic encounters.

   b. A member of the community challenging police authority.

   c. Heightened periods of job or personal stress.

   d. Past trauma.

   e. Hostile groups and/or crowds.

D. What are the “Inhibitors” to becoming an active bystander?

1. Fear of retaliation.

2. Fear of isolation from fellow officers.

3. Fear of being wrong.

4. Lack of knowledge/skill.

5. Fear of crossing boundaries (e.g., rank/assignment).

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

6. Diffusion of responsibility (i.e., “someone else is better equipped to intervene . . .”).

7. “Pluralistic ignorance” (i.e., “no one else looks worried, so everything must be fine . . .”).

E. What the law says about intervention

1. Section 1983. 42 U.S. Code Section 1983, 14141, 3789d.

   a. Several sections of Title 42 of the United States Code can come into play if police officers do not intervene to prevent misconduct. Section 1983 is the primary civil rights law upon which victims of police misconduct rely. Section 1983 enables individuals to bring a lawsuit against law enforcement officers and other government officials, acting under the authority of law, if those officials have deprived the individual of his or her constitutional and federal statutory rights. Police officers can be sued under this section individually. Additionally, courts have found that police officers who fail to prevent misconduct by other officers could be liable under Section 1983. The results of a Section 1983 lawsuit can be costly.

   b. Section 14141 of Title 42 is the police misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994. This provision authorizes the Attorney General to file lawsuits to reform police departments that have engaged in a pattern or practice of violating citizens’ federal rights. This statute allows for federal intervention in state and local police departments if officers are engaged in a pattern of misconduct

   c. Section 3789d of Title 42 prohibits discrimination on the basis of race, color, national origin, religion, or sex in certain U.S. Department of Justice grant programs. Under this provision, if it is discovered that a police department is behaving in a discriminatory manner, the Department of Justice can cut off funding to certain programs within the police department.

2. 18 U.S Code Sections 241, 242

   a. While the statutes described above can lead to civil liability and other administrative penalties, police officers also can face criminal liability and prison sentences for failing to intervene if a fellow officer is acting inappropriately. Under Title 18, Section 242, police officers and other government officials, acting under the

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

authority of law, can be prosecuted for intentionally depriving individuals of their constitutional and legal rights.

b. Under Section 241, two or more people who conspire to deprive other individuals of their constitutional and legal rights can be prosecuted. If such a conspiracy is found, even if no actions have been taken yet, the conspirators can be fined and/or sentenced up to ten years in prison. If certain violent acts have been committed, the conspirators can be fined and/or sentenced to life in prison or death.

c. Both these statutes have been used to bring criminal cases against police officers involved in serious misconduct. If an officer does not intervene to stop the misconduct, he or she can be seen as a participating conspirator and can face criminal charges.

3. What the courts have said:

a. Putman v. Gerloff, 639 F.2d 415, 423 (8th Cir. 1981)

b. "We conclude although Crowe was a subordinate, the evidence is sufficient to hold him jointly liable for failing to intervene if a fellow officer, albeit his superior, was using excessive force and otherwise was unlawfully punishing the prisoner. . . . ."

(1) Even though it was a supervisor who acted improperly, the subordinate was liable because he observed the misconduct and did not intervene.

c. Anderson v. Branen, 17 F.3d 552 (2d Cir. 1994).

(1) "[All] law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence. . . ."

(a) The key point here is: you have an affirmative duty to intervene. This is the expectation set by the courts.

(b) If you observe another officer acting improperly, "letting it slide" will not be tolerated. You will be liable for failure to intervene.

d. Torress v. Allentown Police, No. 13-3066 (2014).

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(1) "Plaintiff can sustain a claim for a Fourth Amendment violation against an officer who did not participate directly in the use of force if that officer failed to intervene despite having had a reasonable opportunity to do so. . . ."

(a) A court said a plaintiff can sustain a Fourth Amendment violation against an officer whose sole transgression was failing to intervene

4. Training appropriately for the risks

a. We train for gun fights, street fights, etc. which we need, but we don't train enough on other things that lead to the end of police careers.

b. We train on physical safety more than emotional/legal safety and the systemic risks of police work.

c. Most of us will never get shot.

d. More cops will go to prison this year than will be shot.

e. More cops will die by suicide this year than will be shot.

f. **All of us will be confronted in policing with significant ethical, emotional, and procedural dilemmas.**

g. **<u>We're not advocating</u> for a reduction in tactical training. That is, and always will be, extremely important.**

F. Why do we intervene?

1. We took an oath as new police officers.

2. We care about the safety and mental health of our coworkers.

3. We are ALL responsible for the reputation and public trust of our badge and the NOPD as an organization.

4. Courts have made it clear that police officers are the first line of defense in identifying and preventing misconduct and will be held accountable for inaction.

5. None of us wants to lose an officer as a result of overlooking depression, PTSD, or substance abuse.

G. When do we intervene?

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

1. We see an officer violating a policy or law, or about to violate a policy or law.
2. We see an officer doing something or about to do something that would discredit themselves, the department, or OUR profession.
3. We see signs/symptoms of job stress or stress at home, depression, or drug/alcohol abuse in a coworker.
4. We see an encounter between an officer and a citizen that is likely to end badly (hostile or escalating behavior, unprofessional conduct, etc.).
5. We see unsafe behavior and/or bad tactics by an officer (e.g., not waiting for backup, etc.).
6. We see an officer cutting corners that could jeopardize an investigation, safety, or public confidence
    a. It's our job to call each other out (in a professional way) to make sure we're all staying safe and doing the job to the best of our ability

H. How do we intervene?

1. Recognizing the need for an intervention and assessing the urgency.
    a. Is the issue minor? Serious?
    b. Can an intervention wait, or is it an emergency?
2. Acting rather than watching; being an active bystander.
    a. Do NOT wait for misconduct to occur or get worse.
    b. Do NOT ignore the "elephant in the room."
    c. Be vigilant and proactive in our coworkers lives and behavior.
3. Being DISCREET when appropriate… (non-emergency)
    a. Personal/emotional problems, drugs or alcohol – these are problems that likely should be addressed behind closed doors, discreetly.
    b. Minor courtesy issues, impatience, and rudeness with the public are problems that can be addressed before or after shifts.
4. Being DIRECT when appropriate… (emergency)

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

a. Excessive use of force, blatant professionalism issues, gross misconduct – these are issues that must be addressed on the spot and directly. Waiting to address such issues can be dangerous.

5. Considering who needs the intervention and why.

   a. Does the officer have a close personal friend who would be in a better position to speak about personal problems?

   b. Is the officer a female who may rather be approached by another female, or vice versa?

   c. Does the issue need to be referred to the Officer Assistance Program (mental health, alcohol abuse, etc.) or is this something you are prepared to discuss with the officer first?

6. Evaluating the seriousness of the problem.

   a. Minor issues and personal problems are best handled between partners or close coworkers. Approach coworkers respectfully but directly; they have a DUTY to accept an intervention.

   b. If an intervention fails, you may need to be more direct; speak up.

   c. In the event of serious misconduct or recurring problems where previous attempts at intervention have failed, “escalating” interventions may be necessary.

7. What does it mean to escalate an intervention?

   a. If a coworker is putting him/herself, the public, or YOU at risk because of his/her behavior, others may need to be brought into the loop. This is referred to as escalating.

   b. Escalation gives coworkers the incentive and the option of accepting an intervention and correcting the problem; if they refuse your help, you may have to involve a sergeant, lieutenant, etc.

   c. Escalating is still an intervention and is designed to give the coworker a chance to correct the problem at the unit level.

   d. Enlist the help of “allies” when escalating – other members who can help ensure the intervention becomes successful.

8. A quick look at the P.A.C.E. Program

   a. Problem

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(1) Airline pilots are subject to a rank structure similar to police departments and operate under similar pressure conditions. Over the years, a number of fatal aircraft accidents involved risky senior pilot behavior that was identified, but not addressed, by subordinate crew members who did not feel they could speak up.

b. Solution

(1) P.A.C.E. – Probing, Alerting, Challenging, and Emergency Warning. A pilot peer intervention program designed to address this very real-world problem that has saved lives and careers. Under P.A.C.E., subordinate crew that intervene in risky behavior are protected by policies aimed at creating a culture of safety.

c. Under the P.A.C.E. program, when a subordinate crew member identifies unsafe behavior, he/she:

(1) Probes - “I believe these storms are colliding – why are we attempting to fly between them?”

(2) Alerts - “Captain, there is no longer room between these storms – I believe it is unsafe to attempt this approach.”

(3) Challenges - “Captain, making this approach is dangerous and unnecessary – you must reevaluate your approach decision”

(4) Warns of EMERGENCY - “This approach puts us all at risk of an accident – if you do not change course immediately, I will take control of the aircraft!”

9. Tips for a successful intervention

a. Remember, everyone in your unit and across the city is a partner.

b. Use phrases like “I’ll take over” or “Go take a break.”

c. All of us must be prepared to accept an intervention. When a coworker says “take a step back,” it is code for “don’t get yourself in trouble.”

d. Approach every situation with respect and sincerity, and even humor when appropriate.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

e. Be ready to provide an alternative or suggest a remedy to the problem.

f. Be open to the discussion of best practices, areas of improvement, and not putting your coworkers in the difficult position of deciding whether they must report misconduct.

10. Corroboration/Cooperation/Coordination…

a. Remember that intervention is a cooperative endeavor…

b. An effective intervention requires both the intervenor and the person receiving the intervention.

c. The acceptance of an intervention is as important as the intervention itself

d. The end-goal is to help a coworker – remind them of this goal

I. Role-Plays

1. Instructor Information

a. It long has been acknowledged that adult learners respond well to scenario-based (i.e., role play) training. Just as an officer does not learn to shoot by reading a book in a classroom setting, that officer also cannot truly understand and appreciate the power of the tools offered through peer intervention from a PowerPoint. Accordingly, this training program incorporates a multitude of role play scenarios to drive home the points of the classroom training.

b. The role-playing scenarios were designed to enable officers to take on the role of the intervening officer, the officer requiring intervention, the supervisor, the witness, and the suspect. These role-playing scenarios are essential in providing officers practice in intervening and informing training staff of the real challenges faced on the street. For each scenario, officers will be provided with information by the “observer” about the role each person should play in the scenario. The observer will facilitate the scenario by adding more information, if needed, to help the scene unfold.

c. The scenarios include a general description of the various persons involved as well as how the scenario is designed to play out. As the scenario unfolds, embracing the principles of peer intervention could change the development of the scenario. Of course, your

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

development of the scenarios is an essential part of the course. Accordingly, some of the specifics may change from course to course as you and/or the students identify new scenarios or modifications to the initial scenarios that incorporate even better opportunities for teaching and learning.

d. For the sake of simplicity, the words “partner” or “assisting officer” are used to describe other officers involved in the scenarios. The other officers may be from other districts, units, or even different agencies.

e. Two things are required for each scenario. First, each scenario must end with the officers demonstrating and agreeing to what constitutes a successful intervention. In most cases a successful intervention is not identified in the role plays. You are encouraged to modify, add to, or change the scenarios and role plays to make them more realistic.

f. The course includes 7 role-plays. Students must complete 4 out of the 7 role plays provided. Instructors are free to exceed the minimum requirement if want to and time allows.

g. All 7 role-plays are included within the student manual.

2. Role-Plays

a. Scenario 1: The Spitter

(1) The Scene: You and a partner whom you’ve known for years respond to a domestic violence call together. You know that your partner finds men that engage in domestic violence to be a vile type of person. You both handle the scene per Department policy and determine that the male is the aggressor and should be arrested.

(2) The Set-Up: The male offender is violent and combative. While in handcuffs, the male is cursing at your partner constantly, screaming derogatory racial epithets at him, and threatening to make false PIB complaints against him. Your partner is visibly agitated as you are walking the arrestee to your squad car. The arrestee spits in your partner’s face; your partner raises his hand as though he is about to strike the arrestee.

(3) Probing Questions:

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(a) How do you respond in the moment?

i) Role players should stop the partner from striking the arrestee and immediately remove the partner from the situation.

ii) How would you accomplish this without embarrassing or potentially escalating your partner?

(b) After the incident, do you report it to your sergeant?

i) Is this something that requires a report?

ii) If a punch had been issued, you would need to report this to your supervisor. If you were able to prevent the punch, do you need to report your partner's behavior?

(c) Is there anything you could have done differently when you noticed your partner's agitation? Could the incident have been avoided?

i) Could you have handled the situation differently from the beginning, knowing your partner was particularly sensitive to domestic violence calls? For example, could you have had a discussion with them in the car on your way to the scene where you let them know you would take the lead so they wouldn't have to deal with the offender?

ii) During the scene, when your partner is becoming agitated by the arrestee's behavior, could you have stepped in and taken the arrestee to transport so your partner could get some distance?

b. Scenario 2: The Known Gang Member

(1) The Scene: You patrol District 5 on the evening watch, and you are very familiar with a repeat offender named "Darryl" who lives in your district. Darryl is a felon, currently on probation backing up 10 years for armed robbery.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(2) Darryl is a known gang member and a suspect in several shootings; however, the Investigations Unit (IU) is unable to close these shootings because witnesses will not name Darryl out of fear. Darryl is listed every month as a "target offender" by your district commander and intelligence division. During roll call one day, someone remarks, "I bet the Commander will give me Christmas off this year if I get this guy."

(3) While patrolling Monday evening, you and another unit receive a call for service describing several males on a corner armed with handguns selling drugs. As you arrive you see the group, which includes Darryl, disperse. As you stop at the corner, everyone except Darryl runs away. Darryl is slowly walking away and says "bitch ass cops, y'all can't touch me."

(4) The Set-Up: You and the assisting officer stop Darryl and do a quick pat search and ask him about what the group was doing. As you are talking to him, another back-up unit locates a silver handgun on the ground under a vehicle where the group was originally standing and says, "If you had seen Darryl toss that gun under the car, he's gone at least I0 years, and IU could probably solve those shootings with him in jail." The assisting officer, who is a rookie, takes you aside and asks what you should say.

(5) Probing Questions:

(a) How do you respond?

i) What do you tell the rookie officer?

ii) Is there a way to get the information on Darryl that you need without making a false report?

(b) Do you think the backup unit member was suggesting that you make the false claim? If so, do you report them?

i) The language in the scenario is ambiguous. If the officer had said, "Just tell me you saw Darryl toss the gun," how would that change your approach?

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

c. Scenario 3: Shots Fired

(1) The Scene: As a member of the Tactical Unit, your team is placed in a zone to find a pair of armed robbers that have been hitting a residential neighborhood every night for a week. You have an excellent description and, after about an hour of patrolling, you come across two teens who fit the description exactly. Both immediately begin running when they spot your patrol car. You and a partner pursue the same suspect to the right because he is clearly holding a firearm in his waistband. As he darts into the alley between two houses he fires two shots in your direction, and you hear him hit a fence. As you make it into the alley, he has dropped the gun and continues running into the block. You continue into the block to search and separate from your partner briefly. After a few moments, your partner shouts “over here!” You find your partner is engaged in physical force, but in control of the handcuffed suspect. You are in a dark area surrounded by fences.

(2) The Set-Up: Your partner has the suspect in handcuffs on the ground as you reach them. Your partner says, “Now’s your chance before everyone gets here. He tried to kill us dude; aren’t you going to take your shot?”

(3) Probing Questions:

(a) How do you respond?

i) Would it be legally justifiable to take your partner’s suggestion? Would it be morally justifiable?

(b) What is the appropriate follow-up action to take with your partner?

i) Do you report it, or do you intervene directly with your partner?

(c) Do you think the use of Body Worn Cameras prevent this type of scenario from playing out, or does this still happen?

i) Does knowing you’re wearing a BWC ever change the way you respond to a scene or interact with a member of the public?

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

d. Scenario 4: Carjacking Admission

(1) The Scene: You are assigned to a district task force. At roll call your supervisor has a message from the commander describing the suspect in a series of violent carjacking's in your district. The car-jackings are just the latest in a string of violent crime that the district is having trouble stemming. It is clear that your supervisor is under a lot of pressure to solve this problem, and they seem to indicate that failure to solve this problem may lead to you or your partner being transferred out of the unit.

(2) While on-duty you locate and arrest a suspect and transport him to the station. Your task force supervisor says, "You guys made the arrest; work the case, interview him, and see what you can get." During the interview, you can tell that the suspect is far below average intelligence. At some point, and without a full confession, the suspect mumbles that he wants to speak to a lawyer. Your supervisor is watching the interview through the external video feed.

(3) The Set-Up: Two officers are in the interview room with the suspect. You, as the supervisor, pull the officers out of the room and ask what the suspect said. When they say he asked for a lawyer you say, "Are you sure that's what you heard?"

(4) Probing Questions:

(a) As the subordinate officer, how do you respond to the supervisor in the moment? What do you do if the supervisor keeps questioning what you heard?

(b) Does knowing there is active recording in the room change your response or your approach to the supervisor?

i) Sometimes technology such as BWCs or interview recordings can give us "excuses" for the interventions we would like to perform when we may not feel comfortable doing so. If you are worried about the supervisor's response to your push back, citing the recording could potentially take

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

some of the pressure off you – i.e. “our hands are tied; the recording captured him asking for a lawyer.”

(c) What are the moral vs. legal justifications for your actions?

i) How do you weigh getting this person off the street against respecting the suspect’s rights?

(d) Do you think about public perception when making these kinds of calls?

i) What would you want the police to do in this situation if you were the victim of one of the violent car-jackings? If your child was the victim?

e. Scenario 5 - Get Off My Corner

(1) The Scene: You are a new officer with just a year in the field. You are transferred to the district task force unit, and at your first task force roll call the supervisor addresses major problems in zone “K.” The supervisor says they've had three shootings in zone “K” in the past week and several complaints about drug activity. The senior officer of the task force says "The new guy is riding with me tonight so I can see if he knows what he is doing."

(2) The Set-Up: After leaving the station the senior officer drives to zone “K” and sees a group of young men standing on a sidewalk outside of a bar. The senior officer shouts through the open window, “Get off the corner, go home or go in the bar.” One of the men in the group responds “We are standing on a public sidewalk.” The senior officer then shouts “Okay, everybody get on the car,” and proceeds to pat everyone down and demand identification. The senior officer tells them to "get the f--- up the street. I don't want to see you again tonight or you all are going to go to jail." You, as the rookie officer, must decide if and how to respond.

(3) Probing Questions:

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(a) Would you address this with the senior officer? If so, how would you approach the situation?

i) If you don't feel comfortable addressing it in the moment, could you address it after the shift ends? Is there a way to raise the issue without seeming like you are challenging the senior officer's judgment?

ii) Is there someone else you could talk to about the situation? Who?

iii) If one of the young men files a complaint, do you think you would face repercussions?

(b) How do you weigh the potential community benefit to having this group of people off the street against the protection of their rights?

i) How do you as an officer think about public safety vs. constitutional rights?

ii) How do you think the public weighs these issues?

f. Scenario 6: The Vehicle Search

(1) The Scene: While assigned to patrol, you and your partner are given a bulletin about a person of interest in a shooting that lives at 1234 North Johnson Street. The suspect is not wanted, but DIU would like to locate him for an interview about the shooting. You and your partner check the address, and as you turn the corner you spot the suspect walking away from a vehicle (doors already closed) toward his residence.

(2) The Set-Up: You drive up ahead of him and get out and stop him. You ask to speak with the suspect, who consents to a conversation outside of the house. Your partner begins interviewing him and then turns to you saying, "Keep talking to him for a minute." As you speak with the suspect at the police car, you can see over his shoulder that your partner is looking through the windows at the vehicle and appears to be trying the door handle.

(3) Probing Questions:

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

(a) Would the search be justified? If not, do you intervene with your partner before he opens the car door? How?

i) Is there a way to stop the search without calling out your partner in front of the suspect?

ii) Are there ways you and your partner could communicate before you ever go out on patrol together to set boundaries and to determine signals you will use if you have concerns?

(b) What are the repercussions for an investigation if your partner conducts an illegal search? Do you speak to your partner about how his actions could have compromised the investigation?

i) Is there a way you can approach the situation that preserves your relationship with your partner while also ensuring that he does not attempt similar actions in the future?

(c) Do you report your partner?

i) If you stop your partner from conducting the search, do you need to file a report?

ii) If you do not stop your partner, and he proceeds with the search, do you need to file a report?

iii) Do you discuss the incident with your sergeant or with anyone else on your platoon?

g. Scenario 7: Behavioral Changes

(1) The Scene: You have been working under the same sergeant for more than a year and have gotten to know him pretty well. He is usually very professional and happy to lend a hand. Recently, he has been coming into work unshaven, looking disheveled. He has been short-

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

tempered and quick to brush off concerned remarks from you and other members of the platoon.

(2) The Set-Up: At roll call one morning, a rookie officer asks a question about conducting searches, and your sergeant snaps, “Haven’t you figured that out by now? What’s wrong with you?!”

(3) Probing Questions:

(a) How do you respond in the moment?

i) Do you address this with the sergeant immediately? For example, do you tell the sergeant you’ll handle this question? Or do you let the moment pass to avoid confrontation in front of your fellow officers?

ii) Do you address this with the rookie officer immediately? Do you try to reassure her about her own performance and/or about the sergeant’s behavior?

(b) Do you think this outburst could have been avoided?

i) Should someone have pulled the sergeant aside earlier, upon noticing the change in his behavior?

ii) How do you follow up if someone brushes off concern and insists that they’re okay? What other resources are available to you? (Examples may include your lieutenant, other officers who may be friendly with the sergeant.)

(c) Do you pull your sergeant aside later to discuss this? If so, what do you say?

i) How do you respond if the sergeant pulls rank and tells you that he is your superior and you need to leave him alone?

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)

ii) Do you let the sergeant know you are going to take additional steps to address the issue?

iii) Do you involve other members of your platoon?

(d) Is there someone you could reach out to who could help address the issue?

i) Do you know any officers the sergeant is particularly close to, whether in your platoon or not?

ii) Are there other individuals in the Department you would trust to help your sergeant work through his issues?

VII Conclusion

A. Questions/discussion

B. Review course objectives

1. Identify values of personal importance.
2. Explain the five steps in the ethical decision-making process.
3. Describe what an ethical dilemma is and the conditions under which they can occur.
4. Explain Noble Cause Corruption.
5. Explain police subculture and its effect on ethical decision making.
6. Define active bystandership.
7. Define passive bystandership.

NYS Division of Criminal Justice Services, Office of Public Safety: Copyright 2018 (December 2018)