

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

**TACTICAL NEGLIGENT DISCHARGE 048-06**

<b><u>Division</u></b>	<b><u>Date</u></b>	<b><u>Duty-On(x) Off( )</u></b>	<b><u>Uniform-Yes(x) No( )</u></b>
North Hollywood	06/10/2006		

<b><u>Involved Officer(s)</u></b>	<b><u>Length of Service</u></b>
Officer B	7 year, 7 months

**Reason for Police Contact**

Officers were in a foot pursuit when a negligent discharged occurred.

<b><u>Subject(s)</u></b>	<b><u>Deceased ( )</u></b>	<b><u>Wounded ( )</u></b>	<b><u>Non-Hit (x)</u></b>
Male: 27 years of age.			

**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 Chief of Police; 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, the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on April 17, 2007.

**Incident Summary**

Officer A received some telephone calls and information from people in the street, indicating that a local male, the Subject was involved in narcotics and was carrying a gun. Officer A was specifically told that the Subject kept the weapon in his backpack and that if the backpack was seen, then the weapon would probably be inside of it. He was also told that the Subject kept the weapon in his apartment when he did not have it on his person.

Officer A was familiar with the Subject from previous encounters. Officer A decided to look for the Subject and requested to be partnered with Officer B. Officers A and B drove in a marked, black-and-white police vehicle to where they suspected the Subject might be. Officers A and B spotted the Subject standing on a curb. Officers A and B decided to contact the Subject, drove toward his location, and stopped their vehicle.

When the officers opened their doors to exit the vehicle, Officer A noticed that the Subject looked like he was about to flee. Officer A yelled for the subject after which the Subject did begin to run away. Officer A began to pursue the Subject and observed that he was wearing a backpack as he ran away. Officer B's seatbelt became entangled with his swivel holster, preventing him from exiting the police vehicle as quickly as his partner did. Once Officer B untangled his holster from his seatbelt, drew his pistol, and also ran in pursuit of the Subject.

The Subject ran toward a nearby apartment building that Officer A believed was his residence. Officer A used his radio to broadcast that he was in a foot pursuit. The Subject ran northbound through the outer gate of the apartment building and into the parking lot of that building.

Officer A followed the Subject through the gate and observed him reach into his backpack as he continued to run. The Subject then ran toward a pickup truck that was parked in the lot and pulled out an object that appeared to Officer A to be a gun. The Subject stated that he never had a weapon in his hand.

Officer A then drew his pistol and began to acquire the Subject as a target. At the same time, Officer A observed the Subject slam his weapon down inside the bed of the pickup truck. Officer A believed that the Subject's backpack fell to the ground near the pickup truck, at approximately the same time that the Subject slammed his weapon down inside the bed of the truck.

Officer A ordered the Subject to show his hands, but the Subject did not comply. Officer B ran through the outer gate of the apartment building and joined Officer A and the Subject in the parking lot. Just as Officer B arrived, the Subject ran southbound toward the gate that he had previously entered. As the Subject approached Officer B's position, Officer B unsuccessfully attempted to holster his firearm in order to grab hold of the Subject. As the Subject ran past him, Officer B kept his right hand on his pistol and used his left hand to grab the Subject's shirt. A piece of the Subject's shirt was torn off by Officer B, and the Subject continued southbound.

Witness A indicated that after the Subject's shirt was torn, both Officers A and B chased after the Subject with their guns pointed at him.

Witness B indicated that after Officer B tore the Subject's shirt, he started running after the Subject with his gun high up in the air. She later stated that Officer B pointed his gun toward the Subject while running after him.

Officer B then pursued the Subject southbound, followed by Officer A. Officer B also turned eastbound and again tried to holster his pistol unsuccessfully. Upon exiting the outer gate, Officer A began to holster his pistol as well. The Subject then turned northbound and ran into the parking lot of the apartment. When the Subject turned northbound, Officer B tried to holster his pistol a third time. As he did so, he heard one gunshot.

The Subject indicated that he believed Officer B was trying to shoot at him.

Witness C indicated that she heard a gunshot just prior to observing the Subject drop something inside a truck that was parked in the parking lot.

Officer A also heard the gunshot and used his radio to broadcast the possibility that shots had been fired. He also removed his pistol from its holster for the second time. The Subject stopped running and complied with Officer B's orders and placed his hands on top of his head. Officer B successfully holstered his pistol, as did Officer A. Officer B then placed the Subject into handcuffs.

Officer A used his radio to broadcast that the suspect was in custody and to request the response of one additional unit to lock down the location where the Subject had been running. Officer A then quickly returned to the parking lot and located the Subject's revolver in the bed of the pickup truck parked there. Officer B maintained control of the Subject and placed him in the back of a police vehicle.

The Subject indicated that while he was in the police vehicle, he observed an officer looking for the cartridge case from the round that he believed Officer B had fired at him during the foot pursuit.

Witness D indicated that after the Subject was placed in the police vehicle, a number of officers who were at the scene, including Officer B, began searching for the cartridge case of a bullet. During their search, an unidentified male approached Officer B and asked him what he was looking for. Officer B replied by saying, the casing. The unidentified male then said, "Okay... it's right there." Witness E then saw Officer B pick up the cartridge case.

Among the officers who arrived at the scene was Sergeant A. When he arrived, Sergeant A approached Officers A and B to find out what had happened.

Sergeant A indicated that, Officer A told him that there may not have been a shot fired. It could have been a backfire or firecracker.

Before being transported to the North Hollywood Area Police Station for booking, the Subject was searched by Officer C. During the search, Officer C located a bullet in one of the Subject's pockets. It was later determined that this bullet was of the same brand and caliber as six additional bullets that were found loaded in the Subject's revolver.

When Officer B arrived at the station, he asked Officer D to ask the Subject (in Spanish) whether he had heard any gunshots during the incident. The Subject stated to Officer D, "Yeah... I heard a shot when the officer shot at me." Officer D then asked the Subject when he heard the shot, and the Subject responded that he heard it when he was being chased. Officer D then verified with the Subject that he was not hurt, and he relayed the Subject's answers to Officer B.

After hearing the Subject's responses to Officer D's questions, Officer B decided to walk to the parking lot of the North Hollywood Area Police Station and check the number of rounds loaded into his pistol. He discovered that the pistol's magazine contained only 12 rounds, not the 13 rounds he had expected to find. Officer B told Officer A of his discovery and both of them returned to the scene of the incident in an attempt to obtain additional information.

After arriving back at the scene, Officer A called his watch commander, North Hollywood Area Sergeant B, and advised him that he and Officer B had returned to the scene in order to determine whether Officer B had fired a round during the incident. While Officer A was speaking with Sergeant B, Officer B located a cartridge case on the ground that he determined was consistent with the ammunition he had loaded into his pistol.

Officer B picked up the cartridge case in order to verify that it was his. He decided not to replace it in the location where he found it because he did not want to tamper with the scene unnecessarily. Officer B also located an impact on the sidewalk that appeared to be consistent with a strike from a fired bullet.

Sergeant B directed North Hollywood Area Sergeant A to return to the scene. Sergeant B also notified Force Investigation Division (FID) personnel about the incident.

### **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 determined that Officers A and B would benefit from additional training.

## **B. Drawing/Exhibiting/Holstering**

The BOPC found Officers A and B's drawing in policy.

## **C. Use of Force**

The BOPC finds Officer B's use of force as negligent, requiring administrative disapproval.

## **Basis for Findings**

### **A. Tactics**

The BOPC noted that the analysis of the incident identified several instances of prudent tactical decisions and proper actions. Officer A received several complaints from citizens regarding the Subject selling narcotics and carrying a handgun in a backpack near his residence. Based on this information, Officer A, who commonly worked alone, properly requested that Officer B work as his partner while investigating the citizen complaint. Additionally, Officer A briefed Officer B, advised him of the details contained in the citizen complaints and provided a photo of the Subject to assist Officer B in identifying the Subject as they patrolled the area of the complaints.

As in every spontaneous tactical incident, there were identified areas where improvements could be made. Upon observing the Subject in front of his residence and wearing a backpack, just as the citizen complaints described, Officer A advised Officer B of the Subject's location and stopped the police vehicle approximately three car lengths east of the Subject. Neither officer advised Communications Division (CD) of their updated location or that they were at scene on a possible man with a gun prior to attempting to make contact with the Subject.

Officers A and B had enough reasonable suspicion to detain the Subject and investigate whether or not the citizen complaints were valid; however, Officer A elected to call out to the Subject while exiting his police vehicle with the intent of conducting a consensual encounter. By calling out to the Subject prior to being in a position to apprehend him, Officer A afforded the Subject the opportunity to flee to avoid detention. There were sufficient facts to justify a legal detention, and the initial contact should have been tactically orientated towards a detention as opposed to a consensual encounter.

While exiting the police vehicle, Officer B's holster got tangled in his seatbelt, causing a three to four second delay before he could join Officer A in the foot pursuit. Officer B did not advise Officer A that he was not able to exit the police vehicle and created the potential for a situation where the officers could have become separated. Officer B is reminded that communication between partners is essential for officer safety.

The first broadcast received by CD related to this incident was, "15SLO13, we have a foot pursuit." This broadcast was transmitted by Officer A and did not include pertinent information such as, specific location of the officers and suspects' description, direction

of travel and crime wanted for to include the belief that the Subject was armed with a handgun. By broadcasting the incorrect location and not providing pertinent information to responding officers, Officer A potentially caused a delay in the arrival of additional personnel and placed himself and Officer B at a tactical disadvantage.

Both Officers A and B believed the Subject was armed; however, they elected to chase the Subject without utilizing the available cover to monitor the Subject's movements to establish a perimeter for containment purposes. The Subject led Officers A and B into a parking lot and removed and discarded a stainless steel revolver while the pursuing officers remained in the open without sufficient cover. The lack of cover exposed Officers A and B to an unnecessary risk of injury.

Both Officers A and B pursued the Subject with their service pistols drawn. Officer B attempted to holster his service pistol several times, but was unable to as the holster swayed as he ran. This created the circumstance where Officer B grabbed the Subject's shirt while his service pistol was still drawn. In order to prevent an unintentional discharge and a possible struggle over their service pistols, Officers A and B should have holstered their service pistols.

When the Subject complied with Officer B's orders to lay in a prone position, Officer B holstered his service pistol, immediately handcuffed the Subject, stood him up and conducted a pat-down search for weapons. It would have been tactically safer for Officer B to obtain a position of cover, wait for Officer A to join him, and establish positions of contact and cover prior to approaching and making contact with the Subject.

After the Subject was taken into custody, Officer A, unaware that the tactical negligent discharge had occurred and believing that there may be an additional outstanding suspect that had fired upon him or his partner, requested one unit to respond to "lock down a possible location for a man with a gun running through the apartment complex." The request for one unit was not sufficient to contain a man with a gun that had presumably demonstrated willingness to fire upon officers. Additionally, while Officer B was walking the Subject back to the police vehicle, Officer A separated from Officer B and returned to the location where he had observed the Subject drop the revolver. It would have been tactically safer for Officers A and B to remain together and direct additional resources to the location of the revolver or transfer custody of the Subject to another unit and return to recover the revolver as a team.

The BOPC determined that Officers A and B would benefit from additional training.

## **B. Drawing/Exhibiting/Holstering**

The BOPC noted that, based on previous information he received that the Subject was armed with a pistol, his knowledge of the area and the belief that the Subject may be leading him into a possible ambush situation, Officer B drew his service pistol.

Officer A received information that the Subject was armed with a pistol and was known to carry it in a backpack. When Officer A attempted to conduct a consensual encounter

with the Subject, the Subject ran from him and reached into a backpack he was carrying. Officer A, in fear of an armed confrontation with the Subject, drew his service pistol.

While pursuing the Subject on foot, Officer A heard a gunshot. Unaware that the shot he heard was a result of Officer B's tactical negligent discharge and fearing an armed confrontation, Officer A drew his service pistol a second time.

The BOPC determined that Officers A and B had sufficient information to believe their incidents could escalate to the point where deadly force may become necessary.

The BOPC found Officers A and B's drawing in policy.

### **C. Use of Force**

While pursuing the Subject on foot, Officer B decided to holster his service pistol. As he did, Officer B pushed his service pistol straight down into his holster and a tactical negligent discharge occurred. Officer B's round was fired in a downward direction and impacted a concrete sidewalk. Scientific Investigation Division personnel analyzed Officer B's holster, found no apparent abnormality or defects and were unable to discharge Officer B's pistol by inserting it into the holster.

The BOPC is critical that Officer B failed to adhere to the basic firearm safety rules while handling his service pistol. A negligent discharge is a serious incident that cannot be mitigated. The BOPC finds Officer B's use of force as negligent, administrative disapproval.