

DE-ESCALATING POLICE-CITIZEN
ENCOUNTERS

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I. INTRODUCTION

In the wake of coverage surrounding deadly police encounters and use of excessive force,¹ officers' ability to de-escalate conflict is vital to both increasing officer and civilian safety as well as protecting civilians' rights. Police-citizen encounters are often mundane, routine stops. Sometimes, however, traffic or street stops rapidly escalate and resolve through force or even death. An opportunity to de-escalate a conflict exists between the moment when the use of force is justified and the moment when lack of an alternative solution makes the use of force necessary.² Cases including those of Sandra Bland,³ James Barker,⁴ and Samuel Dubose⁵ are just three examples of police-citizen encounters that fall into that gray area in which an alternative to using force probably would have sufficed.

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¹ See generally Will Heinke, Note, *Deadly Force: Differing Approaches to Arrestee Excessive Force Claims*, 26 S. CAL. REV. L. & SOC. JUS. 155, 155–59 (2017) (discussing the recent prevalence of excessive use of force and fatalities resulting from police-civilian encounters).

² See, e.g., J.B. Wogan, *How Police Chiefs Plan to Avoid 'Lawful But Awful' Shootings*, GOVERNING (Feb. 2, 2016), <http://www.governing.com/topics/public-justice-safety/gov-police-chiefs-shootings.html> (“When engaging a person with an edged weapon, officers should sometimes pull back to keep a safe distance. (Instead, many academies teach cadets to hold their ground and open fire out of self-defense.)”).

³ Debbie Nathan, *What Happened to Sandra Bland?*, THE NATION (Apr. 21, 2016), <https://www.thenation.com/article/what-happened-to-sandra-bland/>.

⁴ Caroline Connolly, *Watch: Body cam footage from fatal officer-involved shooting in SLC Avenues*, FOX13 (Jan. 9, 2015, 5:44 PM), <http://fox13now.com/2015/01/09/video-body-cam-footage-from-fatal-officer-involved-shooting-in-slc-avenues/>.

⁵ Samuel DuBose: body-camera video shows 360-degree view of police killing, THE GUARDIAN (July 30, 2015), <https://www.theguardian.com/us-news/video/2015/jul/30/body-cameras-officers-samuel-dubose-shooting-video>.

Given that almost half of police-citizen interactions are involuntary (i.e., police-initiated),⁶ and millions of interactions occur each year,⁷ officers are better-positioned to effectively manage conflict that can arise. Officers who undergo continuous de-escalation training will be better equipped to prevent everyday encounters from going wrong. De-escalation training, which emphasizes verbal tactics and reality-based training scenarios, can equip officers with techniques to effectively handle conflicts during police-citizen encounters on the street and during traffic stops. Also, reforms that hold police departments and officers accountable for using de-escalation as an alternative to force can promote safe and constitutional policing. Moreover, public awareness and education about constitutional rights during police encounters can reduce police-citizen confrontations.

Several limitations prevent police departments from implementing de-escalation training. Absent statewide mandates, departments have discretion to implement de-escalation programs,⁸ and some departments are less willing to do so than others.⁹ Cost is another barrier.¹⁰ Also, opponents of de-escalation argue that de-escalation techniques can slow down police-citizen encounters that require the use-of-force, leading to officer complacency and even death.¹¹ A comprehensive discussion of the

⁶ LYNN LANGTON & MATTHEW DUROSE, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS*, 2011, 1 (2013), <http://www.bjs.gov/content/pub/pdf/pbtss11.pdf>.

⁷ Seth Stoughton, *How Police Training Contributes to Avoidable Deaths*, THE ATLANTIC (Dec. 12, 2014), <http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/>; LANGTON & DUROSE, *supra* note 6, at 1.

⁸ See Curtis Gilbert, *Not Trained to Not Kill*, APMREPORTS, <https://www.apmreports.org/story/2017/05/05/police-de-escalation-training> (discussing that most states (approximately thirty-four) do not implement de-escalation training).

⁹ See Ansel Herz, *Seattle Police Training Session, Held Up As a National Model, Lands Trainer and Trainee in Hot Water*, THE STRANGER: SLOG (July 6, 2015, 11:54 AM), <http://www.thestranger.com/blogs/slog/2015/07/06/22481540/seattle-police-training-session-held-up-as-a-national-model-lands-trainer-and-trainee-in-hot-water> (video of officers resisting de-escalation training).

¹⁰ Gilbert, *supra* note 8. See also Steve Baragona, *Experts: 'De-escalation' Training Crucial Not Only for Police*, VOICE OF AMERICA (July 13, 2016, 3:36 PM), <http://www.voanews.com/a/experts-de-escalation-training-crucial-for-more-than-just-police/3417076.html> (police budgets can be scarce after accounting for salaries).

¹¹ See Stoughton, *supra* note 7 (“Hesitation can be fatal. So officers are trained to shoot before a threat is fully realized, to not wait until the last minute because the last minute may be too late.”); Baragona, *supra* note 10 (the National Association of Police Organizations (“NAPO”) believes certain de-escalation techniques might increase harm to officers by impeding their ability to quickly react to situations that require force). See also *Officers Awarded for De-Escalation Tactics*, OFFICER.COM (May 31, 2016), <http://www.officer.com/news/12214554/officers-being-awarded-for-use-of-de-escalation-tactics> (reporting that opponents of emphasizing de-escalation

limitations to implementing de-escalation programs is beyond the scope of this Note, which primarily focuses on situations where officers have an opportunity to use de-escalation tactics before resorting to the use-of-force.

This Note analyzes police de-escalation training and its potential to improve police-citizen interactions by preventing or reducing conflict. Section I discusses the literature on de-escalation training, including examples of different types of training used by various police departments. It also compares various police departments that have incorporated de-escalation training into their programs. Section II provides case studies involving police-citizen encounters on the street and during routine traffic stops, analyzes how the interaction escalated, and discusses how the use of de-escalation techniques might have prevented the resulting arrest or violation of the civilian's rights. Section III proposes suggestions for preventing or reducing escalation during routine traffic stops or street encounters between officers and civilians.

II. DE-ESCALATION TRAINING

A. BACKGROUND

Officers prioritize their safety and are generally instructed to shoot before a threat is fully realized.¹² They are trained to know when the use of force would be justified.¹³ Two Supreme Court cases set the parameters of an officer's justified use of force.¹⁴ *Tennessee v. Garner* held that an officer

techniques believe officers' safety would be put at risk); NAT'L LAW ENFT OFFICERS MEM'L FUND, 2016 PRELIMINARY END-OF-YEAR LAW ENFORCEMENT OFFICER FATALITIES REPORT (2016), <http://www.nleomf.org/facts/research-bulletins/> (discussing a preliminary report showing that 135 officers died in the line of duty in 2016, compared with 123 fatalities in 2015). *But see* Stoughton, *supra* note 7 (out of roughly 63 million interactions in 2011, officers were assaulted in about 0.09 percent of interactions, injured in 0.02 percent of interactions, and feloniously killed in 0.000008 percent of interactions).

¹² See Stoughton, *supra* note 7 (explaining reasons behind the motto, "Better to be judged by twelve than carried by six.").

¹³ See Tom Jackman, *De-escalation training to reduce police shootings facing mixed reviews at launch*, WASH. POST (Oct. 15, 2016), https://www.washingtonpost.com/local/public-safety/de-escalation-training-to-reduce-police-shootings-facing-mixed-reviews-at-launch/2016/10/14/d6d96c74-9159-11e6-9c85-ac42097b8cc0_story.html?utm_term=.e73e1a04e9d0 (describing a situation where police officers successfully de-escalated an encounter with a man who was swinging a knife at people, even though the use of deadly force against the man would have been justified).

¹⁴ Associated Press, *When are police justified in using deadly force?*, LA TIMES (July 13, 2016, 1:49 PM), <http://www.latimes.com/nation/nationnow/la-na-police-deadly-force-20160711-snap-story.html>.

cannot use deadly force to stop a fleeing suspect unless he or she poses a “significant threat of death or serious physical injury to the officer or others.”¹⁵ *Graham v. Connor* held that an officer’s use of force is analyzed under an “objective reasonableness” standard, considering the “totality of the circumstances.”¹⁶ However, even when officers’ use of force is justified, alternative methods can resolve certain conflicts and decrease the situations in which the use-of-force would be “lawful but awful.”¹⁷ These are situations where officers “have a solid legal defense for firing a weapon” but could possibly “have avoided the killing and the public outrage that usually follows.”¹⁸

De-escalation techniques are not new to law enforcement agencies;¹⁹ however, police academies’ focus on using these techniques has diminished over the past two decades.²⁰ Instead, the “21-foot-rule”—an informal doctrine in the police community that deems justified the use of deadly force at the breach of a 21-foot distance between an officer and a citizen—has become a part of police training.²¹ But now some departments are reconsidering whether backing off, or using alternative techniques, might better resolve police-citizen encounters.²² Chuck Wexler, executive director of the Police Executive Research Forum (“PERF”), is among those who believe “policing is in crisis” despite historically low crime rates.²³ He has argued that Americans have lost confidence in law enforcement and has

¹⁵ *Id.*; *Tennessee v. Garner*, 471 U.S. 1, 3 (1985).

¹⁶ *Associated Press*, *supra* note 14; *Graham v. Connor*, 490 U.S. 386, 388, 396 (1989).

¹⁷ *Wogan*, *supra* note 2.

¹⁸ *Id.*

¹⁹ Ed Flosi, *What the public needs to know about police de-escalation tactics*, POLICEONE.COM (June 1, 2016), <https://www.policeone.com/police-trainers/articles/186465006-What-the-public-needs-to-know-about-police-de-escalation-tactics/>.

²⁰ Timothy Williams, *Long Taught to Use Force, Police Warily Learn to De-escalate*, N.Y. TIMES (June 27, 2015), https://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html?_r=0.

²¹ Matt Apuzzo, *Police Rethink Long Tradition on Using Force*, N.Y. TIMES (May 4, 2015), <https://www.nytimes.com/2015/05/05/us/police-start-to-reconsider-longstanding-rules-on-using-force.html>.

²² *Id.*

²³ Apuzzo, *supra* note 21. See also NAACP Legal Defense Fund, POLICING REFORM CAMPAIGN, NAACP.ORG (last visited Oct. 24, 2016), <http://www.naacpldf.org/case-issue/policing-reform-campaign> (discussing the Race and Policing Reform Campaign which aims to address the “national policing crisis” through effecting change in police practices and training, including anti-bias and de-escalation training, at a national level).

called for a new era of training which focuses less on the 21-foot-rule and more on how to defuse situations and prevent violence.²⁴

The reality is that officer training has historically focused in large part on firearm use and defensive tactics.²⁵ PERF conducted a survey of over 280 police agencies' recruit programs and determined that firearms training was given the most emphasis.²⁶ The 2015 survey discovered that agencies dedicate a median of just eight hours to de-escalation training, compared with fifty-eight hours on firearms and forty-nine hours on defensive tactics.²⁷ The survey also revealed that hundreds of officer-involved shootings involved unarmed subjects.²⁸ Accordingly, Chuck Wexler of PERF has urged law enforcement to rethink the current use-of-force policies by arguing that these data show a "significant potential for de-escalation and resolving encounters by means other than the use of deadly force."²⁹ Some departments, such as the Dallas Police Department, are reforming their training programs by teaching officers to "slow the action down," and to take a step back and discuss a strategy with a partner before "running into a situation."³⁰ These techniques can be highly effective in both increasing safety and reducing officers' need to use force.³¹

²⁴ Apuzzo, *supra* note 21.

²⁵ POLICE EXECUTIVE RESEARCH FORUM, GUIDING PRINCIPLES ON USE OF FORCE 9, <http://www.policeforum.org/assets/guidingprinciples1.pdf> [hereinafter PERF].

²⁶ *Id.*

²⁷ PERF, *supra* note 21; see also Tom Dart, 'Verbal judo': the police tactic that teaches cops to talk before they shoot, THE GUARDIAN (July 21, 2016), <https://www.theguardian.com/us-news/2016/jul/21/verbal-judo-police-shootings-deescalation-communication> (explaining that officers "only experience some kind of scenario-based decision making training maybe once a year, once every two years, maybe some don't see it very much at all.").

²⁸ PERF, *supra* note 21 at 7.

²⁹ *Id.*

³⁰ Drake Baer, *The Dallas Police Force Is Evidence That 'De-escalation' Policing Works*, NYMAG.COM (July 8, 2016, 5:05 PM), <http://nymag.com/scienceofus/2016/07/deescalation-policing-works.html>.

³¹ See *id.*; see also Williams, *supra* note 20 (discussing the idea that de-escalation tactics like "talking and behaving calmly and reasonably with sometimes unreasonable people" can be used to "defuse potentially violent encounters").

B. BASICS OF POLICE DE-ESCALATION TRAINING

“‘De-escalating’ means ‘slowing down’”³² or trying “to calm tense situations peacefully.”³³ De-escalation can also be described as “the result of a combination of communication, empathy, instinct, and sound officer safety tactics.”³⁴ The goal is to end the encounter without harm to the officer or civilian.³⁵ Some police departments have developed their own training programs or send trainers to other departments to learn de-escalation techniques.³⁶ Various agencies also provide de-escalation training for police departments.³⁷ One agency claims to train officers on how to become “better communicators and de-escalators to potentially volatile situations.”³⁸

De-escalation is often mentioned in Department of Justice (“DOJ”) investigative reports of agencies faced with consent decrees that result from excessive force complaints and civil rights violations.³⁹ One comprehensive program, approved by the DOJ, teaches trainees how to communicate effectively and demonstrates how to apply de-escalation tactics to help increase officer safety and reduce the need to use force.⁴⁰ Officers can learn techniques including how to recognize “hostility through body language,” understand “physiological changes during aggression,” “avoid communications that may be negative,” and “re-direct the thought process through positive direction.”⁴¹ An even better way for officers to practice de-escalation techniques is using simulations that retain “reality-based”

³² Jean Reynolds, *Police Training for De-Escalating Conflicts*, VIRTUAL ACADEMY (Jan. 4, 2016), https://www.v-academy.com/police-training-for-de-escalating-conflicts/#.WJGFbLYrI_U.

³³ Annie Sweeney, *Police ‘de-escalation’ training – how it could help Chicago*, CHICAGO TRIBUNE (Mar. 25, 2016, 7:10 AM), <http://www.chicagotribune.com/news/ct-police-training-las-vegas-chicago-met-20160324-story.html>.

³⁴ David Griffith, *De-Escalation Training: Learning to Back Off*, POLICE MAGAZINE (Mar. 2, 2016), <http://www.policemag.com/channel/careers-training/articles/2016/03/de-escalation-training-learning-to-back-off.aspx>.

³⁵ *Id.*

³⁶ Sweeney, *supra* note 33.

³⁷ Reynolds, *supra* note 32.

³⁸ See PUBLIC AGENCY TRAINING COUNCIL, COURSES, <http://www.patc.com/courses/training-calmingthefire.shtml> (last visited Apr. 5, 2018).

³⁹ Griffith, *supra* note 34.

⁴⁰ L.E.A.D.S. – Law Enforcement Active Diffusion Strategies Plus Tactical Options, POLICECOMBAT.COM, <http://www.policecombat.com/leads-law-enforcement-active-diffusion-strategies/> (last visited Feb. 3, 2017).

⁴¹ *Id.*

elements.⁴² Various police departments across the country have implemented some form of this reality-based de-escalation training.⁴³

A reporter describes a glimpse of Las Vegas officers in action during a reality-based training session:

Now it's time for the group to head in for the training exercise. Bright strobes flash and a high-pitched burglary alarm rings as officers make their way furtively through several dark rooms and down a long hallway. Amid the chaos, the officers move quickly in groups of three in search of an armed suspect. In the last room, they find him atop a toilet in a bathroom stall. . . He suddenly screams out as the officers, sweat beading on their foreheads as they breathe heavily, attempt to take control. The officers will be judged on how well they use strong verbal commands, keep control of the confined space and avoid using force while taking the suspect into custody. We put these dynamics together so that we don't have startle responses on the street, Lt. Dennis O'Brien whispered inside the darkened room as the next team of officers prepared to go through. "You put them through all the things that are going to stress them out. The point of de-escalation is stopping the momentum. Pull back. Think it through. Solve the problem."⁴⁴

The reporter describes another example of Las Vegas's reality-based training in action:

As the car came to a halt, the irate driver jumped out, peppering the officers with expletives as he rushed to the open trunk. The two Las Vegas Metro cops making the traffic stop yelled for him to stop. One longtime officer, worried that the driver might have grabbed a gun from the trunk, ran toward the man as he continued to scream. The driver scrambled out of reach for a moment before the officer took control of him. It was just a training exercise, and in a briefing a few minutes later, the veteran officer explained he had rushed the agitated driver because he wanted to put "hands on him . . . I was trying to close distance and just grab him . . ."⁴⁵

In the latter scenario, the officer could have resorted to safer alternatives rather than rushing to the scene. For instance, the training officer said the officer could have stayed in the car, and the officers could

⁴² Dart, *supra* note 27.

⁴³ David Griffith, *supra* note 34.

⁴⁴ Sweeney, *supra* note 33.

⁴⁵ *Id.*

have de-escalated the situation by developing a plan before dashing toward the driver.⁴⁶

Verbal de-escalation techniques can be especially helpful during police-citizen interaction in street encounters and routine traffic stops. Craig Geis, a training director at the California Training Institute, emphasizes the importance of first determining a person's mental state and then using the appropriate technique considering the situation.⁴⁷ Similarly, Joel Francis, a former New York police officer and an instructor at the national Verbal Judo Institute, teaches techniques he used while on patrol.⁴⁸ He teaches law enforcement departments and private companies how to use de-escalation techniques and explains why they are needed:

There's so many times when people are screaming and yelling and you just go to them: "Hey, buddy, how you doing? My name's Sergeant Francis, I'm with NYPD, I noticed that you're really upset, now what's going on with you, is there any way I can help?" he said. "What's the expression on your face, what's the tone of your voice? A lot of it has to do with keeping yourself calm. We have to have some sort of a professional language to use, and that's what verbal judo really supplies . . . We know that we can always use the strong arm of the law to make them comply, but we're trying to give our officers tools that will generate voluntary compliance."⁴⁹

Research on de-escalation has been facilitated by guidelines and publications regarding weapon use and situations involving those who are mentally ill. PERF has collaborated with the Department of Justice, Office of Community Oriented Policing Services ("COPS office") to develop guidelines on Electronic Control Weapons, such as Tasers which are "meant to help control persons who are actively resisting authority or acting aggressively."⁵⁰ In 2012, at a time when "de-escalation" was somewhat new to police groups, PERF published "An Integrated Approach to De-Escalation and Minimizing Use of Force," a guidebook about minimizing use of force in encounters with people who are mentally ill or have other

⁴⁶ *Id.*

⁴⁷ Dart, *supra* note 27.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ PERF, *supra* note 25, at 40; POLICE EXECUTIVE RESEARCH FORUM, ELECTRONIC CONTROL WEAPON GUIDELINES 6–8 (2011), http://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf (electronic control weapons (ECWs) are "less-lethal" weapons, such as tasers,

conditions that spawn “erratic or unexpected behavior.”⁵¹ These efforts and publications have helped facilitate PERF’s research on use-of-force.⁵²

In March 2016, PERF introduced “30 Guiding Principles on Use of Force” that are “particularly relevant to situations that involve subjects who are unarmed or are armed with weapons *other than firearms*.”⁵³ At the heart of the guiding principles lies the sanctity of human life.⁵⁴ Over eight of the principles involve de-escalation tactics to reduce unnecessary force.⁵⁵ Some of the tactics include “using distance, cover and time when appropriate; ensuring a strong supervisory response; and training as teams when possible.”⁵⁶ Some of PERF’s other guiding principles include “establishing a duty to intervene with officers who may be using excessive force, prohibiting firing at moving vehicles,” and making “greater use of personal protection shields to increase officer safety during de-escalation efforts.”⁵⁷ PERF recommends that police departments adopt the principles into their use-of-force training programs and policies⁵⁸ and hold officers accountable for sticking to formal policies.⁵⁹ Police departments have discretion on whether to adopt PERF’s principles.⁶⁰

C. COMPARING POLICE DEPARTMENT TRAINING PROGRAMS

Some police departments have changed their training policies due to either a state-mandated order (i.e., consent decree) by the DOJ or a voluntary implementation of de-escalation training.⁶¹ The DOJ issues consent decrees to “promote police integrity,” such as when a department has a history of “excessive force, false arrests, and unreasonable searches

⁵¹ Police Executive Research Forum, *An Integrated Approach to De-Escalation and Minimizing Use of Force* (2012), http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf.

⁵² PERF, *supra* note 25, at 8.

⁵³ *Id.* at 33 (emphasis in original).

⁵⁴ *Id.* at 34.

⁵⁵ Griffith, *supra* note 34.

⁵⁶ PERF, *supra* note 22, at 25.

⁵⁷ PERF, *supra* note 25, at 25-26.

⁵⁸ *Id.* at 9.

⁵⁹ *Id.* at 40.

⁶⁰ Wogan, *supra* note 2.

⁶¹ See Curtis Gilbert, *supra* note 8 (discussing that most states (approximately thirty-four) do not implement de-escalation training).

and seizures.”⁶² This section compares eight various police departments’ approaches to de-escalation training, including departments with robust policies that have been notably successful in reducing excessive use-of-force complaints and fatalities. Common tactics used include reality-based training, verbal skills training, and calling for back-up.

1. New York

The New York Police Department was one of the first to revise its training programs after the Ferguson shooting, in which an unarmed 18-year-old was shot by police.⁶³ The new training “give[s] trainees the tactical tools to de-escalate tense situations while using the least amount of force necessary to gain control of physical confrontations.”⁶⁴ Although the department’s “[p]rior use of force guidelines and reporting standards were inconsistent,” the changes more clearly define force and ask officers “to put an added focus on de-escalating any situation.”⁶⁵ Officers are now required to document any use-of-force incident.⁶⁶ This accountability scheme seems to be working; in 2015, the department had only 67 police weapon discharges, a historic low.⁶⁷

2. Dallas

The Dallas Police Department is playing a leading role in emphasizing de-escalation training.⁶⁸ The department’s training involves reality-based

⁶² See LAPD, *Consent Decree Overview*, LAPD ONLINE, http://www.lapdonline.org/search_results/content_basic_view/928 (last visited Apr. 5, 2018). See also, e.g., Williams, *supra* note 16 (Seattle’s departmental changes were implement “as part of a consent decree with the Justice Department”)

⁶³ Griffith, *supra* note 34; see also *What Happened in Ferguson?*, NY TIMES (Aug. 10, 2015), https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html?_r=0 (discussing the details surrounding Michael Brown’s death); Stacked Studios, “*I Can’t Breathe*” - Eric Garner Dies After NYPD Chokehold (Full Video Compilation), YOUTUBE (Dec. 3, 2014), <https://www.youtube.com/watch?v=OWoZ4Mj9028> (revealing graphic footage of an officer’s excessive force applied using deadly chokehold on civilian, Eric Garner, during arrest).

⁶⁴ NEW YORK POLICE DEPARTMENT, TRAINING: BRINGING THE NYPD INTO THE 21ST CENTURY 2, <http://home.nyc.gov/html/nypd/html/home/POA/pdf/Training.pdf> (last visited Mar. 7, 2017).

⁶⁵ Kala Rama & Shirley Chan, *NYPD implements new ‘use of force’ policies to curb physical confrontations*, PIX 11 (June 1, 2016), <http://pix11.com/2016/06/01/nypd-implements-new-use-of-force-policy-to-curb-physical-confrontations/>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Baer, *supra* note 30.

scenarios to teach officers strategies they can apply to actual incidents, as well as verbal skills training to enhance communication during encounters with the public.⁶⁹ From 2009 to 2014, excessive force complaints against the department dropped by 64 percent.⁷⁰

3. Las Vegas

The Metro Police Department in Las Vegas reported twenty-five officer-involved shootings in 2010—the most in twenty years⁷¹—which led to a DOJ investigation.⁷² This investigation became a “test case for federal involvement in local law enforcement strategies.”⁷³ The DOJ’s investigation concluded that the department’s training program was “inconsistent” and “hurried to ‘get training done and out of the way’ to keep cops on the street.”⁷⁴ The DOJ then rolled out seventy-five findings and recommendations relating to use-of-force issues and officer-involved shootings.⁷⁵ The Las Vegas Police Department adopted almost all of the recommendations⁷⁶ and now heavily incorporates de-escalation training through reality-based scenarios, including depiction of actual incidents.⁷⁷ Las Vegas’s reform efforts seem to be working.⁷⁸ The number of police shootings has dropped since 2010, and training and oversight are contributors to the department’s successful reform.⁷⁹ In 2014, the

⁶⁹ Dallas Police Dep’t, *Officer Involved Shootings Data*, <http://www.dallaspolice.net/ois/ois> (follow “Reducing Deadly Force Incidents” hyperlink) (last visited Mar. 17, 2017).

⁷⁰ Albert Samaha, *Dallas Officer-Involved Shootings Have Rapidly Declined in Recent Years*, BUZZFEED NEWS (July 8, 2016, 6:08 AM), https://www.buzzfeed.com/albertsamaha/dallas-police-numbers?utm_term=.hmXwlvz3E#.omv2BoyMJ.

⁷¹ Sweeney, *supra* note 33.

⁷² Daniel Hernandez, *How one of the deadliest police forces in America stopped shooting people*, QUARTZ (Dec. 4, 2015), <https://qz.com/565011/how-one-of-the-largest-police-forces-in-america-stopped-shooting-people/>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Press Release, Dep’t of Justice, Department of Justice Completes Review of Las Vegas Metropolitan Police Department’s Use of Force Policies and Practices (Nov. 15, 2012), <https://www.justice.gov/opa/pr/departments-justice-completes-review-las-vegas-metropolitan-police-department-s-use-force>.

⁷⁶ Mike Blasky, *Federal report: Las Vegas police shootings down, department reforms up*, LAS VEGAS REV. JOUR. (May 23, 2014, 6:47 AM), <http://www.reviewjournal.com/news/las-vegas/federal-report-las-vegas-police-shootings-down-department-reforms>.

⁷⁷ Sweeney, *supra* note 33.

⁷⁸ See Hernandez, *supra* note 72 (discussing the drop in the number officer-involved shootings).

⁷⁹ Sweeney, *supra* note 33.

department had zero incidents involving deadly force against unarmed civilians.⁸⁰

Out on the reality-based training field, officers get training in real-life settings including alleys and parking lots.⁸¹ Officers use their discretion to decide when and what kind of force to use.⁸² Afterward, a trainer critiques the officer's decisions and asks questions like, "Why did you draw your side-arm instead of the Taser?" or "How come you didn't assure the suspect you weren't going to shoot him when he expressed fear that you would?"⁸³ This kind of discussion teaches the officers how to recognize what techniques they should use, and when to use them, to cool down rather than escalate a situation.⁸⁴

4. Cincinnati

The Cincinnati Police Academy weaves de-escalation training techniques into the overall training of its recruit classes.⁸⁵ The academy's reality-based training exposes trainees to situations ranging from angry drivers to those involving domestic violence and life-threatening situations.⁸⁶ Communication and active listening skills are also essential parts of the training.⁸⁷ The academy teaches officers the importance of word choice.⁸⁸ For example, during traffic stops, officers are taught to say, "I stopped you because you ran a red light two blocks back."⁸⁹ This phrasing is less confrontational and ambiguous than the typical question, "Do you know why I stopped you?"⁹⁰ It is hard to say whether the department's training is working because sixty-two police shootings occurred in the first two months of 2017, a drastic increase from thirty-three that occurred in the entire 2016.

⁸⁰ Hernandez, *supra* note 72.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Mark Curnutte, *NAACP calls for de-escalation training for police*, CINCINNATI.COM (July 19, 2016), <http://www.cincinnati.com/story/news/2016/07/19/naacp-calls-de-escalation-training-police/87284186/>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

5. Los Angeles

Since January 2000, approximately 678 civilians have died at the hands of police in Los Angeles County.⁹¹ The Los Angeles Police Commission recently approved training aimed to reduce officers' need to use deadly force in situations where de-escalation is a feasible alternative.⁹² Matt Johnson, Commission President, has stated that officers were previously not required to use de-escalation techniques as a part of LAPD's policies.⁹³

The Los Angeles Police Department ("LAPD") modified its use-of-force training program to give its de-escalation policy some teeth.⁹⁴ In reviewing investigations involving use-of-force incidents, the department evaluates whether de-escalation tactics could have defused the situation and whether the force was justified in accordance with the department's policy.⁹⁵ The department's command staff underwent a full-day of de-escalation training in November 2016, and sworn personnel began training at the start of 2017.⁹⁶ The department's 10-hour use-of-force class includes "six practical scenarios, four of which are live situations."⁹⁷ The scenarios incorporate communication skills and de-escalation techniques.⁹⁸ The

⁹¹ Ellie Hartleb, *Los Angeles Police Department to write de-escalation policy*, USA TODAY (Mar. 30, 2016, 11:33 PM), <http://www.usatoday.com/story/opinion/policing/beyond-badger/2016/03/30/los-angeles-police-department-write-de-escalation-policy/82437160/>.

⁹² City News Service, *LAPD Commission Approves Changes to Force Policy*, NBC4 (Mar. 15, 2016, 11:34 AM), <http://www.nbclosangeles.com/news/local/LAPD-Commission-Discussing-Use-Force-372136432.html>.

⁹³ Patrick Healy, *'De-Escalation' Proposed to Reduce LAPD Deadly Force Incidents*, NBC4 (Mar. 11, 2016, 9:51 PM), <http://www.nbclosangeles.com/news/local/LAPD-Will-Consider-De-Escalation-as-Way-to-Reduce-Police-Deadly-Force-371860692.html>.

⁹⁴ Rob Hayes, *LAPD Updates Training Program to Decrease the Use of Force*, ABC7 (June 22, 2016), <http://abc7.com/society/lapd-updates-training-program-to-decrease-the-use-of-force/1396937/>; Kate Mather, *The LAPD Is Officially Suggesting a Few Things Officers Can Try to Do Before Pulling the Trigger*, L.A. TIMES (Mar. 15, 2016, 9:34 PM), <http://www.latimes.com/local/lanow/la-me-ln-lapd-rules-change-20160315-story.html>; see L.A. POLICE DEP'T, *USE OF FORCE YEAR-END REVIEW EXECUTIVE SUMMARY 2016*, 9, 21 <http://assets.lapdonline.org/assets/pdf/2016-use-of-force-year-end-review-small.pdf> (the LAPD "integrated the concept of tactical de-escalation into training into its "Use of Force – Tactics Directive No. 16 (October 2016)," which is a document that "defines de-escalation, and introduces the acronym PATROL to easily recall and articulate the techniques of de-escalation (Planning; Assessment; Time; Redeployment and/or Containment; Other Resources; and, Lines of Communication)").

⁹⁵ L.A. POLICE DEP'T, *supra* note 90 at 135-36.

⁹⁶ *Id.* at 21.

⁹⁷ *Id.* at 20.

⁹⁸ *Id.*

training also addresses “constitutional policing, preservation of human life, and strengthening de-escalation skills.”⁹⁹

6. Salt Lake City

According to Mike Brown, Salt Lake City Police Chief, officers spend four times the amount of training time on de-escalation techniques, including “scenario-based training”, than on firearms training.¹⁰⁰ As a result, Chief Brown considers his department as “one of the best-trained departments in the country.”¹⁰¹

But shortly after two deadly police-citizen encounters in Salt Lake City—both deemed justified by the District Attorney—Chief Brown emphasized the importance of calling for back-up and slowing things down.¹⁰² He reiterated the need for officers to communicate and empathize with civilians and explained that having backup help or “cover” is key to de-escalating a situation.¹⁰³ Soon the department will also provide de-escalation training using 500 various scenarios generated by a simulator.¹⁰⁴

7. Seattle

The Seattle Police Department also has a history of using excessive force.¹⁰⁵ To comply with the DOJ’s consent decree issued in 2012, the department launched its new policies and modified training requirements to minimize officers’ use of force.¹⁰⁶ The department’s updated manual

⁹⁹ *Id.*

¹⁰⁰ Christopher Smart, *SLC Police Chief Shows City Council How He Wants to De-escalate His Way into Fewer Shooting Deaths*, THE SALT LAKE TRIB. (Jan. 17, 2016, 7:56 PM), <http://www.sltrib.com/news/3545746-155/slc-police-chief-shows-city-council>.

¹⁰¹ *Id.*

¹⁰² *Id.* See also *Fatal police shooting of James Dudley Barker in Salt Lake City, Utah*, WASH. POST (Sept. 29, 2015), https://www.washingtonpost.com/video/national/fatal-police-shooting-of-james-dudley-barker-in-salt-lake-city-utah/2015/10/08/41e4a658-670f-11e5-bdb6-6861f4521205_video.html (officer’s body cam footage of initial encounter with James Dudley Barker).

¹⁰³ Smart, *supra* note 101.

¹⁰⁴ *Id.*

¹⁰⁵ Press Release, Dep’t of Justice, Justice Department Applauds Adoption of Police Department-Wide Tactical De-escalation Training Program in Seattle, JUSTICE.GOV (Apr. 16, 2015), <https://www.justice.gov/opa/pr/justice-department-applauds-adoption-police-department-wide-tactical-de-escalation-training>.

¹⁰⁶ *Id.*; Steve Miletich, *Federal Judge Puts Brakes on SPD Police-Accountability Plan*, THE SEATTLE TIMES (Aug. 10, 2016, 9:18 AM), <http://www.seattletimes.com/seattle-news/crime/federal-judge-puts-brakes-on-spd-police-accountability-plan/>.

mandates that, when safety and time permit, officers use de-escalation tactics to minimize the need to use force.¹⁰⁷ Officers are instructed on specific tactics to de-escalate situations, including: (1) using distance, cover, and concealment to increase safety; (2) calling for assistance; (3) using verbal tactics to calm down subjects; (4) communicating through verbal persuasion, advisements, and warnings; and (5) physically confronting a subject only if necessary.¹⁰⁸ As part of this new approach officers are trained to ask open-ended questions, paraphrase, and repeat back what they think the person is saying to convey to the person that the officer is listening and empathizing.¹⁰⁹

8. Chicago

The Chicago police department has followed the footsteps of the Los Angeles and Las Vegas departments in launching a mandatory de-escalation training called “force mitigation.”¹¹⁰ The department’s use-of-force policy has been revised to emphasize the value of human life and requires its officers to try to de-escalate a situation before resorting to force.¹¹¹ This change is a significant departure from the old policy, which authorized an officer’s “use of any force which he reasonably believes necessary.”¹¹²

II. STREET AND TRAFFIC STOP ENCOUNTERS

A. WHY ENCOUNTERS GO WRONG

Traffic stops represent the most common type of police-citizen interaction.¹¹³ The Bureau of Justice issued a report in 2011 revealing 26 percent of the U.S. population, or over 62.9 million people age sixteen or

¹⁰⁷ SEATTLE POLICE DEP’T, SEATTLE POLICE DEP’T MANUAL (2015), <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>.

¹⁰⁸ *Id.*

¹⁰⁹ Griffith, *supra* note 34.

¹¹⁰ Leah Hope, *CPD Officers Going Through Mandatory ‘Force Mitigation’ Training*, ABC7 EYE WITNESS NEWS (Sept. 19, 2016), <http://abc7chicago.com/news/cpd-officers-going-through-mandatory-force-mitigation-training/1517693/>; Annie Sweeney, *Chicago police rolling out new, mandatory ‘de-escalation’ training*, CHICAGO TRIBUNE (Sept. 17, 2016, 3:29 AM), <http://www.chicagotribune.com/news/ct-chicago-police-training-met-20160916-story.html>.

¹¹¹ Matt Kenyon, *Police Move Towards De-escalation*, POWERDMS (Dec. 15, 2016), <http://www.powerdms.com/blog/police-move-towards-de-escalation/> (last visited Feb. 3, 2017).

¹¹² *Id.*

¹¹³ BUREAU OF JUSTICE STATISTICS, TRAFFIC STOPS, <http://www.bjs.gov/index.cfm?ty=tp&tid=702> (last visited Feb. 7, 2017).

older, interacted with the police during the preceding twelve months.¹¹⁴ For over 30.9 million, almost half of those interactions, the most recent interaction was involuntary.¹¹⁵ The authoritativeness inherent in police-initiated stops can place civilians in intense emotional states such as fear, intimidation, defensiveness, or irritation. Officers who have de-escalation techniques under their belts can control their emotions during stressful street or traffic stops and are better-able to calm civilians' emotional states or resistance to confrontation.¹¹⁶

When encounters on the street or during routine stops go wrong, usually an identifiable turning point—often a specific act or omission—leads to fast and furious escalation. De-escalation is most useful, and even lifesaving in some cases, at the point in time when one can press the “pause” button. While police officers cannot change the behavior of others, they can behave in a way that may de-escalate confrontation during encounters.¹¹⁷

Often the turning point in a police-citizen encounter is when a battle of wills erupts between a civilian and an officer, especially when a civilian believes he or she has done nothing wrong or when one or both parties believe danger is imminent. Either of these situations can cause the civilian to resist an officer's order, causing further escalation. This problem, in part, stems from many civilians' misconceptions about their rights.¹¹⁸

Far too many people mistakenly believe that Fourth Amendment privacy protections extend to the inside of their cars. Many mistakenly believe that their cars are “effects”—personal belongings.¹¹⁹ This misunderstanding is due in part to the Supreme Court's ruling about the Fourth Amendment's scope of protection as applied to traffic stops.¹²⁰ *Pennsylvania v. Mimms* held that officer safety is a “legitimate and

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Griffith, *supra* note 34.

¹¹⁷ Ron Martinelli, *Who Really Needs “De-Escalation” Training?*, DRONMARTINELLI.COM (July 15, 2016), <https://dronmartinelli.com/2016/07/16/who-really-needs-de-escalation-training/>.

¹¹⁸ See Tyler Tervooren, *Pulled Over? Here's the Right Way to Handle a Traffic Stop*, RISKOLGY, <https://www.riskology.co/traffic-stop/> (last visited Mar. 24, 2017) (discussing a traffic stop that ended in arrest and providing tips on how to avoid making mistakes during a routine traffic stop).

¹¹⁹ For the dictionary definition of “effects,” see *effects*, DICTIONARY.COM, <http://www.dictionary.com/browse/effects?s=t> (last visited Mar. 24, 2017).

¹²⁰ See Kelly W. Patterson, *Know Your Rights: Can the Police Make You Get Out of Your Car?*, COPBLOCK (Feb. 27, 2016), <http://www.copblock.org/154737/know-your-rights-can-police-make-you-get-out-of-car/> (discussing a person's rights during a traffic stop and how those rights do not necessarily align with people's common-sense beliefs about their rights).

weighty” justification for ordering a person out of his or her vehicle.¹²¹ The Fourth Amendment protects a person’s right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and that right “shall not be violated.”¹²² The narrow issue in *Mimms* was whether it was reasonable to order a driver out of the car after he was lawfully stopped for driving with an expired license plate.¹²³ Officer safety outweighed the minimal intrusiveness, a “mere inconvenience,” imposed on the driver.¹²⁴ Thus, ordering a driver out of his or her vehicle is per se lawful.

Regardless of people’s understanding of legalese, drivers should be aware that an officer’s order to exit the car, on its own, does not violate Fourth Amendment rights. With that knowledge, at the very least, civilians may not mistakenly feel wronged when ordered out of their cars. Even if people know the law, they might still resist orders if they pose no threat, believe they have done nothing wrong, or fear for their safety. That is what happened in the case of Sandra Bland, further discussed below.¹²⁵ Bland refused to exit her car because she felt she did nothing to justify the officer’s order.¹²⁶ In circumstances where people resist orders because they are scared for their lives,¹²⁷ officers sometimes unnecessarily—or inadvertently—escalate the situation, leading to an arrest.¹²⁸ In March 2016, a woman named Earledreka White called 911 to request help because she was fearful of the officer who pulled her over.¹²⁹ She told the dispatcher,

¹²¹ *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11 (1977).

¹²² U.S. Const. amend. IV.

¹²³ *Mimms*, 434 U.S. at 107, 109.

¹²⁴ *Mimms*, 434 U.S. at 111.

¹²⁵ Michael A. Cohen, Opinion, *Sandra Bland Didn’t Do Anything Wrong*, BOS. GLOBE (July 23, 2015), <https://www.bostonglobe.com/opinion/2015/07/23/sandra-bland-didn-anything-wrong/bk97Pz3qv1DINRZwa5sk4K/story.html>.

¹²⁶ *Id.*

¹²⁷ See Travis Gettys, *Black Woman Calls 911 During Traffic Stop Because She Fears Houston Cop – Who Then Attacks Her*, RAWSTORY (Aug. 4, 2016, 7:49 AM), <http://www.rawstory.com/2016/08/black-woman-calls-911-during-traffic-stop-because-she-fears-houston-cop-who-then-attacks-her/>; see also Catherine Thorbecke, *Officer Calms Girl Who Is Afraid of Police During Traffic Stop*, ABC NEWS (Aug. 26, 2016, 11:52 AM), <http://abcnews.go.com/Lifestyle/officer-calms-girl-afraid-police-traffic-stop/story?id=41667522> (discussing how an officer calmed down a frightened young girl while he issued a ticket to her father).

¹²⁸ Gettys, *supra* note 127; Nathan, *supra* note 3.

¹²⁹ Gettys, *supra* note 127. Brian Rogers, *Lawyer: Video shows police officer caused confrontation with social worker*, CHRON (Aug. 5, 2016, 2:47 PM), <http://www.chron.com/news/houston-texas/houston/article/Lawyer-Video-shows-police-officer-caused-9103071.php> (full video footage of White’s traffic stop encounter).

“My heart is racing. I’m really afraid.”¹³⁰ The dispatcher told White that another officer would arrive at the scene.¹³¹ But instead of waiting for backup, the officer threatened to use his Taser, grabbed and twisted White’s arm as he arrested her.¹³² White was charged with resisting an arrest and went to jail for two days.¹³³ James Douglas, NAACP president, commented that the officer “got impatient” and needs to learn “how to de-escalate a situation,” a tool that is “especially important in today’s climate.”¹³⁴

B. CASE STUDY: STREET AND TRAFFIC STOP ENCOUNTERS GONE WRONG

1. Sandra Bland

The routine traffic stop of Sandra Bland is a prime example of a mundane event turned tragic—one that likely could have been prevented using de-escalation techniques. In July 2015, Bland failed to signal a lane change and was pulled over by Texas State Trooper Brian Encinia.¹³⁵ Encinia immediately told Bland why he stopped her.¹³⁶ He took her license and registration and, after a few moments, returned to Bland’s car.¹³⁷ Bland was irritated because she was getting ticketed for a minor traffic violation.¹³⁸ Encinia acknowledged Bland’s irritation and asked her about it.¹³⁹ She explained that Encinia was tailing her, and stopped Bland when she changed lanes to get out of his way.¹⁴⁰ He asked, “Are you done?” and she replied, “You asked me what was wrong, and I told you. So now I’m done, yeah . . .”¹⁴¹

Meanwhile, Bland was smoking a cigarette and Encinia asked her if she minds putting it out.¹⁴² Bland asked why she had to put out her cigarette

¹³⁰ Gettys, *supra* note 127.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ PoliceCenter, *Sandra Bland Dashcam Video Released*, YOUTUBE (July 21, 2015), <https://www.youtube.com/watch?v=jpSEemvwOn4> (video footage of State Trooper Brian Encinia’s dashcam).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

when she was in her own car.¹⁴³ Encinia ordered Bland to “step on out now.”¹⁴⁴ This was the impetus that quickly escalated the situation. A few seconds later, as Bland continued to refuse his orders, Encinia opened her car door.¹⁴⁵ Even then, Bland insisted that Encinia did not have “the right to do that,” as Encinia continued to threaten to remove her by force.¹⁴⁶ The escalation continued for another minute and culminated in Encinia’s attempt to forcefully jerk Bland out of her car.¹⁴⁷ Bland finally stepped out of her car when Encinia threatened to “light” her up.¹⁴⁸ Outside of the car, Encinia ordered Bland to turn around so he could arrest her.¹⁴⁹ Instead of complying, Bland pleaded to know why she was being arrested.¹⁵⁰ Bland and Encinia then struggled off-camera for some time, and their next appearance captured by the dashcam shows Bland in handcuffs. Encinia cited as the reason for Bland’s arrest her failure to comply with a lawful order.¹⁵¹

Police experts agree that officers can legally order civilians out of their cars.¹⁵² The Supreme Court doctrine allows officers to order civilians out of their cars, without having to explain themselves, particularly if the officer perceives a threat.¹⁵³ As discussed above, officers are allowed to order drivers to exit their vehicles because officer safety trumps a driver’s freedom.¹⁵⁴ Regardless of the lawfulness of Encinia’s order, it is doubtful that Bland’s cigarette posed a threat to Encinia’s safety.¹⁵⁵ Other than expressing her irritation and smoking her cigarette, Bland did not display violent or threatening behavior.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* See also Carma Hassan et al., *Sandra Bland’s family settles for \$1.9M in wrongful death suit*, CNN (Sept. 15, 2016), <http://www.cnn.com/2016/09/15/us/sandra-bland-wrongful-death-settlement/> (discussing the controversy surrounding Sandra Bland’s arrest).

¹⁵² Richard Winton, *Can a police officer order you out of your car? Experts weigh in on Sandra Bland case*, LA TIMES (July 22, 2015, 1:41 PM), <http://www.latimes.com/nation/la-na-sandra-bland-arrest-experts-20150722-story.html>.

¹⁵³ *Id.*

¹⁵⁴ *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).

¹⁵⁵ Winton, *supra* note 152.

While no law requires drivers to put out their cigarettes, one retired LAPD officer said it is a common practice for drivers to do so.¹⁵⁶ And although Encinia could lawfully order Bland out of her car due to officer safety reasons, some experts say it was not professional to reach inside Bland's car or threaten to "light her up."¹⁵⁷ Ed Obayashi, a Sheriff's deputy and an attorney, commented that Encinia handled the situation lawfully until he asked Bland to put out her cigarette and ordered her out of her car.¹⁵⁸ Encinia had several opportunities to de-escalate from that point onward.¹⁵⁹

Experts have weighed in on how the confrontation and arrest in Sandra Bland's case could have been avoided. Jim Harrington, an attorney and the director of the Texas Civil Rights Project, provided insight about what went wrong in the Bland case in his discussion of a person's rights during a traffic stop.¹⁶⁰ He believes the turning point that escalated the situation was when Encinia asked Bland to put out her cigarette when she was not required to do so.¹⁶¹ When Encinia ordered Bland from her car, it was unclear whether the order was to put out her cigarette or to get out of the car.¹⁶² Either way the order does not seem entirely lawful.¹⁶³ If Encinia was ordering Bland out of her car for safety reasons, then it was allowed under the Fourth Amendment.¹⁶⁴ But if Encinia was ordering Bland from her car in retaliation for not putting out her cigarette, then Bland's First Amendment rights were violated, even if her Fourth Amendment rights were not.¹⁶⁵ After Bland denied Encinia's request to put out her cigarette, he could have called and waited for back-up to arrive. The extra time may have helped to cool the situation.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Rhonda Fanning, *10 THINGS ABOUT THE SANDRA BLAND TRAFFIC STOP EVERY TEXAN SHOULD KNOW*, TEXAS STANDARD (July 22, 2015, 1:06 PM), <http://www.texasstandard.org/stories/10-things-about-the-sandra-bland-traffic-stop-every-texan-should-know/>.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *See id.*

¹⁶⁴ *See* Orin Kerr, *The Law of the Sandra Bland Traffic Stop*, WASH. POST (July 23, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/07/23/the-law-of-the-sandra-bland-traffic-stop/?tid=a_inl&utm_term=.ed85947b9123 (discussing First and Fourth Amendment rights applicable to the Sandra Bland's situation).

¹⁶⁵ Fanning, *supra* note 160.

Harrington also argues that Bland was correct that she did not have to talk to Encinia other than to identify herself.¹⁶⁶ Yet Encinia's authority was questioned, which only fueled the already heated situation. While Encinia may have had the right to order Bland out of her car, he failed to state a reason for doing so—causing Bland to become even more irritated. Instead of de-escalating the situation, Encinia's emotional reaction to Bland's challenge to his authority rapidly escalated the encounter, erupting into a battle of wills.

Encinia further escalated the situation when he pointed a Taser at Bland's face and attempted to physically pull her from the car.¹⁶⁷ Both of those acts can amount to excessive force—a violation of one's Fourth Amendment right to be free from unreasonable seizure.¹⁶⁸ Even if Encinia perceived a threat, he had alternatives available to him other than attempting to remove Bland from her car—the simplest option was to wait for backup to arrive. Bland had already complied with Encinia's request for her license and registration.¹⁶⁹ Also, Bland's behavior seemed to express agitation rather than pose a physical threat. Ultimately, according to Harrington, the entire confrontation could have been avoided if Encinia had just given Bland the ticket and both could have gone their separate ways.¹⁷⁰

2. James Barker

In January 2015, James Barker was knocking on doors in his Salt Lake City neighborhood, hoping to shovel snow in exchange for cash.¹⁷¹ Some neighbors grew suspicious of Barker because the ground was scarcely covered with snow.¹⁷² A caller reported him to the police, so a patrol officer

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Kiersten Nunez & Mark Green, *New video shows scene of officer-involved shooting in SLC; attorney asks D.A. to reopen case*, FOX13 (Jan. 8, 2016), <http://fox13now.com/2016/01/08/new-video-shows-fatal-officer-involved-shooting-in-salt-lake-city-from-another-angle/>; The Salt Lake Tribune, *Body camera footage of confrontation with James Dudley Barker*, YOUTUBE (Jan. 9, 2015), <https://www.youtube.com/watch?v=Ntv4fOdVall> (video footage of confrontation between Barker and the officer).

¹⁷² *Id.* Pat Reavy & McKenzie Romero, *Police release body-cam footage of violent attack on officer prior to fatal Avenues shooting*, DESERET NEWS (Jan. 9, 2015, 3:40 PM), <http://www.deseretnews.com/article/865619269/Police-release-body-cam-footage-of-violent-attack-on-officer-prior-to-fatal-Avenues-shooting.html>.

was dispatched.¹⁷³ The officer approached Barker who was standing on a front porch.¹⁷⁴ Within minutes, the officer shot and killed Barker.¹⁷⁵

Immediately after exiting his vehicle, the officer asked Barker what he was doing in the neighborhood. Barker replied, "Snow removal."¹⁷⁶ The officer explained that no snow needed to be removed and that a few of the neighbors had called the police; he then asked for Barker's identification.¹⁷⁷ Barker refused to identify himself. Barker reached for his shovel and told the officer he was just trying to go about his shoveling business to make money.¹⁷⁸ The conversation turned into an argument as Barker insisted that he was seeking future business and would not "wait until it snows again."¹⁷⁹ The officer pressed for identification and warned Barker that he could be arrested for failing to comply. Barker grew angry and shouted, "Go back to your car, I'm doing my business!" and "I'm trying to make a living!"¹⁸⁰ The officer called for backup as the confrontation became more heated. The officer attempted to grab Barker's shovel from his hand but missed. Barker became even more angry and swung his shovel at the officer.¹⁸¹ A fight ensued, the officer's bodycam was broken, and seconds later Barker was shot and killed.¹⁸²

According to Deeda Seed, former Salt Lake City Councilwoman, the officer could have responded differently when he approached Barker.¹⁸³ She believes the officer had a clear opportunity to de-escalate the situation.¹⁸⁴ As the situation became heated, the officer should have stepped away and waited for backup.

In this example, the turning point was when Barker told the officer to go back to his car and the officer called for backup. For his own safety, the officer could have asked Barker to put the shovel down instead of reaching for it. The officer could have been more cognizant of Barker's rising anger

¹⁷³ Nunez & Green, *supra* note 171.

¹⁷⁴ *Id.*

¹⁷⁵ Reavy & Romero, *supra* note 172.

¹⁷⁶ Nunez & Green, *supra* note 171.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Reavy & Romero, *supra* note 172.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Daniel Woodruff, *At vigil, loved ones of James Barker call for justice*, KUTV (Jan. 8, 2016), <http://kutv.com/news/local/at-vigil-loved-ones-of-james-barker-call-for-justice>.

¹⁸⁴ *Id.*

and defensiveness. Anger can impair one's "cognitive scope," meaning one's attention becomes narrowed.¹⁸⁵ When cognitive scope narrows, "then everything, except for the object that evoked the anger, is shut out temporarily."¹⁸⁶ Consequently, a narrowed cognitive scope "undermines people's cognitive control and rational thinking."¹⁸⁷ This phenomenon helps to explain why Barker seemed focused in on the encounter, not thinking rationally about what could happen if he hit the officer with the shovel. The officer should have attempted to calm the situation by creating a physical distance between himself and Barker. Moreover, the officer could have opened a dialogue to reason with Barker about the best course of action.¹⁸⁸ According to Seed, the officer failed to notice that Barker was "clearly under stress."¹⁸⁹ The officer should have created distance and called for backup instead of allowing the situation to turn tragic.¹⁹⁰

3. Samuel DuBose

On July 19, 2015, Samuel DuBose was pulled over by a Cincinnati police officer, Ray Tensing, for a missing front license plate.¹⁹¹ In response to Tensing's request for a driver's license, DuBose did not give a direct reply.¹⁹² Their exchange went back and forth for a minute until eventually DuBose admitted he did not think he had his license with him.¹⁹³ Tensing suspected that DuBose's license was suspended, and asked some additional questions.¹⁹⁴ Tensing then told DuBose to remove his seatbelt until he could

¹⁸⁵ Philip A. Gable et al., *Anger Perceptually and Conceptually Narrows Cognitive Scope* 109 J. of Personality & Soc. Psychol., 163, 166 (2015).

¹⁸⁶ Reflectd, *Anger Impairs People's Cognitive Scope, Study Shows*, REFLECTD (Aug. 8, 2015), <http://reflectd.co/2015/08/08/anger-impairs-cognitive-scope/>.

¹⁸⁷ *Id.*

¹⁸⁸ Christopher Smart, *Instead of shooting suspects, Utah police are training to de-escalate violence*, THE SALT LAKE TRIBUNE (Sept. 19, 2016, 4:59 PM), <http://www.sltrib.com/home/4334493-155/instead-of-shooting-suspects-utah-police>.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Hamilton County Prosecutor's Office, *Body-camera footage of Samuel DuBose shooting – video*, THE GUARDIAN (July 29, 2015, 5:50 PM), <https://www.theguardian.com/us-news/video/2015/jul/29/samuel-dubose-shooting-body-camera-footage-video>; Dan Horn & Hannah Sparling, *UC report: Sam DuBose shooting "entirely preventable"*, CINCINNATI.COM, (Sept. 14, 2015, 4:18 PM), <https://www.cincinnati.com/story/news/2015/09/11/uc-release-new-dubose-shooting-report/72058718/>.

¹⁹² Hamilton County Prosecutor's Office, *supra* note 206.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

figure out if he had a license.¹⁹⁵ Tensing refuses.¹⁹⁶ Within seconds, Tensing inched open the driver's door—DuBose quickly closed it, reached for the car's ignition, and said "I didn't even do nothin'."¹⁹⁷ Tensing reached into the car, pulled out his gun, and shouted, "Stop! Stop!" He then fatally shot DuBose, and the car rolled down the street.¹⁹⁸

Scot Haug, the Police Chief of Post Falls, Idaho and a use-of-force expert, testified at Tensing's murder trial.¹⁹⁹ Haug testified that shooting a runaway suspect is unlawful unless the officers, or others, are threatened with serious injury or death.²⁰⁰ Haug said that Tensing's encounter with DuBose did not rise to that level of threat.²⁰¹ Similarly, an investigative report released by the University of Cincinnati found that DuBose's death was "entirely preventable."²⁰² It stated that, although the traffic stop and the initial approach were proper, Tensing escalated the situation and then responded by discharging his gun.²⁰³ The report concluded that Tensing "violated standard police practice" and should have de-escalated the situation by calling for back-up help instead of reaching into DuBose's vehicle.²⁰⁴ The department's policy allows officers to draw their weapons "only when 'necessary'["]."²⁰⁵ Tensing could see DuBose's hands, and DuBose did not show "aggression or threatening behavior."²⁰⁶ Thus, Tensing should not have "further escalated the encounter by drawing his service weapon within one to two seconds of the moment DuBose started the car."²⁰⁷ As this example demonstrates, police officers should avoid using force when civilians resist their authority but do not pose a substantial threat, especially when de-escalation tactics can prevent the need to use deadly force.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Kevin Grasha et al., *Ohio officer who shot Sam DuBose wore Confederate flag T-shirt under uniform*, USA TODAY (Nov. 4, 2016, 5:40 PM), <http://www.usatoday.com/story/news/nation-now/2016/11/04/ohio-officer-who-shot-sam-dubose-wore-confederate-flag-t-shirt-under-uniform/93288510/>.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Horn & Sparlin, *supra* note 191.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

III. PROPOSALS FOR DE-ESCALATING TRAFFIC STOPS AND STREET ENCOUNTERS

A. LEGISLATION

Legislation could be effective, but has proven difficult, to effect change in de-escalating police-civilian encounters. Federal Bill HR 5221, introduced in May 2016, proposed setting a new national standard for deadly force use and sought to require officers to undergo de-escalation training.²⁰⁸ The bill, which failed in the House, also called Preventing Tragedies between Police and Communities, would have required state and local government recipients of the Edward Byrne Memorial Justice Assistance Grant Program (“JAG”) to mandate that officers use de-escalation techniques as alternatives to using force.²⁰⁹ Essentially, this bill sought to require other police departments to reflect the Seattle Police Department policy, which requires de-escalation when possible.²¹⁰ Civil rights groups, such as the American Civil Liberties Union, support similar legislation to promote safe communities and police accountability.²¹¹ If officers are trained to use alternatives to force whenever possible, civilians may gain more trust in knowing that officers will not immediately resort to using force during an encounter.

²⁰⁸ Wesley Lowery, *Proposal to Congress would require police to get de-escalation training, create national use of force standard*, WASH. POST (May 12, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/05/12/proposal-to-congress-would-require-police-to-get-de-escalation-training-create-national-use-of-force-standard/?utm_term=.f5b049f318b8.

²⁰⁹ Preventing Tragedies Between Police and Communities Act of 2016, H.R. 5221, 114th Congress (2015-2016), <https://www.congress.gov/bill/114th-congress/house-bill/5221/text> (last visited Mar. 21, 2017).

²¹⁰ See Griffith, *supra* note 34 (De-escalation was written into Seattle’s policy manual, which states, “When safe under the totality of circumstances and time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force.”).

²¹¹ See ACLU, *ACLU of California Statement on 2018 Legislation to Hold Police Accountable*, ACLU (Apr. 3, 2018), <https://www.aclunc.org/news/aclu-california-statement-2018-legislation-hold-police-accountable> (discussing The Police Accountability and Community Protection Act, which would authorize officers “. . . to use deadly force only when it is necessary to prevent imminent and serious bodily injury or death . . .” and SB 1421, which would allow the public to access police records regarding “[s]erious use-of-force investigations,” such as police shootings).

B. REVISED TRAINING PROGRAMS

Police departments should revise their training programs by devoting the same amount of time to de-escalation tactics as shooting techniques.²¹² Officers should be extensively trained not only on how to use force but also on how to reduce or avoid the need to use force even when legally justified. Officers must be equipped with verbal skills and other techniques that can slow down a conflict or reduce people's fears during an encounter.²¹³ Other police departments should follow a policy similar to the Dallas Police Department's policy to train officers to become "consciously aware" of what they are doing and try to build rapport with a suspect before rushing into a situation.²¹⁴

Additionally, de-escalation programs should incorporate traffic stop scenarios into reality-based training programs. Given that traffic stops constitute the most common type of police-civilian interaction,²¹⁵ de-escalation training based on routine traffic stop scenarios could be highly beneficial. Training academies could train officers by re-creating actual incidents, such as scenarios that mimic the traffic stops of Sandra Bland, Terence Crutcher, Samuel DuBose, and Earledreka White. Just as the Las Vegas Police Department critiques its officers after they have undergone a reality-based training scenario,²¹⁶ trainers should similarly review and evaluate officers' reactions. In evaluating the scenarios, trainers could also teach officers how verbal skills could be used to help calm down tense confrontations specific to each scenario.

Departments should adopt at least some of PERF's 30 guiding principles on use of force with a core emphasis on valuing human life.²¹⁷ The report recommends that police departments prioritize de-escalation techniques in their training and stresses how important it is for police officers to communicate, back off, and slow down during encounters.²¹⁸ It also advises departments to stop using the informal 21-foot rule and instead

²¹²Joshua Holland, *Are We Training Cops to Be Hyper-Aggressive 'Warriors'?*, THE NATION (Nov. 10, 2015), <https://www.thenation.com/article/are-we-training-cops-to-be-hyper-aggressive-warriors/>.

²¹³ See Thorbecke, *supra* note 127.

²¹⁴ Baer, *supra* note 30.

²¹⁵ BUREAU OF JUSTICE STATISTICS, *supra* note 113.

²¹⁶ Blasky, *supra* note 76.

²¹⁷ PERF, *supra* note 25.

²¹⁸ *Id.*

use time, distance, and backup to de-escalate a confrontation.²¹⁹ PERF's overall proposal for revised training programs is that officers should try to resolve conflicts by first creating a zone of safety and then taking a step back to evaluate the situation before quickly resorting to using unnecessary force.²²⁰

C. ACCOUNTABILITY

Like the LAPD has done, police departments should commit to maintaining "transparency and accountability" through annual releases of use-of-force statistics and updates regarding de-escalation training.²²¹ Currently, no government database keeps track of police shootings,²²² but the Washington Post launched one in 2015.²²³ The LAPD hopes that "national initiatives underway can create cost effective publication methods with integrated benchmarking . . . to benefit both the public and law enforcement as a whole."²²⁴

Departments should also implement procedures to ensure their officers are abiding by their department's policy. Training should be thorough, and officers should undergo continuous training. For instance, the LAPD's police academy is rigorous, as students are required to succeed on fourteen scenario tests and 26 exams to graduate.²²⁵ Regarding use-of-force incidents, officers should be appropriately held accountable for conduct during use-of-force incidents. Within the LAPD, after a use-of-force incident has been adjudicated, an "Administrative Disapproval/Out of Policy" determination results in at least one of the following: "extensive

²¹⁹ *Id.* See also Andy Sheehan, *Stopping Deadly Encounters: Officers Practice De-escalation Techniques*, CBS PITTSBURGH (Sept. 19, 2016 at 6:39 PM), <http://pittsburgh.cbslocal.com/2016/09/19/stopping-deadly-encounters-officers-practice-de-escalation-techniques/> (discussing the three main tools of de-escalation: time, distance, and cover; includes a video of a recruit in simulated training).

²²⁰ *Id.*

²²¹ See L.A. POLICE DEP'T, *supra* note 90, at 7, 13 (discussing the various ways the LAPD is sticking to its commitment to transparency, training, and reduced use-of-force situations).

²²² Tom Jackson, *De-escalation Training to Reduce Police Shootings Facing Mixed Reviews at Launch*, WASH. POST (Oct. 15, 2016), https://www.washingtonpost.com/local/public-safety/de-escalation-training-to-reduce-police-shootings-facing-mixed-reviews-at-launch/2016/10/14/d6d96c74-9159-11e6-9c85-ac42097b8cc0_story.html?utm_term=.850be0516d5a.

²²³ *Id.*

²²⁴ *Id.* at 7.

²²⁵ *Id.* at 19.

retraining, notice to correct deficiencies, or a personnel complaint.”²²⁶ Then the Chief of Police decides what outcome best suits the employee’s actions.²²⁷ A personnel complaint due to a use-of-force incident may be issued if training will not, or has not, addressed the employee’s conduct.²²⁸ Officers can appeal the Administrative Disapproval/Out of Policy determinations regarding use-of-force incidents depending on the imposed penalty (e.g., demotion, suspension, reprimand, removal).²²⁹

D. EDUCATION AND AWARENESS

People should be continually educated about their rights so they can prevent unnecessary confrontation.²³⁰ According to Thomas Griffith, a distinguished law professor of USC Gould School of Law, one recommendation for reform is to equip officers with departments’ handbooks or simple brochures that explain drivers’ rights during a police encounter.²³¹ The officers could hand materials to the drivers whom they have stopped. Professor Griffith believes that backing up an order with a legitimate, tangible source might help to lessen the intensity of civilians’ stress, and make them more likely to follow the officer’s orders.

Moreover, every licensed driver should understand an officer’s perspective during a traffic or street stop.²³² CNN law enforcement analyst, Cedric Alexander, said that officers make their safety a priority.²³³ During traffic stops, drivers should shut off their engines, roll down their windows, stay put, and keep their hands free and visible.²³⁴

Schools and governmental agencies, such as the Department of Motor Vehicles (DMV), should be proactive in educating civilians about their Fourth Amendment rights. Most middle school and high school students are far from well-informed about their Fourth Amendment rights

²²⁶ *Id.* at 137.

²²⁷ *Id.* at 137, 141.

²²⁸ *Id.* at 137, 141.

²²⁹ *Id.* at 143.

²³⁰ See Tervooren, *supra* note 118.

²³¹ Interview with Thomas Griffith, Professor of Law, Univ. of S. Cal. Gould School of Law (Oct. 19, 2017).

²³² Gettys, *supra* note 127.

²³³ Ashley Fantz, *What are your rights during a traffic stop – and is it wise to exercise them?*, CNN (July 23, 2015, 3:54 PM), <http://www.cnn.com/2015/07/23/us/sandra-bland-traffic-stop-rights/>.

²³⁴ *Id.*

during police encounters.²³⁵ High school curricula should include mandatory education in basic “must know” rules of criminal procedure (e.g., obligation to exit a vehicle upon officer’s lawful command, even in a routine stop).

The DMV should formulate test questions about criminal procedure rules in the written portion of a driver’s license examination. The test questions could include hypotheticals of actual routine traffic stop scenarios, and the answer choices could include various response options. For example, a question might state, “During a traffic stop, if an officer requests that I exit my vehicle, I have the right to do the following.” The answer choices should include: (a) stay in my vehicle, (b) exit my vehicle immediately, (c) ask the officer why I should exit my vehicle. The study booklet should provide a summary of Fourth Amendment rights and an ample number of hypothetical situations and proper responses for the licensee to review before the examination. The DMV should also include with a driver’s license issuance a brochure of basic criminal procedure rules and Fourth Amendment rights related to traffic stops.

IV. CONCLUSION

Every police department should emphasize de-escalation techniques as part of their training programs. Officers interact with people on a daily basis, so they should be trained to effectively communicate and empathize with people and minimize conflict whenever possible. Verbal de-escalation techniques can help an officer reduce a civilian’s fears during an encounter and calm down a situation, reducing the chance of harm to either party. Reality-based de-escalation training programs could provide officers with training that closely resembles scenarios they face while out on the beat.

Several reforms can help to improve trust between officers and civilians, increase officer safety, and reduce the need to use force. First, all police departments should require their officers to use de-escalation tactics as an alternative to force whenever possible. Second, de-escalation training programs should incorporate a mandatory reality-based module that includes traffic stop scenarios. Third, police departments should remain transparent and accountable to the public by releasing use-of-force statistics and maintaining procedures for officer compliance with the department’s

²³⁵ See Ron Martinelli, *It’s Citizens; Not Police Who Need De-escalation Training*, BLUE LIVES MATTER (July 16, 2016), <https://bluelivesmatter.blue/citizens-not-police-need-de-escalation-training/> (discussing the educational disparity between police officers and the public regarding civil rights).

policy. Finally, people should be educated about their rights during a police encounter. Taken together, these proposals could facilitate a nationwide change in policing and help restore trust in the motto that police officers protect and serve their communities.