

**ABRIDGED SUMMARY OF CATEGORICAL USE OF FORCE INCIDENT AND
FINDINGS BY THE LOS ANGELES BOARD OF POLICE COMMISSIONERS**

LAW ENFORCEMENT RELATED INJURY 053-09

<u>Division</u>	<u>Date</u>	<u>Duty-On(x) Off()</u>	<u>Uniform-Yes() No(x)</u>
Southeast	08/09/09		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Officer A	12 years, 9 months
Detective D	19 years, 5 months

Reason for Police Contact

Officer responded to a radio call regarding a loud party in a residential area.

<u>Subject(s)</u>	<u>Deceased (x)</u>	<u>Wounded (x)</u>	<u>Non-Hit ()</u>
Subject 1			
Subject 2			
Subject 3			
Subject 4			

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the BOPC; and the report and recommendations of the Inspector General. The Department Command Staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on August 3, 2010.

Incident Summary

Officer A and B responded to a radio call regarding a loud party in a residential area, but did not receive a specific address. When the officers arrived in the area they observed

at least three loud parties in progress within a one block area. The officers initially responded to a residence, where the owner voluntarily turned the loud music down and the party dispersed.

Officers A and B responded to a second loud party location. The officers approached the backyard of that residence and told the disc jockey, Witness A to shut the party down and Witness A immediately turned the radio off.

Officer A and Officer B ordered the attendees to go inside the residence if they lived at the location or to leave the area, but the attendees were arguing and trying to tell the officers that they had a right to stay. According to Witness A, the officers were pretty nice because they told those who wanted to stay to go in the house.

A crowd of 20-30 males and females started to form around the officers, and according to Officer A, members of the crowd smelled of alcohol and held alcoholic beverages in their hands. As the crowd surrounded the officers, an unknown female reached up toward Officer A's chest and attempted to grab his badge. The female held a cell phone in one hand, and Officer A assumed she was going to take a picture of his badge. When Officer A knocked her hand away, the crowd became more frenzied and started to approach the officers. As the crowd became more hostile, Officer B issued a radio broadcast for additional units. According to Officer A, he pulled out his ASP baton and extended it as the crowd yelled comments at the officers. Officer A then issued a follow-up broadcast, indicating that the additional units should respond Code-2.

Officers C and D arrived at the scene, and entered the rear yard and observed Officers A and B engaged with the hostile crowd. Officer C broadcast that back-up units were needed. Sergeant A, Officer E, F, G, H, and I also arrived, and the officers ordered the crowd to move toward the east side of the residence.

Officer A collapsed his baton to help facilitate pushing the crowd out, and as the crowd moved to the east side of the residence, the pathway leading toward the yard's exit became narrow and slowed the movement of the crowd. According to Officer A, he repeatedly ordered the crowd to continue moving.

Officer F observed one of the attendees of the party, later identified as Subject 1, near the side door of the residence, which was adjacent to the east side. Officer F directed people in the backyard to leave the premises, but according to Officer F, Subject 1 was confrontational. Subject 1 picked up a deck of cards and flicked it in the officers' direction. Subject 1 then picked up a two liter bottle of soda that was half full and threw it in the officers' direction. Another party attendee, Subject 2, then pushed Officer B in the chest with two-hands after Subject 1 threw the deck of cards at the officers. Officer B grabbed onto Subject 2's left wrist and upper left arm and guided her to the ground.

According to Officer F, Subject 1 was glassy-eyed, and Officer F could smell alcohol on his breath. Subject 1 and another Hispanic male entered the residence through the side door and left the door halfway open as they went inside. According to Officer F, Subject 1 was pushing Officer B with his right hand while

continuing to hold the door halfway open. Officer B was standing just outside the house near the door, with Officer F and Officer E.

The officers initially did not intend to go inside, but after Subject 1 pushed the door two times into Officer B's chest, Officers B and E stepped into the doorway to try to open the door because Subject 1 would not come out. Officer F indicated that Subject 1 would let go of the door real quick and immediately push it back as if to strike Officer B.

As officers continued their attempt to enter the residence, there was resistance on the other side of the door due to people inside trying to push the door completely closed. According to Officer F, Subject 1 had the left side of his chest pushing up against the door. Officers B and E had their body weight up against the door in an attempt to keep it open. Eventually, the people inside the house were able to push the door closed and locked it.

According to Officer H, once the door was shut, the officers heard a bunch of screaming inside the house. Officer H could not discern if the screaming meant that someone was being hurt or if they were just yelling to yell. Sergeant A subsequently learned from an unknown Hispanic male that his daughter suffered from mental illness and screams when she would get very excited. According to Sergeant A, due to the hostile group being contained within the residence and because officers heard the scream indicating distress, he formed a plan to force entry into the house and attempt to provide assistance to that female and also effect an arrest. The plan, according to Sergeant A, also involved breaching the door, kicking the door, and evacuating the house.

According to Officer A, he attempted to kick the door open, but his foot slipped off the door, so Officer E mule kicked the door, which caused it to open.

Officers A, F, B, H, C, E, and G, among others, began to cross the threshold of the doorway and entered the residence. Once the door was open, Subject 1 and Subject 3 and Subject 4 were forcefully pushing the door again into Officer B. Subject 3 used a clenched fist to strike Officer B on the left side of his face. As Subject 3 attempted to punch Officer B again, Officer B stepped to the side and punched Subject 3 in the face three times. Subject 3 ran into a nearby bedroom, followed by Officer B, who took Subject 3 into custody shortly thereafter.

Officer E observed Subject 4, who had been slamming the door. Officer E approached Subject 4, who clenched his fists and assumed a fighting stance. Officer E used his forearm to strike Subject 4's face. Subject 4 fell to the ground face-down, and Officer E ordered him to put his hands behind his back. Subject 4 complied.

Officer A quickly located Subject 1 on the in the kitchen/dining room area, and approached him to take him into custody. Officer A ordered Subject 1 to turn around and face the wall. Subject 1 took a fighting stance and came at Officer A. Subject 1 swung at Officer A with his right fist, and Officer A ducked and grabbed both of Subject

1's legs in an attempt to take him down to the ground. According to Officer A, he felt himself being struck in the shoulders and upper back.

According to Officer F, Subject 1 took a fighting stance and swung at Officer A approximately three to five times; Subject 1 was holding his fists toward Officer A's face. According to Subject 1, once the officers entered the house, they started hitting everybody with batons and were pushing and shoving everybody. According to Subject 1, the officers kept hitting him and once he went down on the ground, they kicked him in the chest and ribs.

According to Officer A, he took Subject 1 down to the ground and attempted to force his hand behind his back, but Subject 1 continued fighting. According to Officer A, Subject 1 got back up on their feet and was punching him.

According to Officer H, he saw Subject 1 go to the ground, with Officer A holding onto him. Officer H also observed the two stand back up and resume fighting. According to Officer A, once they stood back up, he struck Subject 1 five times in the face. Officer A backed away to assess whether Subject 1 would comply, but he raised his fist again. According to Officer A, Officers H and F approached Subject 1 with their batons and swung at him. Officer A did not see how many times Officers H and F struck Subject 1 with their batons.

According to Officer F, who was two to three feet away from Subject 1, Officer A backed up and Subject 1 punched Officer F in the face once with his right fist." Officer F had already drawn his PR-24 baton, held it in the side ready position, and struck Subject 1 Subject three times with the baton in Subject's right leg area, and on the outside of his right knee. Officer F, used three power strokes to prevent Subject 1 from striking him. According to Officer F, Subject 1 continued to swing with both fists at the officers and tried punching him three to four more times. Officer F indicated that Subject 1 continued throwing punches toward him] and Officer H.

Officer C, observed Subject 1 swinging frantically, wildly at Officer F and other officers that were there.

Officer H, saw Officers A and F engaged in the continued altercation with Subject 1 and drew his PR-24 baton and immediately struck Subject 1 four times on the left side. Officer H used a baseball bat swing motion to strike Subject 1's left arm with the baton, somewhere near the elbow. Officer H used his baton to stop Subject 1 from continuing to strike Officer A.

Officer C, saw Subject 1 hit Officer F in the face and subsequently drew his PR-24 baton. However, Officer C put his baton away and went over to Officers H and F to assist. As Subject 1 continued to swing, Officer C hit him on the side and it impacted him on the back. Officer C, he swung at Subject 1 with his right arm, with a closed fist, and made contact one time to stop Subject 1 from swinging at him. Subject 1 continued to throw two to three more punches at Officer F, who struck Subject 1 with two power

strokes to his left elbow, and Subject 1 cringed and he kind of had his hand over his elbow.

According to Subject 1, Officer F “was the one hitting me and that’s the [officer] that hurt my arm.”

Subject 1 capped his elbow with his right hand and fell to the ground.

Officer H, Officer C put a knee on Subject 1’s back, put Subject 1’s hands behind his back, and placed Subject 1 into handcuffs with Officer F’s assistance.

As the officers were engaged with Subject 1, other family members observed what was happening inside the kitchen/dining room area. According to Subject 5’s mother, officers pushed her youngest daughter, Subject 5, towards the refrigerator because Subject 5 was trying to talk to Subject 4, who was on the floor. An unknown officer then called her brother-in-law a “fat ass.”

According to Officer G, three females were in the kitchen when he entered the residence. According to Officer G, he started grabbing one female at a time and pushed them toward a counter so they wouldn’t rush the officers.

Officer G later clarified in his interview that he “didn’t want to say that [he] pushed them, but [he] used the little counter to protect them.”

According to Subject 5, an unknown male officer placed his knee on her dad’s back as she was encouraging Subject 4 to cooperate, and the officers grabbed her and pushed hard into the refrigerator so that she would not be able to look at what the officers were doing. Subject 5 indicated that the officer put her hands behind her back really hard. According to Subject 5, she believed that the officer possibly intended to hurt her because he pushed her into the fridge really hard. Finally, Subject 5 indicated that an unknown tall, white officer was disrespectful and rude, telling people in the house to shut up. The females were eventually escorted out of the house and onto the street.

When asked in his FID interview whether he saw a male officer grab a female and throw her against the refrigerator, such that her head struck the refrigerator, Officer G responded, “No.”

Officer G did not see the altercation between Subject 1 and other officers. Furthermore, he did not hear officers saying, “Shut up,” to anyone inside the residence or address anyone as a “fat ass.”

In the aftermath of the incident with Subject 1, officers did not notice Subject 1’s injuries until after he was in custody. Officer C indicated he heard Subject 1 say he thought he he was bleeding from his arm.

According to Officer F, he conducted a pat-down search of Subject 1’s rear waistband and pockets when he was on the ground, and then assisted him to his feet and escorted

him outside. Once outside, Officer F noticed blood on his own left hand. According to Officer F, he figured out that it was Subject 1's left elbow that was bleeding.

Subject 1 said his broken bone made him bleed and he could not walk because his knees were swollen. In addition, Subject 1 said he had a big bump on his temple.

According to Officer H, after Subject 1 was escorted outside the residence, Officer H informed Sergeant B of his use of force by indicating he struck Subject 4 "probably about four times" with his baton.

According to Officer A, once the house was clear one of the first things he did was when he found Sergeant B to let him know that there was a use of force.

Officer I, who had also responded to the scene, requested a Rescue Ambulance for Subject 1.

After the use of force incident occurred, Sergeant A attempted to make contact with everyone who lived in the residence who was still at the location. Sergeant A also gave multiple people his business card, but they refused to speak to him.

Los Angeles Fire Department personnel arrived at the scene and treated Subject 1's injury. Firefighter A described Subject 1's demeanor as intoxicated, verbally kind of loud, a little noncooperative." Fire personnel transported Subject 1 to the hospital. Officer F accompanied Subject 1 in the ambulance.

Sergeant C received additional information that Subject 1 suffered a broken elbow and would be admitted to the hospital. Lieutenant A notified FID.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting/Holstering of a weapon by any involved officer(s); and the Use of Force by any involved officer(s). All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort to ensure that all officers benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC unanimously made the following findings.

A. Tactics

The BOPC found Detectives A, B, E, K, I, and J's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

Does not apply.

C. Non-Lethal Use of Force

The BOPC found Detective A and D's use of force to be in policy.

Basis for Findings

A. Tactics

Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance." (Use of Force Directive, July 2008)

Department policy relative to Administrative Disapproval is: "A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training." (Use of Force Directive, July 2008)

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific. Each tactical incident inherently results in considerations for improvement. In this instance, although there were identified areas for improvement, the tactical considerations neither individually nor collectively *"unjustifiably or substantially deviated from approved Department tactical training."*

In conclusion, a Tactical Debrief is the appropriate mechanism for Officers A, F, H and C to evaluate the events and actions that took place during this incident and assess the identified tactical consideration to better handle a similar incident in the future.

The Chief directed Officers A, F, H and C to attend a Tactical Debrief. Additionally, although they do not require specific findings, Sergeant A, along with Officers B and G will also benefit from attending the Tactical Debrief.

B. Drawing/Exhibiting/Holstering

Does not apply.

C. Non-Lethal Use of Force

- *California Penal Code Section 835(a) states: "Any police officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome*

resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reasons of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."

The Department's use of force policy is: "In a complex urban society, officers are confronted daily with situations where control must be exercised to effect arrests and to protect the public safety...force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm." (Los Angeles Police Department Manual, Section 1/240.10) It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or, Overcome resistance. (Los Angeles Police Department Use of Force – Tactics Directive, Use of Force Policy – Revised, July 2009)*

Baton contact should be directed to the areas of the body that will temporarily incapacitate the combatant and avoid contact to the body parts that could be potentially lethal. The primary baton striking or target areas are the bony areas of the body: the arms, hands, wrists, elbows, legs, knees, and shins. The secondary striking or target areas are the chest and midsection.

Officer A – Physical Force, Takedown, Punch: five times

After numerous attempts to gain compliance from Subject 1, Officer A utilized several force options to defend himself when Subject 1 raised his clinched fists and assumed a fighting stance. Officer A recalled, *"He—instead, he raised his hands, clenched his hand - - clenched his fists and came toward me."* Following the takedown, Officer A delivered a total of five punches to Subject 1's upper body and face.

Officer F – PR-24 Baton, three strikes to Subject 1's right leg and two to his left arm, Physical Force and Firm grip

Officer F stated, *"So he [Subject 1] punches me once in the face with his right fist and I struck him three times... to prevent him from striking me anymore."* Once Subject 1 fell back onto the floor, Officer F stated he grabbed onto Subject 1's shirt and forced him to the ground. Officer F then forced Subject 1's left arm out from under his body and applied the handcuffs with Officer C's assistance.

Officer H – PR-24 Baton, four baton strikes to Subject 1's left arm.

Officer H stated, *"That's exactly how he looked. He looked like he was going to go punch him again. Starts raising his arm back again and that's when I struck him four times in the left side."*

Officer C – Punch to Subject 1's upper back, Joint Lock, Bodyweight.

As Officer C approached, Subject 1 attempted to strike him. Officer C stated, *"The arm he [Subject 1] swung at me which would be his right. And that's when I impact him on the upper right."* Officer C then used his bodyweight and a joint lock to secure Subject 1's right arm behind his back and apply the handcuffs.

During this incident, the involved personnel were confronted by a combative suspect who refused to comply with the lawful orders of the officers. Because of the suspect's resistance, the officers utilized a variety of force types to take the suspect into custody.

In conclusion, the Chief found Officers A, F, H and C's application of Non-Lethal Force to be objectively reasonable, and to be in policy.