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Berkeley police emphasize 'culture of de-escalation'

By Emilie Raguso
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Berkeley police practice de-escalation skills during a drill in the old Pyramid brewery. (The helmets they are wearing are safety gear due to the type of rounds used in the drill.) Here, officers respond to an armed bank robbery scenario. Photo: Emilie Raguso

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Two officers pull up to a house in Berkeley. There's yelling coming from inside: Roommates are fighting about the rent and police have been dispatched to respond.

As the officers approach, the roommates come outside, still fighting. One of them has a gun. Seeing police, he grabs his roommate, holds him at gunpoint and drags him back inside.

The officers are ordering him to drop the gun but he refuses.

"We want to keep you guys safe," an officer yells to the man.

"We're safe. Go find some real shit to do!" the man yells.

"What do you need from us?" asks the officer.

"I need you to leave, bro," the man replies.

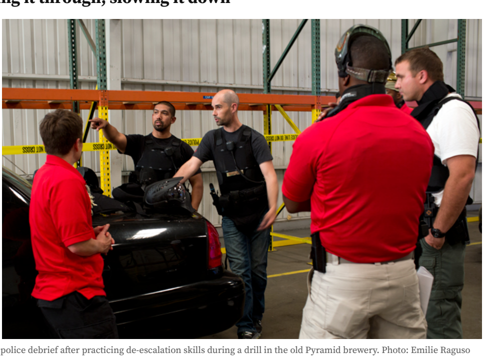
The officers spend several more minutes trying to speak with the man: to have him toss his gun outside, send out his roommate, or provide his phone number so police can call him rather than shouting through the open doorway.

But he doesn't come out. Instead, a trainer in a red shirt calls "time" and the officers, from the Berkeley Police Department, circle up to discuss the drill. It was one of three scenarios they ran through Thursday inside the vacant Pyramid brewery on Gilman Street in West Berkeley.

The goal of the training was to practice using verbal de-escalation tactics instead of force. It's an approach the department already prides itself on using on a daily basis. But, as police shootings and use of force continue to draw increased scrutiny nationwide, the department says it is stepping up its efforts to ensure officers use those skills in Berkeley whenever possible.

"The Berkeley Police Department has a culture of de-escalation," said Sgt. Spencer Fomby, a BPD use of force instructor and a leader on its tactical team. "We look at things differently. We try to take a different approach. You can tell by the outcomes that that is our goal."

Talking it through, slowing it down



Berkeley police debrief after practicing de-escalation skills during a drill in the old Pyramid brewery. Photo: Emilie Raguso

Unlike many other police departments, all officers with BPD have received specialized Crisis Intervention Training (CIT), which emphasizes verbal de-escalation as well as the redirection of people in mental health crisis to support resources available in Alameda County. Mental health calls have been described as the No. 1 drain on department resources, comprising at least 35% of its overall calls.

"We deal with people all the time who are mentally ill or in crisis," Fomby said last week.

De-escalation, as defined by the U.S. Department of Justice, is "the strategic slowing down of an incident … that allows the officers more time, distance, space and tactical flexibility during dynamic situations in the street."

Beginning in June, the department began rolling out a new de-escalation training course to all officers. It uses the crisis intervention approach, and focuses on specific tactics police can use to avoid using force. Fomby created the course, which has since been accepted into the state's law enforcement training catalogue. It appears to be among the first of its kind in the system, and other departments have already expressed interest in having their officers complete it, he said.

Thursday, several dozen BPD officers spent the day taking the course. After four hours in the classroom in the morning, officers broke into small teams to practice de-escalation tactics in three scenarios: a disturbance in a bar caused by a person with a sword in a mental health crisis; the aftermath of an armed bank robbery where the suspect runs to a waiting vehicle and guns the engine; and a domestic dispute involving roommates, where one of the roommates is armed.

During the morning session, Fomby described to officers the tension between what the law allows in terms of use of force, and how some members of the public have come to see it.

"Even when people have firearms, they're looking at us and telling us that we shouldn't use force," he told the group. "It's a tough situation."

"The Berkeley Police Department has a culture of de-escalation," said Sgt. Spencer Fomby, in red. Photo: Emilie Raguso

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State law (Penal Code 835a) allows officers to use force to arrest anyone they believe has committed a "public offense." And officers are not required to retreat or desist from detention efforts if someone resists. The city's deadly force policy, U-2, allows lethal force to be used to prevent serious bodily injury or stop a suspected fleeing felon in certain cases.

But what the law allows and what the public wants to see from police have become increasingly at odds in recent years as support for the Black Lives Matter movement has grown, and significant questions have arisen about whether police use force differently depending on the color of a suspect's skin. Officers involved in fatal shootings who are found to have acted within the law are routinely criticized and vilified by the public, and demands to reform modern American policing have become more and more common.

During Thursday's training, officers shared examples with each other of situations in their own careers where they would have been legally allowed to use deadly force, but found another way. Other examples have already made headlines in Berkeley this month, such as when a man with a knife threatened Public Works employees and police near Whole Foods, or when a felon with a loaded rifle was walking around West Berkeley armed with extra ammunition.

Last week, after getting calls about a man on Adeline Street who had threatened to harm someone else, officers talked him into surrendering after following him for five blocks through South Berkeley. He took off his shirt — a possible sign of agitation — and at one point picked up a stick. Ultimately, the man was detained and sent for a psychiatric evaluation and was not arrested.

"Lower your voice, change your demeanor, take the time to actively listen"

Fomby — one of two team leaders on the department's Special Response Team (known in other departments as SWAT) — said one of the first steps in de-escalation is to recognize the warning signs of agitation, such as a raised voice, balled fists or an aggressive posture. He also noted how the very presence of uniformed police, or traditional police tactics, such as the tone of voice officers learn to use in the academy to establish "command presence" or control a scene, could increase agitation. He said officers need to try, when possible, to compensate for that.

"Lower your voice, change your demeanor, take the time to actively listen," he said, adding that he didn't think he was telling the group anything it didn't already know. "You guys negotiate all the time. If we didn't negotiate, our jail would be full three times a day."

Thursday's drill took place in the old Pyramid brewery in West Berkeley. Photo: Emilie Raguso

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Officers were also advised to show empathy, ask open-ended questions and "offer acceptable options" that might help bring a stalemate to conclusion.

Officers went over phrases to avoid with an agitated person — such as "You want to go to jail?" and "I'm not going to tell you again" — and ones to practice, such as: "What can I do to help you?" "Would you assist me…?" and "You look like a reasonable person."

Officers also watched videos Thursday about arrests that had gone wrong, and discussed how to avoid those outcomes. Fomby reminded officers to call for back-up when they need it, rather than rushing into a situation alone, finding themselves stranded, and feeling left with limited options.

Common de-escalation tactics include creating distance, away from the subject, to avoid unnecessary physical confrontation; using "cover" such as walls, vehicles or other physical barriers to keep that safe distance; making sure to transmit updates over the radio so other officers and supervisors know the current status of a situation; not having too many officers on the scene; calling in resources such as CIT officers, mental health workers and paramedics; and making sure there is clear communication between a single officer and the person of concern.

"We're in a good position because of our track record," Fomby told the officers in attendance Thursday. "It's stuff that we do all the time. We actually stand out compared to how other agencies handle business."

BPD: No police shootings since 2012

An officer takes cover behind a patrol vehicle during a scenario involving a bank heist. Photo: Emilie Raguso

Officer-involved shootings have garnered intensifying attention and sparked outrage in recent years as Black Lives Matter has sought to focus awareness on reports about the disparate use of force by police on minority community members.

This month has been no exception. Alton Sterling, a 37-year-old black man, who police say was armed, was fatally shot in Baton Rouge by officers responding to a call about a man outside a convenience store who had a gun and was threatening people. The next day, Philando Castile, a 32-year-old black man, was killed during a traffic stop in Minnesota; police say he was reaching for his gun but his girlfriend, in the car with him, said he was just trying to get his ID.

According to the Washington Post, "black Americans are 2.5 times as likely as white Americans to be shot and killed by police officers." The newspaper has been tracking officer-involved shootings since Jan. 1, 2015, and found that, as of earlier this month, about 1,500 people had been killed in those incidents: "732 were white, and 381 were black (and 382 were of another or unknown race)." Though more white people have been killed by police, black individuals are shown to be overrepresented in the numbers after adjusting for the demographics of the U.S. population.

In 2015, the Post reported that nearly 1,000 people were killed by police. The majority of people shot by police, according to the paper's analysis, were armed with a weapon and on the attack. But numerous researchers have found that black suspects are more likely than white suspects to be perceived by officers as a threat, which can have fatal consequences.

Berkeley's most recent officer-involved shootings took place in 2012. In February of that year, police shot a man who tried to run over an officer, crushing him between two cars. Two months later, police shot a murder suspect who opened fire on officers surrounding the building he had fled into during a chase. Neither incident was fatal.

Nearly two years before that, in June 2010, officers shot and killed Choung Nguyen after he pulled out a gun and fired at them following a chase through Albany. (Fomby, who ran Thursday's training, was one of those officers.) The FBI has said Nguyen was part of an Oakland-based armed robbery crew responsible for a series of crimes, many of which targeted teenage girls. There was no reported public outcry after his death.

In one drill, police respond to a "bar" in which a woman with a sword is having a mental health crisis. (The helmets they are wearing are safety gear due to the type of rounds used in the training exercise.) Photo: Emilie Raguso

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That's not to say there have been no questions at all raised about use of force by police in Berkeley. In 2008, police shot and killed Anita Gay on Ward Street as she reportedly threatened her adult daughters with a large knife after using crack cocaine for days. One of the daughters told police the officer had saved her sister's life, according to numerous media reports. Still, community members protested Gay's shooting and there were reports at the time that a wrongful death suit would be filed.

The department is currently facing a lawsuit in connection with the in-custody death of Kayla Moore in 2013. Police, called by Moore's roommate, responded to her downtown Berkeley apartment for a disturbance. The coroner's office ruled that Moore's death was due to "acute combined drug intoxication," but her family and friends have said it was the struggle with police that killed her.

The city is also facing a civil rights lawsuit in connection with what attorneys described as "unconstitutional police attacks" during Black Lives Matter protests in December 2014 in which 11 demonstrators and journalists said they were injured.

Aside from these incidents, the department gets relatively few use of force-related allegations from the community, according to the available data.

Out of more than 112,000 calls for service in 2015, there were 46 complaints filed by members of the public against officers in Berkeley totaling 186 allegations. The most common type of allegation involved improper procedure, with "discourtesy" a distant second, followed by improper stop, seizure or arrest. Harassment and improper use of force were the next most common type of allegation.

There were 11 allegations regarding improper use of force in 2015, but none were sustained.

Only six of the 46 complaints last year — all of which appear to be related to "discourtesy" — were sustained by either the Police Review Commission or the department's Internal Affairs Bureau.

According to its draft 2015 annual report, the city's Police Review Commission has gotten approximately one to two dozen complaints each year since 2011. Last year, there were eight "board of inquiry" hearings before commissioners to review 51 allegations against officers; just one allegation — for discourtesy — was sustained. (This number is also reflected in the internal affairs tally above.)

PRC: 4 sustained excessive force allegations since 2011; none since 2013

Officers listen carefully to each other after a drill involving a person with a sword having a mental health crisis. Photo: Emilie Raguso

Of all the findings from 2011 to 2015, last year had the lowest rate of sustained allegations by the PRC, at 2%. The PRC has sustained just four excessive force allegations since 2011: two that year and two in 2013.

In 2014, one of two PRC allegations for the year that was sustained was later overturned by a judge on appeal. The 2015 sustained allegation has also been appealed, and is set to be heard by a judge this year. Most of the PRC findings of allegations against BPD that are appealed are later overturned by a judge, according to the PRC's annual report.

That said, it's difficult to compare BPD's record to other agencies, particularly as far as use of force, because data are not collected on a large-scale basis. State law provides broad protection to officers as far as actual use of force reports, because the reports are considered personnel records, which are confidential, according to a recent opinion from the city attorney's office. That approach appears to be changing, however, at least as far as summary data about the most serious cases.

The state Department of Justice has announced plans to collect and share certain use of force data related to shootings and serious bodily injury from all law enforcement agencies in California beginning Jan. 1, 2017. More data about police misconduct complaints are set to be collected by the DOJ next year, too. The details of exactly how the new system will work are still being developed, according to the city attorney's office, but BPD will likely have the option either to release its data on its own, or wait for the DOJ to make it publicly available.

Scenarios put the focus on tactics

Fomby, wearing a red trainer's shirt, watches how officers respond to a drill involving a bank robbery. (The helmets they are wearing are safety gear due to the type of rounds used in the training exercise.) Photo: Emilie Raguso

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During Thursday's training, officers were told to ask: Is there an immediate threat? If so, is it the suspect or the officer who is creating it?

Officers also grappled with how best to respond to a situation where a person is suicidal and armed with a knife. Families who call 911 for help are looking for their loved one to be saved. But, for officers, the question then becomes how to effectively disarm someone with a knife without using lethal force. That question may be particularly pertinent in Berkeley because officers don't have Tasers and often must come into close contact with armed, non-compliant individuals to try to disarm them.

There has been some discussion in Berkeley in recent years about having someone other than police be the first-responder to calls involving those in mental health crisis. Police have said it's simply not realistic or feasible, however, to send a mental health worker alone into an environment where someone is armed and could be violent.

Fomby said Thursday that the reality these days, based on many of the discussions taking place in the media about police use of force, is that some members of the public would prefer police simply walk away than try to disarm someone who does not seem to be an immediate threat to others.

He brought up the example of a call where an officer in another jurisdiction, faced with a suspect armed with a knife, simply got into his patrol vehicle and locked the doors. In the U.K., he said, officers regularly let fleeing suspects flee.

"It's better that the officer … let this person be than cause a confrontation where the suspect would be hurt," Fomby said, describing the British approach. An officer asked him how the public there makes peace with the possibility that that individual might later hurt someone. Fomby said, for the most part, that isn't a common outcome, adding: "It's just ingrained in their culture."

Officers respond to a domestic dispute drill involving a hostage and an armed man. Photo: Emilie Raguso

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There was also discussion about those seeking to commit "suicide by cop," and how to avoid it; and how to know the difference between a standoff, which could require a lower-key, more drawn-out response — or a retreat altogether — and an active threat of violence to the public, which would require more immediate action.

In the practice scenario involving the armed man who dragged his roommate into their home, for example, had there been a gunshot, officers would have needed to go inside. But, as the scenario actually unfolded — with only yelling from the armed roommate, and no evidence of physical harm — there was no pressing need to use force, or force entry.

"The idea is to program the officers to have a response where they slow down," Fomby said, as he walked from one training group to another at Pyramid.

In the exercises, a trainer would "dispatch" officers to a scene with limited information — similar to a real-life call — and assess whether the response was appropriate. After each scenario, participants and trainers would debrief about what worked well and where there could be room to improve. Then, the group would move into the next room for a different drill.

"We don't want to make a bigger problem," Officer Jason Tillberg, one of the eight BPD instructors who oversaw the exercises Thursday, told one group. "There's so many unknowns. We're going to use time to our advantage."

Another trainer, Sgt. Rashawn Cummings, told officers during the drills at Pyramid that the goal was not "to put yourself in a situation where you chose deadly force because you were forced into it." Cummings has experience in making those tough calls: He is a member of the department's Special Response Team and was the officer who shot Anita Gay in 2008. Cummings was cleared of any wrongdoing in the matter.

Capt. Jennifer Louis, right, and Sgt. Rashawn Cummings debrief officers after a drill involving a bank heist. Photo: Emilie Raguso

Capt. Jennifer Louis, another instructor, reminded officers not to be afraid to back up and reassess their position if they get too close.

"Can I readjust? Can I make a bigger cushion? Can I see better?" asked Louis, the commander of the Special Response Team, who was recently promoted to the rank of captain.

She reminded officers to be flexible, and work to find the most advantageous position. Spread out, use cover and make sure only one person is giving commands.

"This isn't new for you," she told the officers, adding, of what she had observed during the scenarios: "There are a lot of good tactics [being used] out there."

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Emilie Raguso (former senior editor, news) joined Berkeleyside in 2012 and covered politics, public safety and development until her departure in 2022. In 2017, Emilie was named Journalist... ***More by Emilie Raguso***

emilie@berkeleyscanner.com

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