

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

LAW ENFORCEMENT RELATED INJURY 008-06

| <u>Division</u> | <u>Date</u> | <u>Duty-On (X) Off()</u> | <u>Uniform-Yes(X) No()</u> |
|------------------------|--------------------|---------------------------------|-----------------------------------|
| West Los Angeles | 02/03/06 | | |

| <u>Officer(s) Involved in Use of Force</u> | <u>Length of Service</u> |
|---|---------------------------------|
| Sergeant A | 19 years, 6 months |
| Officer P | 6 years, 8 months |
| Officer S | 33 years, 10 months |
| Officer X | 12 years, 8 months |

Reason for Police Contact

Officers A and B responded to a broadcast related to an altercation between Subject 1 and Witness B at an apartment complex. After interviewing several witnesses, Officers A and B attempted to contact Subject 1, who was still inside his apartment. Subject 1 refused to cooperate and stated something to the effect of, "I have a gun. If you come in, I'm going to shoot." Additional units, including SWAT, responded to the scene. Less-lethal impact project were subsequently used, causing injury to Subject 1.

| <u>Suspect</u> | <u>Deceased ()</u> | <u>Wounded (X)</u> | <u>Non-Hit ()</u> |
|---------------------------|---------------------------|---------------------------|--------------------------|
| Subject 1 Male, 44 years. | | | |

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 suspect 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 of Police; and the report and recommendations of the Inspector General. The Los Angeles Police Department command staff presented the matter to the Commission and made itself available for any inquiries by the Commission.

The following incident was adjudicated by the BOPC on December 19, 2006

Incident Summary

On the early morning of February 3, 2006, Communications Division (CD) received a 911 call from Witness A, a resident assistant manager for an apartment building. Witness A reported that one of the building tenants, Witness B, was having a problem with her boyfriend, Subject 1. Witness A added that Subject 1 was "violent," had hit Witness B, broken a door, and would not leave the apartment even though he did not live there. Communications Division also received another 911 call from another resident of the apartment building, Witness C, who reported that Witness C heard someone banging, slamming doors, throwing furniture, and generally creating a disturbance. Witness C also heard a woman crying.

In response to the 911 calls, Police Officers A and B were dispatched to the apartment. Upon their arrival, they were met by Witness B and her ex-boyfriend, Witness D, in front of the apartment building. Witness B indicated that Witness B and Subject 1 had a verbal argument. When asked, Witness B advised the officers that Subject 1 had no weapons and had not physically assaulted Witness B. Officer A informed Witness B that the officers needed to check on Subject 1 to ensure that he was okay. As a result, Officers A and B, accompanied by Witness B and Witness D, proceeded to the second floor of the apartment building to Witness B's apartment. While en route to the apartment, Witness D indicated to Officer A that Subject 1 was armed with a knife.

Officers A and B approached Witness B's apartment with Witness B. Witness B knocked on the apartment door and asked Subject 1 to let her and the police officers in. In response, Subject 1 stated something to the effect of, "I have a gun. If you come in, I'm going to shoot." Witness B then ran down the hallway but Officer A told Witness B to come back over to Officers A and B.

Officer A indicated that at some point prior to Subject 1 making his threat, Officer A requested an additional unit from CD. However, once he heard the threat, Officer A upgraded the request to a "backup" request for a man with a gun inside an apartment. Police Officers C and D arrived shortly thereafter. Officer D brought Witness B to the lobby of the apartment building and while there, attempted to gather additional information from Witness B while Officer C took a position near the front door of the apartment with Officers A and B.

As additional officers began to arrive at the scene, officers made numerous verbal attempts to get Subject 1 to surrender. However, Subject 1 refused to comply. Meanwhile, Officer D attempted to gather additional information from Witness B, who was uncooperative but did inform Officer D that Subject 1 did not have a gun.

Officers who arrived at the scene in response to the backup request included Police Officers E, F, G, H, I, J, K, L, M, N, and Sergeants A, B, and C. Additionally, Police Officers O, P, Q, and R responded to the scene following a broadcasted request for officers to respond with rifles. Upon arrival, Officer N was assigned to stay with Witness B.

Sergeant A and Officers G, L, M and P deployed outside the apartment building on the street. Officers G and P were armed with beanbag shotguns, while Officers L and M were designated as lethal force officers and drew their pistols. Officers Q and R took a position across a street, with Officer R armed with his rifle.

Sergeants B and C and Officers D, E, F, H and I joined Officers A, B, and C inside the apartment building and a perimeter was established around the subject apartment.

Upon his arrival, Sergeant B was briefed about the subject's threats by Officer C and formed the opinion that the officers were faced with a barricaded suspect situation. Sergeant B relayed this information to Lieutenant A, the on-duty watch commander, who agreed that the situation met the criteria for a SWAT call-out. SWAT officers were then notified to respond to the scene.

Although several attempts were made to communicate with Subject 1, Subject 1 failed to respond verbally and failed to exit the apartment. At some point prior to the arrival of the SWAT personnel, a fire was started inside the apartment. Officers were made aware of the fire when they observed smoke billowing out of vents near the front door to the apartment. At the time the fire was noticed, Sergeant B had left the second floor of the apartment building to relay information to Lieutenant A. Sergeant B left Sergeant C in charge of the front door containment area.

Due to the fire, Sergeant C determined that it was necessary to make entry into the apartment in case Subject 1 had hurt himself. As such, Sergeant C directed officers to kick in the front door to the apartment. However, when officers forced the front door to the apartment open, they were met with heavy smoke. Sergeant C directed the officers not to enter the apartment.

Meanwhile, the apartment building was evacuated in response to Subject 1's threats as well as the fire. Additionally, the Los Angeles Fire Department was called to the scene. Firefighters quickly determined that due to the potential threat from Subject 1, they would not be able to enter the apartment and fight the fire.

The following SWAT personnel responded to the scene at various times and after the fire had begun: Officers S, T, U, V, W, X, Y, and Z, Sergeants D and E, and Lieutenant B.

The first SWAT personnel to arrive were Officers S and U and Sergeant E. Upon their arrival, the apartment was already on fire. As such, Sergeant E and Officers S and U formulated a plan whereby officers would open the front door to the apartment, verbalize with Subject 1, and attempt to get him to give up. The plan was put into action and the door was opened. However, while Officers S and U could hear noises that might have been Subject 1 moving around, they were unable to see Subject 1 inside the apartment.

Meanwhile, while the SWAT plan was being put into action, Sergeant A received word from Sergeant C that SWAT officers had requested the officers to utilize beanbag shotguns to shoot out the windows of the apartment. As such, Officers G and P secured beanbag shotguns and took positions of cover within range of the apartment windows. According to Sergeant A, Officer E also advised him that the beanbags were to be utilized to break the windows.

Note: The investigation was unable to determine the source of the request to shoot out the windows. When asked, SWAT team members and Fire Department employees denied making the request. SWAT team members stated that shooting out the windows was not part of their strategy. Fire Department employees indicated that shooting out the windows would only ventilate the fire, causing it to get worse, and as such, they would not have made the request.

Note: Sergeant A believed that the request to shoot out the windows with the beanbag shotgun was in order to create a distraction for use by the SWAT officers. However, Officer P and several other officers believed that the request was made to ventilate the apartment. According to Officer E, a Fire Department employee requested that the windows be shot out.

Officer G fired three rounds from his beanbag shotgun at the balcony window, causing it to break. At the direction of Sergeant A, Officer P fired one super-sock round from her beanbag shotgun at the balcony window, which struck the balcony wall and was ineffective. Officer P then asked Sergeant A what her target was and Sergeant A informed her to fire instead at the bedroom window. Officer P then fired three super-sock rounds at the bedroom window from her beanbag shotgun, causing the window to break.

Almost immediately after the bedroom window broke, Subject 1 came to the window and began to climb out. According to Officer P, Subject 1 draped one leg through the window and over the side of the edge and kept the second leg inside the apartment. Officer P ordered Subject 1 to show his hands. Subject 1 was non-responsive and, as such, Sergeant A ordered Officer P to shoot him with a super-sock round. According to Officer P, she fired this round "to try to get Subject 1 to go back inside of the apartment."

Note: According to Officer P, officers were ordering Subject 1 to re-enter the burning apartment.

Note: According to Sergeant A, both of Subject 1's legs were inside the apartment when Officer P fired the first super-sock round.

Officer P continued to order Subject 1 to show his hands. Sergeant A ordered Officer P to fire a second round at Subject 1. One of Officer P's rounds hit Subject 1 in the side of his torso and the other hit him in his buttocks.

After Subject 1 was struck with two super-sock rounds, he continued his egress from the window and hung from the window for a short time. Subject 1 then dropped from the second story window to the first story balcony of the apartment unit below. Officers X and Y, having heard that Subject 1 had begun to climb out the window, walked out onto the balcony of the second level apartment located immediately north of Witness B's apartment. Officer X caught a quick glimpse of Subject 1 as he fell to the first floor balcony. Once Subject 1 landed on the first floor balcony, Officers X and Y used the flashlights mounted to their rifles to illuminate Subject 1. Officer X ordered Subject 1 to "Lay down on the ground. Put your hands out. Don't move. Relax." Subject 1 responded by saying, "You're not going to take me." Officer X described Subject 1 as agitated, angry, screaming, violent, and combative. Officer X also noted that it appeared to him that Subject 1 was unable to stand up.

According to Officer X, Subject 1 then picked up hand-sized pieces of broken glass and began to throw the glass from his position on the first floor balcony toward Officers X and Y. The glass passed over the officers' heads. In response, Officer X decided to retrieve a beanbag shotgun and secured one from the patrol officers in front of Subject 1's apartment. When he returned, Officer X noted that Subject 1 had armed himself with a long metal pole of some kind and was swinging it in the air. Subject 1 then dropped the pole and picked up more glass and attempted to cut his own wrists.

To prevent him from injuring or killing himself, as well as to prevent him from attacking the officers, Officer X fired three rounds from his beanbag shotgun at Subject 1. According to Officer X, all three rounds struck Subject 1 in his lower torso. Subject 1 went down to the ground on his stomach. Subject 1 then began picking up glass once again. In order to prevent him from further assaulting the officers, he fired an additional two super-sock rounds at Subject 1's torso.

Subject 1 laid down on his back but then rolled over onto his stomach. Officers X and Y ordered Subject 1 to "stay down, lay on your stomach. Put your hands out to your side." By this time, Officers S, W, V, and Z entered the first floor apartment unit where the suspect landed and made their way to the balcony sliding door. Officer W ordered Subject 1 to show the officers his hands and not to move. However, Subject 1 did not comply. Instead, Subject 1 began to raise his body off of the balcony floor. According to Officer S, because he could not see Subject 1's hands and because he believed Subject 1 was armed with a knife, given the initial information received by the officers that Subject 1 was so armed, Officer S decided to fire his TASER at Subject 1.

The TASER was effective and caused Subject 1 to become temporarily incapacitated, allowing Officers V and W an opportunity to handcuff Subject 1.

Subject 1 was subsequently transported to a hospital and was admitted due to abdominal trauma, smoke inhalation and lacerations. Subject 1 sustained four impacts from super-sock rounds, one to the buttocks and three to his torso. He also received two punctures from the darts associated with the discharge of the TASER. Subject 1

had lacerations to his hands, arms, and head, as well as self-inflicted wounds.

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 make specific findings in the following areas: Tactics of the involved officer(s); Drawing/Exhibiting/Holstering of a pistol by any involved officer(s); the Use of Force by any involved officer(s) and any additional pertinent issues. All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve the 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 Sergeants B and C and Officers C, E, F, H, I, and S's tactics to be appropriate.

The BOPC found Sergeant A, Lieutenant A and Officers A, B, G, P and X's tactics to warrant divisional training.

The BOPC found Sergeant A's tactics to warrant formal training.

B. Drawing/Exhibiting/ Holstering

The BOPC found Sergeant A and Officers A, B, C, E, G, H, I, P, S, and X's drawing to be in policy.

C. Less Lethal Use of Force

The BOPC found Sergeant A and Officer P's less-lethal use of force to be in policy, warranting formal training.

The BOPC found Officers S and X's less-lethal use of force to be in policy.

Basis for Findings

A. Tactics

The BOPC noted that Officers A and B responded to the radio call at the location and spoke with several witnesses. Officer A indicated that a man informed him that Subject 1 was armed with a knife. Witness D stated that he told Officer A that Subject 1 had a knife before Officers A and B approached Witness B's apartment. There is no indication in the Investigation File that Officers A and B attempted to discuss the situation with

Witness D, how Witness D knew about the knife, what Subject 1 did with the knife, and gather any additional information Witness D may possess that would assist the officers. The BOPC would have preferred that given the threat of a suspect with a knife, that Officers A and B had attempted to gather more information from Witness D before proceeding to the apartment, especially given that Witness B advised the officers that Subject 1 was unarmed. Officers attempted to make contact with Subject 1 who had barricaded himself inside the apartment and refused to comply with the officers' commands. Additionally, Subject 1 stated he was armed with a gun and would shoot them if they tried to enter the apartment. The BOPC is concerned that Officers A and B decided to continue to approach Witness B's residence without backup present, given that Officer A was informed by Witness D that Subject 1 was inside the apartment, armed with a knife. The BOPC would have preferred that Officers A and B had withdrawn and waited for the backup officers to arrive before approaching an apartment that contained a suspect armed with a knife. Additionally, the BOPC is concerned that Officers A and B decided to continue to approach the apartment where Subject 1 was located while accompanied by Witness B, who was a potential domestic violence victim. The BOPC would have preferred that the officers had approached the apartment without Witness B present, in order to prevent the situation from escalating by having both of the involved parties in close proximity. Additionally, once Officer A was informed that Subject 1 was armed with a knife, he should have ensured that Witness B was removed from the immediate area for Witness B's safety. Instead, when Witness B tried to leave the area of Witness B's apartment, Officer A told Witness B to return to the apartment where the officers had positioned themselves. Officers A and B remained in the hallway and requested back-up units to respond to their location.

Officers C, F, H, and I arrived at the location and responded to the second floor of the apartment building, joining Officers A and B. Officer E arrived and stood along the side of the building covering the balcony to Subject 1's apartment. Shortly thereafter, Sergeants B and C arrived at the location and were briefed on the incident. Sergeant B took charge of the incident and directed Sergeant C to maintain control of the officers on the second floor while he made the necessary notifications.

Sergeant A arrived on scene and directed the responding officers to contain the area around the apartment building and to control traffic. Sergeant A then served as the liaison between the command post and the officers at the location.

Sergeant B notified Lieutenant A who responded to the incident command post and took charge. Lieutenant A coordinated the personnel from the command post. Lieutenant A should have responded to and obtained a first-hand look at the evolving incident.

As Sergeant C and the officers stood in the hallway outside of Subject 1's front door, they observed smoke emitting from the apartment. Fearing for the suspect's safety, Sergeant C formulated a plan and ordered the officers to attempt entry. The officers attempted to force the front door but were driven back by smoke and objects placed up against the door by Subject 1 to barricade it. Fearing the fire placed the other occupants of the apartment building in danger, Sergeant C ordered the evacuation of

the remaining apartments.

SWAT Officers S and U arrived and donned their tactical gear. Officer S met with Lieutenant A who requested that they assist the officers inside the apartment building. Officers S and U met with the officers on the second floor hallway and were briefed on the incident. Two more attempts were made by the officers to enter the apartment; however, heavy smoke and fire drove them back. SWAT Officer X arrived outside the apartment and was directed by Officer S to an adjoining apartment to assist Fire Department personnel.

The BOPC noted that when Officer X was positioned on the second floor balcony looking down towards Subject 1 on the first floor balcony, Officer X indicated that he ordered Subject 1, "Don't move. Lay down on the ground. Lay down on the ground. Put your hands out. Don't move. Relax." Taken individually, these commands appear to be appropriate under the circumstances. However, taken together, in conjunction with the fact that Subject 1 was not complying with officers' commands, these commands may create confusion. Specifically, if a suspect is ordered "don't move" or "relax" at or about the same time he or she is ordered to "lay down on the ground" or "put your hands out," the suspect may not know which command to follow. That is, if he or she lays down on the ground or shows his or her hands, the suspect would be disobeying orders not to move and to relax. This confusion may lead to an unwarranted use of force.

As additional officers arrived on scene, Sergeant A received a request from an unknown source, via Officer E, to break the windows of the suspect's apartment. Sergeant A ordered Officers G and P, who were armed with beanbag shotguns, to a position across from Subject 1's apartment. Sergeant A then instructed Officer G to target the sliding glass door in the balcony area and Officer P was tasked with breaking a window south of the balcony. Officer G fired three beanbag rounds at the balcony sliding glass window causing it to shatter. Simultaneously, Officer P fired one super-sock round at the balcony sliding glass window, which appeared to have no effect. Sergeant A clarified Officer P's target. Officer P then fired three beanbag rounds at a window. Sergeant A should have consulted with the command post and Sergeant B to verify that there was indeed a request to break the apartment windows. Due to the lack of communication, the officers positioned outside the front door of the apartment were unaware that Officers G and P were planning to fire beanbag rounds. The BOPC is concerned that Sergeant A did not broadcast his intent to have the windows shot out. Given that Subject 1 claimed that he was armed with a firearm, the officers at the front door of the apartment could easily have mistaken the shotgun blasts coming from officers on the street-side of the apartment as shooting coming from Subject 1. This could have mislead these officers to believe they were under fire. The BOPC would have preferred that Sergeant A had broadcast his intent to fire.

The BOPC found Sergeants B and C and Officers C, E, F, H, I, and S's tactics to be appropriate.

The BOPC also found Lieutenant A, and Officers A, B, G, P and X's tactics to warrant divisional training.

Finally, the BOPC found Sergeant A's tactics to warrant formal training.

Drawing/Exhibiting/Holstering

The BOPC noted that Officers A and B responded to a Domestic Violence call and were told by Subject 1 that he was armed and would shoot them if they entered. Officers A and B drew their service pistols and covered the door to Subject 1's apartment. The BOPC determined that the officers had sufficient information to believe that the incident may escalate to the point where deadly force may be justified.

The BOPC further noted that Officers C, H, E, and I responded to the back-up request. The officers were advised that Subject 1 was barricaded and possibly armed with a firearm. Officers E, H, and I drew their service pistols. Officer C deployed a Department-issued shotgun. The BOPC determined that the officers had sufficient information to believe that the incident may escalate to the point where deadly force may be justified.

The BOPC also noted that Sergeant A and Officers G and P responded to the back-up request. Sergeant A and the officers assumed containment positions outside of Subject 1's apartment. Sergeant A and the officers were advised that Subject 1 was barricaded and possibly armed with a firearm. Officer G removed his service pistol while he contained the exterior of the apartment. Sergeant A removed his service pistol and provided cover to Officers G and P when they fired beanbag rounds at the apartment windows. Officer P drew her service pistol when Subject 1 exited the apartment window and dropped to the first floor balcony. The BOPC determined that Sergeant A and Officers P and G had sufficient information to believe that the incident may escalate to the point where deadly force may be justified.

The BOPC also noted that SWAT Officers S and X, attired in their tactical uniforms, responded to the location. Upon their arrival the officers armed themselves. The officers were informed that the suspect had barricaded himself inside the apartment and was possibly armed with a handgun. The BOPC determined that the officers had sufficient information to believe that the incident may escalate to the point where deadly force may be justified.

As such, the BOPC found Sergeant A and Officers A, B, C, E, G, H, I, P, S, and X's drawing and exhibition of a firearm to be in policy.

Less-Lethal Use of Force

The BOPC noted that after the beanbag rounds broke the apartment windows, Subject 1 approached and sat down on the bedroom windowsill. Believing Subject 1 was attempting to exit the location, Officer P ordered Subject 1 to display his hands, which

were concealed inside the upper window frame. Sergeant A believed that SWAT personnel were preparing to make entry into the location and felt that they would prefer to have Subject 1 remain within the location.

The BOPC noted that Sergeant A ordered Officer P to fire one super-sock round at Subject 1. Officer P fired once, striking Subject 1 in the buttocks. The super-sock round had no effect and Subject 1 swung a leg out and straddled the windowsill. Officer P ordered Subject 1 to stop and show his hands. When Subject 1 did not comply, Sergeant A ordered Officer P to fire a second super-sock round at Subject 1, striking him in the torso. After assessing their tactical options, Sergeant A and Officer P should have realized the potential for serious injury, should Subject 1 fall out of the window after being struck by a super-sock round.

The BOPC further noted that Subject 1 continued to climb out the window and subsequently dropped down to a balcony located directly below his apartment. The BOPC determined that Sergeant A and Officer P's use of the beanbag shotgun was reasonable to overcome Subject 1's resistance and take him into custody.

The BOPC found Sergeant A and Officer P's less-lethal use of force to be in policy, warranting formal training.

The BOPC noted that Officer X gained access to the apartment balcony above Subject 1, who was now on a first floor apartment balcony. Officer X ordered Subject 1 to comply and issued a verbal warning. Instead of complying, Subject 1 grabbed shards of glass and threw them at Officer X. Officer X discharged the beanbag shotgun at Subject 1 three times, causing him to go to the ground. Once on the ground, Officer X observed Subject 1 arm himself with additional pieces of glass. Fearing Subject 1 would continue to throw the glass, Officer X discharged two additional beanbag rounds causing Subject 1 to stop his actions and lay down. The BOPC determined that Officer X's use of the beanbag shotgun was reasonable to overcome Subject 1's resistance and take him into custody.

The BOPC further noted that once Subject 1 was on the floor of the balcony, Officer S approached as part of the arrest team. Subject 1 was ordered to show his hands. He did not comply and instead concealed them beneath his torso and began to rise up. Fearing that Subject 1 was trying to stand up and that he may be armed, Officer S fired the TASER at Subject 1, striking him in the torso. Subject 1 was taken into custody without further incident. The BOPC determined that Officer S's use of the TASER was reasonable to overcome Subject 1's resistance and take him into custody.

The BOPC found Officers S and X's less-lethal use of force to be in policy.