

Counsel's Corner



De-escalation: A Commonsense Approach



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"The officer really should have de-escalated the situation."

Such statements are becoming common in accounts of and conversations about use of force incidents. An increased focus on de-escalation is a good thing; experienced police officers know the value of being able to "talk someone down", and countless tragedies have been averted by officers using de-escalation skills.

But the above statement is all too often applied quickly and without an understanding of what de-escalation means and without knowledge of the factors and actions—those of both the subject and the officer—that led up to the use of force. As a career police officer, chief, attorney and police trainer for the last 30 years, it is very clear to me that people will sometimes do what they are going to do no matter what an officer says or does.

It is easy to ask, "Why didn't the officer de-escalate the incident?" But from a training, policy and liability perspective, that may be wrong question. If culpability is to be assigned to someone, the more appropriate question is, "Who escalated the situation and why?"

WHAT IS DE-ESCALATION? DO WE NEED TO DEFINE IT?

What is the definition of de-escalation? Well, in my trusty and ancient American Heritage dictionary (a real book!), it is defined as "to decrease the scope or intensity." Turning some yellowed pages, I then get to escalate: "to increase or intensify." In the world of police training these are not the most helpful definitions. Do we need to further define de-escalation? Or will that only bog us down in examples of tactics and decisions that may help to bring the incident to a successful conclusion?

Lexipol recently completed a revision and update of its Use of Force Policy by adding a new subsection:

ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

This section needs no accompanying definition of de-escalation as the operant content speaks for itself. It supplements the entire Use of Force Policy (and the policy manual) in reinforcing the concept, "Don't make it worse if you can help it, but if the person forces the issue, respond in an objectively reasonable manner." It also supplements and reinforces other areas of Lexipol policy that address de-escalation, including crisis intervention incidents, emergency admissions, conducted energy devices and civil disputes.

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TRAINING OPTIONS

While having de-escalation in policy is important, it must be reinforced by training. Two primary de-escalation-oriented trainings I recommend are Force Science Institute's "Realistic De-Escalation" course and the Police Executive Research Forum's "Integrating Communications, Assessment and Tactics" (ICAT) training, which deals heavily with decision-making, particularly while dealing with people in crisis.

In the era of COVID-19 and related lockdowns, attending in-person training like these two courses is difficult. But de-escalation is too important a topic for agencies to sit back and wait, putting off training until the pandemic has eased. In this article I will share some thoughts and considerations that can inform how law enforcement leaders discuss de-escalation with their officers and deliver instruction on the topic, whether through roll call, online training or even one-on-one conversations.

COMMUNICATION OR DE-ESCALATION? OR BOTH?

Dr. Bill Lewinski of the Force Science Institute distinguishes

between conflict communications and crisis communications. In general, conflict communications are used on criminal suspects, while crisis communications—tactics we associate with de-escalation—are used on noncriminal subjects, including persons in crisis.

As Dr. Lewinski notes, however, it's not that simple. The proper opportunity (when there is limited risk to innocent people or officers) is necessary for de-escalation to be successful. De-escalation is particularly applicable to persons in crisis situations with limited risk. It should be noted a person who is in a severe emotional crisis or state of "excited delirium" may not be able to comprehend or even hear attempts at de-escalation, which is based on a capacity for communication. Therefore, the situation could exceed the limited risk necessary for effective de-escalation.

4 BASIC DE-ESCALATION PRINCIPLES

Using some real-world incidents from the past several months, we can identify four basic de-escalation principles that may be of immediate applicability in your agency. While considering these principles, it is important to candidly assess whether some past training artifacts may have created unnecessary conflict in these incidents.

1. **Ensure your citizen contact procedures are legitimate and based on respect.** A police officer stops a car for an equipment violation—the rear taillight is out. The officer approaches and asks for the operator's paperwork. The operator asks the officer why he was stopped, but the officer refuses to answer, again asking for the paperwork. The situation now escalates, with both parties refusing to budge, and results in the officer forcibly removing the operator from the car.

Who escalated the situation? Is the officer within his or her legal right to demand the paperwork before explaining why the operator was stopped? In many, if not most states, yes. But is refusing to tell the person why they were stopped legitimate—meaning not only legal but the right thing to do? No, the respectful thing to do is to advise someone why they are being contacted and immediately take that issue off the table.

2. **Ensure your officers know their legal limitations prior to engaging the public.** A citizen calls the police to report a person acting "sketchy" because he is walking down the street with a ski mask on in August (this is pre-COVID). An officer sees the young man—5'6" and 140 lbs.—walking down the street carrying a shopping bag and wearing ear buds. The officer stops his car and gets out, immediately shouting, "Hey, stop right there. Stop, stop, stop." The man continues to walk, indicating he has the right to walk on and go home. The officer states he has the right to stop the man because "he is being suspicious." The man replies, "I am an introvert, please respect the boundaries that I am speaking. Leave me alone." Officers physically seize the man, eventually bringing him to the ground in a struggle that results in an officer applying a carotid restraint. As the man is being transported to the hospital, he goes into cardiac arrest; he dies a few days later.

The legal authority of an officer to seize a person for no other reason than there was an "acting suspicious" call and he was wearing a mask is questionable at best. Absent reasonable suspicion of a crime, any seizure of a person is a violation of the Fourth Amendment. Understanding your legal limitation should dictate your interview manner and tactics. If possible, watch the person to see if there is anything suspicious before approaching them. Remember that in the absence of reasonable suspicion, people do not have to stop and speak with officers. While it is hard to watch someone ignore you and walk away, officers need to accept it, deal with it and not take it personally.

3. **Appreciate that to influence a person, you need to understand their perspective and purpose.** This is a concept Dr. Lewinski emphasizes. Understanding someone's perspective requires officers to utilize any available time and opportunity. Continuing with the previous scenario, once you decide to approach, use requests rather than commands to gain the man's cooperation. Greetings and open-ended questions would be better to initiate a conversation than aggressive commands. The man wants to go home. Understanding his desire (his purpose), you can emphasize that you will not stop him from leaving, but explain why you wish to speak with him. Communication is only effective if it is done in a manner as to encourage two-way participation.
4. **Do not presume what makes sense to you makes sense to others.** Following some use of force incidents, we sometimes hear statements from officers such as, "If

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he didn't do anything wrong, why did he run?" or "He didn't have a weapon; why didn't he just put his hands up and comply?" Such statements are genuine attempts to understand how a situation went tragically wrong, but they miss the point: What makes sense to you may not make sense to the person you're dealing with.

For example, a mother calls the police because her 13-year-old autistic son is experiencing a mental health crisis. The mother explains this to the officers and further explains the boy fears the police. When asked about weapons, the mother says she thinks he owns a BB gun and a "prop" gun, but stresses it's not a real gun and she does not think the boy is carrying it. The officer advises her they will have to treat it as a real gun. When an officer sees the boy in the back yard, he yells, "STOP, get on the ground!"

Knock it off!” The officer chases the boy and then shoots him multiple times when the boy turns toward the officer.

While the boy running away may not make sense to the officer, it does not need to. Based on the information available to the officer, it should not have been a surprise to him that the boy (who is autistic and fears the police) might run away and not obey commands. If you can try to put yourself in the shoes of the other person, then the use of strategies specific to the perspective of the person in crisis may be more effective than tactics and commands appropriate on a person choosing to resist a criminal arrest.

A CULTURAL CHANGE IS REQUIRED

My personal experience and study of tragic incidents reaffirms that these basic principles are a good start in our approach to

the complex concept of de-escalation. Essential to all of them is slowing situations down whenever possible. Time can create understanding and additional options to resolve situations.

While not easily defined, the concept of de-escalation must be ingrained in organizational culture. Cultural change takes time and requires the integration of policy, training and supervision. The reality is there are many incidents where, no matter what the officer does, the other person will dictate what happens. But agencies have an obligation to try to minimize those incidents and where possible, produce outcomes that minimize harm.

The next time you or someone around you is tempted to ask, “Why didn’t the officer use de-escalation tactics?” consider the alternate question, “Who escalated the situation, and why?” Focusing on this question can provide common ground for officers, instructors, administrators and the general public to learn from an incident and prevent future tragedies.