



Date: October 8, 2015
To: Jon Ruiz, Eugene City Manager
From: Pete Kerns, Eugene Police Chief
Subject: IA15-100 Deadly Force Review

The incident this March that ended with the loss of Brian Babb has led us to make a thorough examination of our philosophies and practices. We saw in our review that our department is made up of good people of character, who are well trained and devoted to our mission. Because of our staff and this review, our ability to respond to high risk and high stakes incidents in ways that increase the likelihood that all parties survive, has and will improve. It is important to know that even with the steps we're taking, we cannot always predict how dangerous encounters will unfold, nor will we always avoid tragic outcomes. We are committed to maintaining the safety of our community and our officers.

After reviewing the investigative files, the conclusions of the Use of Force Review Board and recommendations from our Police Auditor, I have adjudicated the case involving the death of Brian Babb.

Review Process

The evening of March 30, 2015, at the conclusion of the call on Devos Street, we activated the Lane County Interagency Deadly Force Investigation Team (IDFIT). The IDFIT is responsible for gathering facts to aid the District Attorney in determining whether the deadly force used by the officer was lawful. On May 1st, 2015, then Lane County District Attorney Alex Gardner announced that the IDFIT investigation showed that the officer's use of force was lawful, and it was also the officer's only reasonable option given the circumstances.



Following Mr. Gardner's announcement, our internal affairs team conducted a broader administrative investigation into the performance of the officer who used deadly force, and of other involved personnel. The purpose of this investigation was to assist the Use of Force Review Board in its assessment as to whether our employees' actions were within policy. The board also considered whether lessons learned from the incident indicated that there should be changes in policy, training and equipment.

Many deadly force encounters in law enforcement are brief and intimate, involving only one officer and one threatening subject. The fact sets are often uncomplicated. This incident, on the other hand, was complex, relatively protracted and dynamic. It involved processes in the Central Lane Communication Center (CLCC), an ad hoc team of patrol officers and sergeants, a member of our Crisis Negotiations Team (CNT) and the use of our armored rescue vehicle (ARV). In addition, the person who ultimately threatened a police officer was an Army National Guard, combat veteran.

To be sure that we would glean every possible lesson from the incident, we added three professionals to the board. These included an experienced and seasoned CLCC supervisor, a psychologist who has worked with veterans and who instructs our personnel in the 40 hour Crisis Intervention Team (CIT) training, and a nationally recognized expert on police use of deadly force with expertise in response to veterans in crisis. The City's independent Police Auditor, Mark Gissiner, as always, was a member of the board.

Incident Summary

Our department's involvement in this incident began when Mr. Babb's therapist called 911 and spoke with a call-taker in the CLCC. She said, "I'm a therapist and I'm calling about a client...He's got a 9-millimeter gun. He just shot once through the ceiling, I think he said. And, um, obviously he's having a really hard time and he's been drinking." The therapist went on to say that Mr. Babb was a veteran from the war in Afghanistan, had "severe PTSD" and a traumatic brain injury, and he was "high risk."

The call-taker initiated a call in the Computer Aided Dispatch (CAD) system, including a detail that read, "He shot one bullet into a window or somewhere in the house." All these details were sent electronically to the Dispatcher, who works at a station across the floor in the communication center. The Dispatcher transmitted these details by radio to officers.

About 27 seconds after sending the initial information to the dispatcher, the call-taker clarified with the therapist where the round had been fired. She entered the clarification, "1 shot into the ceiling", to the call details. However, that clarification was not shared by radio with responding officers. The call-taker also learned that a roommate lived in the house and that the therapist did not believe the roommate was home. This information was shared with officers.

The therapist was on her office phone with Mr. Babb and had called 911 from a cell phone. At one point the connection with the cell phone was lost. The therapist called 911 again and this time worked with a different call-taker. Also during the incident, a routine assignment change occurred at the dispatch console as a different communication specialist replaced the one who originally dispatched officers to the Devos Street incident.

Among the responding officers was a patrol sergeant who assumed command of the scene. The involved house is on the west side of Devos Street facing east and is set back behind a neighboring house. It is a two-story structure, on a panhandle lot, in a closely-built neighborhood. Its second story windows have a commanding view of the neighborhood and one officer on scene notified others that because of the view from the second story windows, there were no safe routes to the front of the house.

According to the patrol sergeant, when he arrived, the primary factors informing his decisions were these:

- a. The emotional condition of the subject in the house,
- b. The subject's background, training and experience and,
- c. That he had shot a firearm at or out a window.

The sergeant's priority of concern was and should have been:

- a. The safety of neighbors,
- b. The safety of the roommate
- c. The safety of officers and,
- d. The survival of the subject in the house.

In cases where we are called to aid suicidal subjects who are alone in their homes and known to possess firearms, our response is intended to be unobtrusive. Responding officers and supervisors will, depending on circumstances, stand-off some distance, attempt communication by phone or ensure that the subject is connected with other crisis services. When facts known in these cases suggest that only the suicidal subject is in danger, that they are not interested in talking or working with police, we may leave without contacting the subject knowing that police presence alone can exacerbate a condition of extreme emotional distress. Crisis Assistance Helping Out On The Streets (CAHOOTS) or other crisis services will instead be connected to work with these individuals remotely, or until it is safe to visit with them face-to-face.

The incident on Devos Street was different. Officers had a duty to protect neighbors, at least until the neighbors could be either evacuated or safely sheltered in their homes, and determine if the roommate was in the house and safe.

With these needs in mind, the sergeant communicated that he wanted the therapist to continue talking with Mr. Babb. The sergeant has said that he hoped that by the time a perimeter of officers was set-up around the house, the therapist could ask Mr. Babb to walk out of the house unarmed. He assigned two officers to each of the four sides of the house. He asked that an officer drive the armored rescue vehicle (ARV) to the location intending to have it parked down the street and available if needed. A CAHOOTS team and a medic unit were also staged down the street. One of the department's CNT members was called to the scene and was ultimately assigned to the front passenger seat of the ARV.

While managing the call, the sergeant conferred on occasion with the department's SWAT team lieutenant, an experienced, tactical expert. They discussed how they could address the

obligation to protect uninvolved parties and de-escalate, or at minimum, not aggravate Mr. Babb's emotional state.

Within a few minutes of their arrival, it became clear that there was no location from which officers could safely observe all the windows and doors at the front of the house. The sergeant learned that of the two vehicles parked in the driveway, one was registered to Mr. Babb and the other to a man with a different name and address. Given that the second vehicle may have belonged to the roommate or to a visitor the sergeant felt they could not back away from the immediate vicinity of the house until they knew if others in the house were safe.

The ARV was placed in the driveway of the address just south of Mr. Babb's residence and was parked facing the front of his house. A wooden fence between the properties partially obstructed the view of the front of the house through the ARV windshield. According to the sergeant, Mr. Babb's military training and combat experience, together with his possession of a firearm, his recent discharge of the firearm, and his emotional condition, raised the sergeant's concern for the safety of officers. To insure that Mr. Babb did not leave the house armed to move about the neighborhood, the sergeant felt it was important to see all the doors and windows until neighbors could be made safe and the roommate's welfare was known. If the entire front of the house could have been seen through the ARV's windshield there would have been no need, according to the sergeant, to place officers on the exterior of the armored vehicle.

With no other apparent option, the sergeant assigned an officer to stand in the roof hatch of the ARV with only his head and shoulders exposed. The sergeant at this point believed all sides of the house were under observation and requested through dispatch to have the therapist ask Mr. Babb to exit the house unarmed.

Because the therapist was talking with Mr. Babb and away from the cell phone, the call-taker was not able to ask the therapist to direct Mr. Babb to leave the house unarmed. After a short time passed and hoping to gain the attention of the roommate, the sergeant directed the CNT officer to use the vehicle's public address system to encourage Mr. Babb to exit the house.

Shortly after the first hail, the roommate was seen looking out an upstairs window, then walking out the front door of the house. He was called to the ARV where he was quickly interviewed by the sergeant.

The roommate told the sergeant that Mr. Babb was attempting to open a gun safe to acquire his hunting rifles. He cautioned officers to be careful. With the roommate safely out of the house the sergeant was considering backing away from the residence to give Mr. Babb space. The sergeant asked the roommate how he felt about the police leaving, or about the roommate returning to the house. The roommate felt strongly that it would not be safe for police to leave or for him to go back in the house with Mr. Babb.

Mr. Babb was seen occasionally walking throughout the house and the call-taker heard him departing at times from his conversation with the therapist. Mr. Babb was seen opening the front door, yelling an obscenity and ordering the police to leave. The sergeant believed dialogue had broken off with the therapist. The sergeant asked, via dispatch, that the therapist disconnect with Mr. Babb's phone so the CNT officer could attempt to communicate with him. When Mr. Babb answered the phone he told the CNT officer that he had a gun pointed at him, that they should not come on his property and that they should leave. Shortly after this Mr. Babb disconnected the call.

From the point when the roommate walked out of the house, including his interview with the sergeant, until Mr. Babb opened the door with a rifle, nine minutes elapsed. During that time the officers did not come onto the property, fire any less lethal rounds or gas, or otherwise attempt to subdue Mr. Babb. They held their position and developed a strategy.

After interviewing the roommate and before Mr. Babb appeared at the door with a rifle, the sergeant decided it was time to back the ARV away from the front of the house. Before he could make this happen, Mr. Babb opened the front door, then shouldered and pointed a scoped, high power rifle at the officer in the roof hatch.

The officer had little time to think. He was concerned that because, as he believed at the time, he had the only view of the front of the house, if Mr. Babb shot him, other officers wouldn't know

Mr. Babb was out of the house, armed with a rifle and potentially a threat to them. He also worried, as Mr. Babb was pointing the rifle at him, that he would be shot and had waited too long to react. He remembers calling out that Mr. Babb had a weapon, then firing one shot that caused Mr. Babb to fall near the door.

When Mr. Babb opened the door and aimed the rifle toward the ARV, the driver, who had a narrow view over the top of the fence, saw Mr. Babb with the rifle at his shoulder. The driver worried that the rifle was pointed at him and wondered if the ballistic windshield would stop a rifle round.

It took a couple minutes to verify that the gunshot heard by everyone on scene was fired by the police officer and not from the house. When it was clear that the officer had fired, the sergeant directed the ARV to be driven through the fence and directly to where Mr. Babb was laying. The medic unit was called in and checked on Mr. Babb as officers quickly moved through the house to determine if others were present.

We know now that the rifle Mr. Babb held was not loaded. It was a Remington 700 with an effective firing range of 800 to 1600 meters.

Findings

There is an exacting truth in law enforcement that officers must make life and death decisions, with very little time to consider options, in unfamiliar environments, with constantly shifting variables, and based only on what is known to them at the time. Our department should do everything it can to protect the community from known threats, to keep our officers safe, and to preserve the lives of people whose behavior necessitates our intervention and who represent an extreme danger to others and to themselves.

In this section you will see that our officers' and sergeants' performance was within policy and that they acted within the training and practices that existed at the time. In the next section it will be clear that changes to our processes, which have emerged from this experience, can potentially save lives and improve on our ability to protect our community.

Use of Force:

The officer's use of deadly force was within policy. He was faced with an immediate threat of serious injury or death and responded in accordance with our department's training and expectations.

The officer used a department issued firearm that he was qualified by a certified range officer to use.

Mental Health Crisis Response:

The on-scene supervisor complied with this policy when he took steps to de-escalate the situation and to protect the public, the officers and the involved subject, Mr. Babb. He worked toward these objectives by directing that the therapist continue to dialogue with Mr. Babb, by calling a CNT officer to the scene, and by using the ARV to aid in locating the roommate. Use of the ARV kept officers safe while they were able, by their presence and observation, to contain the incident within the confines of the house.

Hostage/Barricaded Subject:

The sergeant's actions complied with this policy. The definition of a barricaded subject includes, "a person threatening suicide who is armed with a deadly or dangerous weapon which could be a threat to others." The incident fell within this definition; Mr. Babb was in possession of a weapon(s), he had apparently committed the crime of discharging a firearm within the City, he was refusing to exit, and the therapist believed he wanted to die. Responding officers had a reasonable belief that Mr. Babb posed a continued danger to himself, anyone else inside the home, and to the public. With his view from a two-story home, there existed the possible risk to adjoining homes, to community members and to responding officers.

In this case, the initial approach of containing the incident to Mr. Babb's residence, and attempting to contact him was appropriate and per policy. While the police response was being managed, the sergeant continued to have the therapist communicate with Mr. Babb in hopes of a peaceful resolution. Carefully coordinated communication with therapists during police responses can improve outcomes. Coordinating with therapists who are engaged with a barricaded subject was not a component of our protocol at the time of this incident so a seamless and open process for doing so did not exist.

The decision to use the loud hailer should be based on the circumstances of each specific situation. Will hailing be effective in furthering the goal of a peaceful resolution or will it have an adverse impact on the involved subject? The on-scene commander should weigh the benefits of hailing with its potential to aggravate the crisis. For instance how does the need to use a hailer to alert a civilian or to get an innocent bystander to safety weigh against the potential impact of adversely affecting an emotionally-distressed armed subject. In this case, the loud hailer was effective in alerting the roommate to the police presence and getting him to exit while at the same time it may have worsened Mr. Babb's emotional state.

It was critical for the sergeant in charge to determine the location and safety of the roommate. The therapist believed there was a roommate but didn't know if he was in the house. It was incumbent upon officers to confirm one way or another, his whereabouts. His location had direct

bearing on the tactical plan and the type of actions the sergeant could take. Once the roommate exited, the sergeants on scene discussed pulling back the police presence. This would have been appropriate with the information they had. However, due to Mr. Babb's emotional state and his possession of rifles, they would not be able to leave entirely, due to the continued risk to the public. Mr. Babb appeared at the door with a rifle before any additional plan could be put in place.

Crisis Negotiation Team:

As officers were arriving at 2248 Devos and were being deployed, the sergeant asked that a member of the CNT respond to the front of the residence in the event his skills would be needed. The CNT officer was already en route as part of his normal patrol duties. As a negotiator, he had 285 documented hours of training in crisis negotiation, crisis intervention, hostage negotiation and suicide intervention. He had both practical experience and scenario-based training. The request for the CNT officer's specialized skill was an appropriate use of CNT under our current policy and practices. The CNT policy reads, "CNT may also be used in other situations where the expertise of a negotiator would be valuable, such as a suicidal person." Additionally, "supervisors are encouraged to use on-duty negotiators whenever possible."

The policy also indicates notification of the CNT supervisor when CNT is used. In this instance it did not occur. In practice, it would be difficult for a negotiator or a supervisor immersed in a developing incident to divert their attention and make notifications. Only one CNT member was used and no other CNT call-outs were made.

During the incident, the therapist offered to come to the scene to speak with Mr. Babb. This request was not relayed to the sergeant, and likely would not have been used as it is not a common practice. The sergeant asked to keep the therapist on the phone with Mr. Babb. Once Mr. Babb was no longer speaking with her, she was asked to disconnect so that CNT could take over the call.

Standard procedure is for the police negotiator to make contact or take over the conversation so that police have direct communication with the subject. Doing this provides the on-scene commander with the most accurate and timely information by removing the layers of the Communication Center and the third-party.

In this case, the sergeant's request to keep the therapist on the phone was not standard practice, yet it was appropriate. The therapist had the best rapport with Mr. Babb and was able to keep him talking for some time. The sergeant followed a standard practice in the use of the

loud hailer and our review of the case raises the question of whether a different practice will improve the outcome for future incidents of this kind.

Next Steps

Veteran's Services:

Ideally, police would not be needed to respond to veterans in crisis, and incidents like this would never occur. The unfortunate reality is that there will continue to be those occasions to which police must respond. In an effort to reduce the need for police involvement, we have explored programs that offer effective prevention and intervention strategies.

In some cases intervention for veterans in crisis should occur where the person resides and that service model doesn't appear to exist here. Central Lane County has a community of capable, motivated and dedicated service providers, veterans and members of military guard and reserve units. These include people interested in seeing on-the-street outreach that supports and mentors veterans struggling with behavioral health conditions. An outreach program in Idaho, known as the Idaho Veterans Network, is a model our staff has studied and that we have begun to develop locally. There is local interest in the effort which would enhance the very competent array of professionals already active here. Well-timed intervention by veterans and other supporters can reduce the need for police involvement.

Universal Decision Model:

In 2011, Scotland's Police Service experienced a crisis similar to the one US law enforcement agencies are working through today. In the United Kingdom (UK), communities lost confidence in their police to manage encounters with individuals that could lead to the use of physical or deadly force. Police in the UK developed what is known as the National Decision Model (NDM). The model is designed to lead officers in dangerous encounters through a series of thoughtful steps, each informed by Scotland's Police Service code of ethics. They found that the NDM reduced the need for force and they saw a decline in injuries to people in crisis and to officers. Using the NDM as a framework, our staff will work to create a universal decision model for our department to standardize quality decision-making. It's development and implementation will take time and will undoubtedly evolve through experience.

The decision-making and leadership displayed by the sergeants on scene in this case were impressive and undoubtedly the product of years of experience and specialized training.

Coordination with Therapists:

We are updating our protocols for response to people in crisis. Where possible, we will establish face-to-face coordination with counselors and others who are in communication with those we are called to help. As we respond to the scene of people in extreme emotional distress, officers will also be sent to the location of the therapist in communication with the subject, to coordinate efforts and to increase the likelihood of a safe and peaceful resolution.

Police presence can be more remote and actions can be more patient when we know more about the safety of people we are obligated to protect. Coordination with a therapist in circumstances like these can increase the quality of information the commander works from as he or she makes critical decisions with the goal of peaceful resolutions.

Hostage/Barricaded Subject Policy:

The policy of Hostage/Barricaded Subjects combines guidelines for response to hostage situations and response to barricaded subjects. The response and tactical considerations for these two types of incidents are very different. A true hostage situation is a high-risk, low-frequency event and the police response is considerably different. Law enforcement is trained to take more risks and exert higher levels of force to secure the rescue of a hostage. Conversely, barricaded subject calls, while still high risk, occur more frequently. The approach to an armed barricaded subject, alone in a residence can be handled in a manner that entails less risk and allows more flexibility by law enforcement. We will separate this and create two policies -- one for response to hostage situations and one for barricaded subjects.

Armored Rescue Vehicle:

It is difficult to know the effect the presence of the ARV has on people in crisis who are armed with firearms. Our officers should use the ARV when needed and should not be reluctant to make it available at scenes where firearms present a real danger to the community and to police

officers. A new directive now requires that officers and sergeants report on the ARV's use to ensure we are learning from each deployment.

In dangerous encounters with people carrying firearms, officers are more likely to have the need to use deadly force when they are in a place without ballistic protection or cover. We are studying how the use of video and audio equipment on the ARV could reduce the need to place officers in exposed positions in or near the armored vehicle.

Central Lane Communication Center:

Expert Communication Specialists involved in this incident performed to the best of their ability during what turned out to be a complex and dangerous event. The involvement of more than one call-taker and more than one dispatcher is not the ideal. The CLCC is developing a practice that would establish an ad hoc team that would remain assigned to high-risk calls until their conclusion. This practice will ensure a comprehensive transfer of relevant information to officers and sergeants in the field. It will also help to ensure notifications are made and that necessary and required resources are introduced where appropriate.

Crisis Intervention Team Training:

All our sworn personnel attend the 40-hour CIT training. A policy published this summer requires that all sworn personnel also participate in refresher training. We are identifying jurisdictions that have established training programs tailored to 911 center personnel and have assigned managers to implement that training in the CLCC.

Uniforms:

Not directly related to this incident, but through conversations we have had with veterans, it is apparent that there is a deeply held kinship among military veterans. The kinship enables an immediate and meaningful connection between individuals who have served in our armed services. It creates an opportunity for officers and civilian employees to connect quickly with veterans they encounter in the course of their work. We will allow our staff to wear insignia so that other veterans can be easily made aware of their military service.

Conclusion

The loss of Brian Babb is a tragedy for his family and our community. We will use the lessons we have learned here to improve coordination with other professionals, to improve our systems and practices and to reduce the need for deadly force while assisting people in crisis.

The Use of Force Board felt, and it is my finding, that capable communications specialists, officers and sergeants made and implemented the best decisions they could with the practices in place at the time, with what they knew at the time and with the resources available to them.

The experience of this incident has caused us to re-examine our practices and philosophies thoroughly and to advance our performance in high-risk, complex calls for service.