Bystander and Witness Presence

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What It Is

Bystander and witness presence refers to individuals at a scene who are not the primary subject of a law enforcement contact: family members, neighbors, passersby, building residents, or other civilians present at the time of or immediately after an encounter. Their presence is nearly universal in residential and urban incidents and is increasingly captured on mobile devices in addition to officer body-worn cameras.

Bystanders are often treated as a complicating factor in officer training – a crowd-management problem. In edged-weapon encounters, they are also an information resource, a safety variable, a de-escalation resource, and a post-incident accountability mechanism. Their role in each capacity deserves operational attention.

Bystanders as an Information Source

Bystanders at an edged-weapon scene frequently have information the responding officer does not:

Relationship to the subject. A family member can tell an officer whether the subject has a psychiatric diagnosis, is currently on or off medication, has a history of previous episodes, responds to particular approaches, or is frightened versus threatening. This information changes the officer's initial assessment and approach strategy.

What happened before dispatch. The 911 call captures one moment in time. Bystanders can provide the preceding narrative – what triggered the episode, how long it has been ongoing, what has already been tried, and whether the situation has escalated or de-escalated since the call.

Current subject state. A family member who has been with the subject for the past ten minutes has more current information about the subject's emotional state, level of arousal, and responsiveness than the officer arriving with dispatch information from several minutes ago.

The weapon. Bystanders can identify the weapon, describe whether the subject has used it or threatened to use it, and indicate whether the subject acquired it recently as an escalation or has been holding it throughout.

Officers who approach subjects immediately without first speaking to available bystanders are trading current, specific information for speed of contact. In most non-time-critical edged-weapon calls, this is a poor trade.

Bystanders as a Safety Variable

Bystanders present at an edged-weapon encounter can become victims. This risk has two dimensions:

Proximity risk. Bystanders who are within the potential action radius of the subject – particularly in an uncontrolled indoor space – are at risk if the subject moves toward or past the officer. Officers must assess and address bystander proximity before and during contact.

Crossfire risk. In incidents where lethal force may become necessary, bystanders in the background of the officer's line of fire represent a backstop problem. Officers should identify bystander positions relative to their potential firing positions before force becomes imminent.

Managing bystander position – moving them to cover, directing them away from the immediate area, placing them behind physical barriers – is a priority task at arrival that competes with, but should not be entirely displaced by, the urgency of addressing the subject.

Bystanders as a De-escalation Resource

Family members, friends, or known community members at a scene have relational access to the subject that the officer does not. In some circumstances, involving a bystander in de-escalation produces results that direct officer engagement cannot:

- A family member who the subject trusts may be able to communicate that the officer is not there to arrest them, that help is available, or that it is safe to put down the weapon.
- A person known to the subject can provide familiar context that grounds the subject's perception during a psychotic or dissociative episode.
- The presence of a known person can regulate the subject's emotional state in ways that officer commands cannot.

This resource has limits and risks. Bystanders should not be used as de-escalation intermediaries if: - The subject's behavior suggests they pose a threat to the bystander specifically. - The bystander is visibly frightened or escalated themselves. - The bystander is a party to the conflict that generated the call. - The scene is too dynamic for the officer to protect both the subject and the bystander simultaneously.

When it is appropriate, the bystander's involvement should be directed – the officer should give the bystander specific, calm instructions about what to say and what not to do, rather than simply allowing them to approach.

Bystanders as a Post-Incident Accountability Mechanism

The increasing prevalence of mobile video recording by bystanders has transformed the evidentiary landscape of law enforcement encounters. Bystander video frequently captures elements of an incident that body-worn cameras do not:

- Wider-angle views that show officer positioning and surrounding context.
- The period before officers turned on BWC or activated recording.
- The perspective of persons other than the primary officer.
- Audio from a different position than the BWC microphone.

Bystander video has been material evidence in multiple high-profile use-of-force cases and has, in several instances, contradicted officer accounts. Officers who understand that bystander recording is likely should treat its existence as a given and behave accordingly – not because surveillance is the standard, but because conduct that would be defensible on video is generally conduct that was lawful and reasonable.

Legal status of bystander recording. The First Amendment right to record police activity in public is well established. Officers who confiscate recording devices, order bystanders to stop recording, or delete bystander footage without consent are acting unlawfully in most jurisdictions and have generated substantial civil liability. Bystanders may be directed out of an area for safety reasons; they may not be directed to stop recording as a condition of remaining.

Managing Bystander Presence Operationally

Bystander management is not crowd control in the traditional sense. The goal is to create conditions that allow the encounter to develop without bystanders becoming additional victims, without bystanders interfering in ways that destabilize the situation, and without losing the information and de-escalation resources that bystanders may provide.

Immediate assessment. On arrival, identify how many bystanders are present, where they are positioned relative to the subject, whether any of them know the subject, and whether any of them are in immediate danger.

Active direction. Bystanders who are within the action radius should be directed to move to a specific, safer location. “Please move to the other side of the street” is more effective than a general instruction to get back. Designating a specific officer to manage bystander position – when multiple officers are present – prevents bystanders from defaulting to the most engaged officer.

Family member engagement. Identify the primary family member or person most known to the subject and, if the situation permits, speak with them before approaching. Keep the conversation brief and specific.

Do not treat recorders as threats. Officers who respond adversarially to bystander recording elevate the perceived significance of the recording behavior and generate conduct that itself may become the subject of complaint.

Witness Statements and Post-Incident Documentation

After force is used, bystanders present at the scene become potential witnesses in any civil, criminal, or administrative proceeding. Best practices for post-incident bystander contact:

- Identify and document all bystanders present, including those who have left before formal documentation begins.
- Do not discuss the substance of the incident with bystanders while the scene is active.
- Separate bystander witnesses from each other before formal statements are taken.
- Preserve contact information for all identified witnesses.
- Note whether bystanders were recording and request preservation of any footage (a request, not a demand).

Policy Implications

1. Train bystander information-gathering as a first-arrival skill. Officers should have a practiced protocol for quickly identifying and speaking to knowledgeable bystanders before contact.
2. Develop family engagement protocols for mental health calls. A structured intake question ("Is there a family member here who knows this person?") captures a consistently underutilized resource.
3. Include bystander position in scene documentation. Use-of-force reports that capture only officer and subject position lose data on scene geometry that may be relevant to backstop analysis and force justification.
4. Establish clear agency policy on bystander recording. Officers need unambiguous guidance that bystander recording is lawful and that interference is prohibited, with supervisory accountability for violations.
5. Train de-escalation intermediary use as a structured technique, not an improvised choice. Officers should know when and how to use a bystander in the de-escalation process, not just that the option exists.

HOW TO CITE

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