

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

LAW ENFORCEMENT RELATED INJURY – 023-14

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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West Valley 05/05/14

Officer(s) Involved in Use of Force	Length of Service
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Officer A	19 years, 7 months
Officer B	16 years, 5 months
Officer C	5 years, 3 months
Officer D	1 years, 8 months
Officer E	1 years, 1 month

Reason for Police Contact

Officers responded to a call of a hot prowler at an apartment complex, and a Law Enforcement-Related Injury (LERI) occurred.

Subject(s)	Deceased () Wounded (X) Non-Hit ()
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Subject: Male, 26 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, 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 April 21, 2014.

Incident Summary

Officers A, B, C, D and E responded to a radio call of a "Hot Prowl in Progress" at an apartment building. The information broadcast was that unknown individuals were trying to enter an apartment.

Officer A arrived and parked his vehicle facing the Subject's balcony. He exited his vehicle and took cover behind the ballistic door panels and monitored the Subject's north-facing balcony and west-facing bedroom windows.

The other officers exited their patrol car and attempted to enter the front lobby area of the building, but the door was locked. An unidentified resident opened the door to the ground level parking area for the officers. The officers entered the parking area, went upstairs, and approached the apartment.

Upon arriving at the apartment, the officers paused to listen for any noise coming from inside of the apartment. All was quiet. Officer B knocked on the door and stated "Los Angeles Police Department." The Subject, from inside the apartment, shouted at the officers and began to violently kick the inside of the apartment door approximately five to ten times.

Simultaneous to the initial attempt to contact the Subject, the officers believed they heard a female voice coming from inside the apartment, but they could not discern what the female was saying.

The officers continued to listen for the female voice, but they did not hear it again. Officer B continued to state, "Los Angeles Police...please open the door...," while the Subject continued to curse at the officers.

Officer B broadcast a request for Communications Division (CD) to call the Subject and tell him to open the front door. The officers became concerned that the female they heard inside the apartment might be in danger due to the Subject's behavior

Officer B requested other officers to bring a beanbag shotgun to the apartment. The officers went to the second floor. Officer C was armed with a beanbag shotgun.

Officer B briefed the arriving officers. He advised that when they attempted to contact the Subject, they heard the voice of a female from inside the apartment. The Subject became belligerent, kicked the door, and cursed them. Officer B was concerned that they had not been able to establish any contact with the female and feared she may be in danger due to the Subject's erratic behavior.

A neighbor, one door east of the Subject's apartment, heard the Subject shouting and banging on the apartment door. He opened his apartment door and observed the officers in the hallway gathered by the Subject's door. Officer B spoke to the neighbor in an attempt to get any information that he could regarding the Subject.

According to Officer B, the neighbor stated that he knew the Subject. The Subject had a wife and child, but the neighbor did not know if they were present at the moment. He believed they were possibly having marital problems. He based that on hearing yelling and screaming from the Subject's apartment on prior occasions. At Officer B's request, the neighbor allowed the officers access to his balcony to monitor the north-facing balcony of the Subject's apartment.

Officers went out to the neighbor's balcony. They observed the Subject standing on the ledge of his own balcony and believed he was possibly going to jump off (the Subject's apartment was on the building's second level). They relayed this information to Officer B via their radios.

Officer B requested backup officers to upgrade their response to Code Three (emergency status) due to his concern that the Subject would jump off the balcony. Officer B broadcast, "Be advised we have a possible 5150 [mentally ill subject]. He's standing on the ledge of the apartment building right now."

Numerous other officers responded to the scene, along with Sergeants A, B, and C.

Officer B believed that ultimately officers would have to enter the Subject's apartment to ensure the safety of the female occupant who he believed was inside, but he opted to wait for the arrival of a supervisor. In the interim, he formed a plan to enter the Subject's apartment. He designated Officer C as the beanbag officer, Officer F as the TASER officer, and other officers as the contact team. Other officers covered the Subject's balcony from the outside the building in the event the Subject jumped off the ledge.

Officer E arrived on scene and took a position of cover behind his open car door and monitored the Subject's balcony.

The Subject stepped down from the ledge, paced back and forth on the balcony, and shouted expletives and "Kill me!" at the officers arriving outside. He began to throw objects, including containers of Pine Sol and bleach, a hammer, an unopened can of Coke, a coffee table, and other miscellaneous items at the officers on the street. The officers took cover behind their respective vehicles or nearby residential structures.

Sergeant A arrived at the location and met with the officers in the hallway outside the apartment. Officer B briefed him on the tactical situation.

According to Sergeant A, Officer B stated there were a woman and possibly a child inside the apartment. Officer B believed, based on the comments of the call as well as the Subject's actions, that the Subject was possibly mentally ill, and that any persons inside the apartment were in danger. Exigent circumstances existed that made it imperative that the officers make entry into the apartment.

Sergeant A asked CD if the original PR on the incident was a male or female. Communications advised that it was a male.

Sergeant A also spoke to the neighbor. According to Sergeant A, the neighbor informed him that the Subject had a wife and child, but he did not know where they were. There were possible domestic violence issues in the past based on the neighbor hearing yelling and screaming from inside the Subject's apartment on prior incidents.

Sergeant A went out to the neighbor's balcony. He observed the Subject on his respective balcony immediately to the west. Sergeant A introduced himself and tried to engage the Subject in conversation to find out who else was in his apartment. The Subject cursed at Sergeant A and did not provide any information.

Sergeant A returned to the hallway and advised Officer B that he agreed exigent circumstances existed to make entry to ensure the safety of the female and/or child in the apartment.

Sergeants C and D arrived at the scene. Sergeant C entered the apartment building and was briefed by Sergeant A while standing outside the Subject's apartment. Sergeant C agreed with Sergeant A that exigent circumstances existed to force entry into the Subject's apartment to ensure the safety of the Subject's wife and/or child. Sergeant C then went back outside to assess the resources at scene in the event that the Subject jumped off the balcony.

Sergeant D assumed a position on top of an exterior staircase of an apartment building across the street and north of the Subject's apartment. He utilized a pair of binoculars to observe the interior of the Subject's apartment.

Sergeant A directed Officer B to re-organize the officers (in a "stick" formation) to prepare for forced entry to the Subject's apartment. Officer D and Sergeant A assumed a position to the left of the Subject's door. Officer D was assigned to kick the door open. Upon doing so, Sergeant A planned to pull him out of the way to allow the entry team to enter. The remainder of the officers lined up to the right of the door. Officer G was at the point, followed by Officer H (assigned lethal), Officer B, Officer F (armed with the TASER), and Officer C (armed with the beanbag).

Sergeant A advised the officers to prepare for a fluid situation in which they may have to switch roles and positions as the situation developed.

Officers obtained a key from the apartment building manager and gave it to Sergeant A. Sergeant A attempted to unlock the Subject's door with the key, but it did not work. At this point Sergeant A initiated the forced entry plan and directed Officer D to kick the door in.

Officer D kicked the door approximately three times, forcing it open. Upon the breach of the door, Sergeant A immediately pulled Officer D out of the way to the left of the door

to allow the entry team to move forward. As Officer G moved from the right side (east side) of the door to make entry, he observed the Subject directly in front of him toward the rear of the apartment. The Subject threw a glass bottle at Officer G, which narrowly missed his head and shattered on the hallway wall behind him. Officer G took cover behind the wall to the left of the doorway.

The Subject then threw a can of Lysol that struck Officer C's right forearm. Officer C and the other officers in the stick backed up to avoid being struck by the objects being thrown through the doorway at the officers. The Subject continued to throw miscellaneous glass and metal objects through the doorway at the officers, keeping the officers at bay in the hallway.

Officer C moved to the point in front of the Subject's apartment door to deploy the beanbag shotgun. The Subject, then at the doorway entrance inside his apartment, lifted up a sofa couch in a vertical position to block the doorway entrance. The Subject was concealed behind the couch, but his abdominal area became momentarily visible to Officer C. Officer C discharged one beanbag round, aiming at the Subject's abdomen from a distance of approximately seven feet. Officer C observed the round strike the couch. The couch became lodged in the doorway barricading the entrance, and the situation became static.

Sergeant A re-assessed the situation with Officer B. Sergeant A planned to have outside units attempt to distract the Subject while the interior team looked for opportunities to deploy less-lethal means from the doorway, if the opportunity afforded itself.

Officer B obtained a TASER from Officer F. He took a position of cover behind the vertical standing couch and looked for an opportunity to deploy it against the Subject. Officer B took quick peeks over the couch at which time the Subject would throw an object at him. The Subject began to mount chairs on top of the couch to fortify his barricade and further block the officers' view into his apartment.

Sergeant C re-entered the apartment building and met with Sergeant A. Sergeant C advised the entry team to don their helmets. Sergeant A directed Officer F to retrieve the officers' ballistic helmets from their respective vehicles outside.

Sergeant C telephonically contacted Lieutenant A, assigned as the Area Watch Commander, and advised him that situation would require his response.

Officer F returned with the officers' helmets. The officers donned their ballistic helmets and resumed their attempt to breach the barricade and make entry.

Sergeant D broadcast a request for a Rescue Ambulance (RA) to respond to standby if the need arose. He also requested a ladder-equipped Engine Company to respond in the event the officers needed the ladder to gain access to the Subject's balcony.

Lieutenant A arrived at the scene and assumed the role of the Incident Commander from Sergeant C. He was briefed by Sergeants A and C.

In the meantime, the officers removed the chair from the top of the couch. As soon as an opening appeared on top of the barricade, the Subject threw a heavy metal box at the officers. The box struck the hallway wall, causing a dent in the dry wall. The box split open and scattered keys on the floor. The Subject then placed another chair on top of the couch.

Officer B discussed pushing the couch over but elected not to because the officers on the stick believed it would block the entry teams' path into the apartment. Officer B continued to try quick peeks over the couch looking for an opportunity to deploy the TASER. During one of these quick peeks, the Subject pushed the chair on top of the couch at Officer B. Sergeant A grabbed hold of the chair to try to pull it down. The Subject tried to pull the chair back and the two engaged in a tug-of-war over the chair.

As the Subject was occupied with pulling the chair, an opportunity was presented for the officers to move forward and grab hold of the couch without being struck with objects. Officers D and G pulled the couch into the hallway. The Subject let go of the chair, armed himself with an approximately six-foot metal ladder and jabbed it at the officers. Officer B grabbed hold of the ladder and pulled it away from the Subject.

As Officer B was wrestling the ladder away from the Subject, Officer D stepped on the couch from the left side of the door, reached over the ladder and deployed his TASER at the Subject from a distance of approximately six feet. Officer D was not sure if the darts struck the Subject directly, but he heard the Subject wince and observed him step back. The barricade was then breached, but the Subject resumed throwing objects at the officers, which momentarily held the officers at bay in the hallway.

Officer B quick-peeked from the right side of the door and deployed the TASER at the Subject from a distance of approximately five feet. Officer B observed one dart strike the Subject's right torso area, but it appeared to have no effect.

Officer C stepped up to the doorway and deployed the beanbag shotgun, firing two rounds at the Subject in rapid succession from a distance of approximately seven feet. Officer C assessed. The Subject yelled and appeared to have been struck by the rounds, but remained standing, and threw a glass object at the officers, which struck the door frame. Officer C fired two more beanbag rounds at the Subject from a distance of approximately seven feet and assessed again. The Subject did not show any reaction other than backing up a couple steps. The Subject bent over and picked up an unknown type of metal object. Officer C fired one more bean bag round at the Subject from a distance of approximately ten feet. The Subject yelled and leaned back. He then ran into his bedroom, armed with the metal object, and slammed the door shut.

The officers made entry into the living room area of the apartment. Sergeant A directed Officer H to the balcony to monitor the Subject's north bedroom window. Sergeant A

and Officer B moved to the right side of the bedroom door. Sergeant A tasked Officer D with lethal responsibility and directed him to the left of the bedroom door. He had the remaining officers form a stick behind Officer D to the left of the door.

Officer D unholstered his sidearm and activated the attached lighting device. Sergeant A opened the bedroom door approximately six to ten inches and discovered that the door was barricaded. Officer D was able to get a look around inside the room, utilizing the attached light to illuminate the inside of the bedroom. Officer D observed the Subject armed with what he initially believed was a metal pipe, holding it in an overhand motion above his head. Officer D stated, "He has a metal pipe!" The Subject threw an unknown object at the door and the door slammed shut.

The officers heard the Subject placing objects against the door. Officer D told Sergeant A that he had observed a bedroom dresser and mattress in the bedroom and stated that he did not believe that they would be able breach the door once the Subject barricaded these items up against the door.

The officers observed no sign of the Subject's wife or child. Sergeant A assessed and realized that his officers had no available cover in the apartment interior and redeployed them back into the hallway to take cover behind the walls at the apartment's front door.

Sergeant A deployed Officer D to the right of the apartment door and tasked him with lethal. Officer C was deployed to the left of the apartment door and tasked with less lethal. The officers covered the bedroom door with their weapons.

Sergeants A and C decided that the situation had escalated to the point where it was confirmed that the Subject was armed and barricaded and that Special Weapons and Tactics (SWAT) personnel should be notified and requested to assist in clearing the bedroom. Lieutenant A concurred.

As Officers C and D continued to cover the Subject's bedroom door, they observed an orange glow that appeared to be fire coming from within the bedroom at the bottom of the door. Officer D yelled, "He's lighting stuff!"

Sergeant A broadcast on the simplex radio frequency that he needed the fire department to respond inside the apartment building from their staging area. Lieutenant A ordered all available officers to evacuate civilians from the building.

Sergeant A directed Officers I and H to start evacuating residents from the apartment building. Other officers also responded from their positions outside to also assist in the evacuation.

Lieutenant A broadcast a request for a tactical frequency for the incident and requested additional units and supervisors to respond to his location to assist with the evacuation.

Thick smoke began to billow out of the bedroom and filled the hallway where the entry team was positioned. The officers assumed prone positions on the floor to avoid the smoke and continued to cover the Subject's bedroom door.

The pre-staged Los Angeles Fire Department (LAFD) personnel deployed north of the building and began to spray water into the north-facing bedroom window to douse the fire. The LAFD personnel also responded outside of the Subject's apartment. They provided masks for the officers to provide protection from the smoke. They also supplied portable industrial strength fans to assist in dissipating the smoke from the hallway and the Subject's apartment.

Sergeant A became concerned that as the fire raged within the Subject's bedroom that the Subject's wife and child (if they were in the bedroom), as well as the Subject himself would perish. Sergeant A communicated this to the LAFD Incident Commander who was on scene on the second floor. A plan was made for the LAFD to bring a hose into the Subject's apartment from the hallway, and to breach the bedroom door. The officers were tasked with escorting the firefighters to provide force protection.

The Subject broke the west-facing bathroom window and stuck his head out. The Subject started to crawl out of the window. He partially hung out of the bathroom window by holding onto to the window sill area with his arms and leg hooked inside the bathroom. In his left arm he held a small dog.

Sergeant C advised Sergeant A that the Subject was hanging out of the bathroom window, affording an opportunity to breach the bedroom door because the Subject was not in the bedroom.

Sergeant A went downstairs to the ground level to open the door to the outside on the west side of the building to help clear the smoke. When he looked outside he saw the Subject hanging out of the west-facing bathroom window. He told the Subject, "just come on out!" The Subject replied by cursing at him.

Once the Subject's apartment became engulfed in flames, Lieutenant A reached the conclusion that SWAT did not need to respond because the Subject would either be consumed by the flames or be in custody because he was now hanging from the window.

Sergeant A went back upstairs and directed Officers B, C, D and H to provide force protection for three firefighters equipped with a water hose and breaching tools. The officers and firefighters entered the living room area of the apartment.

The firefighters breached the bedroom door with axes and breaching tools as the officers covered them. The bedroom was engulfed in flames and smoke, but with the second hose pouring water into the bedroom, the flames were extinguished.

Due to the firefighting efforts, the smoke was very thick, and visibility was initially only a couple of feet. With the fans however, the smoke was blown back out of the bedroom, and the officers were able to visually observe the bedroom interior.

The officers observed no sign of the Subject, his wife or child, but did observe an additional south-facing bathroom door that was closed. Sergeant A directed the officers to enter the bedroom and clear it.

Sergeant A positioned the officers at the bathroom door. He designated Officer D as lethal, Officer C as less-lethal (TASER), and Officer H to kick the door open. Upon entry to the bathroom, the officers observed no sign of the Subject, or his wife or child.

Simultaneous to the officers entering the Subject's bedroom, Officers A and E along with Sergeants B and D approached the west side of the building where the Subject was hanging out of the bathroom window. The paramedics stood by on the sidewalk behind the officers.

Sergeant D directed Officer E to try to talk the Subject into giving up. The Subject responded by shouting, "I don't care! You're racists! Just kill me!"

Sergeant B developed a plan and told the officers that if the Subject jumped, not to use TASERs or beanbags, but to swarm him and make sure he did not grab hold of anything that could be used as a weapon. Officers A and E were armed with TASERs but kept them holstered.

A short time later, the Subject jumped from the window and landed on the top of an abandoned refrigerator that had been left upright on the walkway underneath the Subject's bathroom window. The Subject crouched low on his knees and continued to clutch the dog. Officers A and E moved forward within three to four feet north of the refrigerator. The officers shouted commands at the Subject, "Get your hands up!...Get off of there!... Come down!"

The Subject armed himself with a wooden stick that was on top of the refrigerator, stood up, and pointed it at the officers.

The Subject swung the stick at the officers. The officers stopped and stepped backwards to avoid being struck with the stick. Officers A and E unholstered their TASERs and pointed them at the Subject. The Subject stood up, pointed the stick at the officers and stated, "Get back! Get back!"

Both officers warned the Subject to drop the stick or they would deploy their respective TASERs. The Subject failed to drop the stick. According to Officer E, the Subject raised the stick as if he were going to swing it downward at him. According to Officer A, the Subject started to swing it at the officers again. Officers A and E nearly simultaneously deployed their TASERs from a distance of approximately eight feet.

The original plan was to swarm the Subject, but once the Subject armed himself, Officers A and E nearly simultaneously deployed their TASERS in response to the threat. Officers A and E and Sergeant D did not plan or know that the other officer was going to simultaneously deploy their TASER.

According to Officers A and E, the darts from their respective TASERS contacted the Subject's torso. However he failed to drop the stick and remained still. The officers cycled through their TASERS with a second five-second activation, at which time the Subject fell down in a northerly direction. The officers backed away to avoid the Subject falling on top of them. The Subject fell to the pavement, striking his head.

Officers moved forward and handcuffed the Subject's wrists behind his back. The Subject appeared unconscious for a short period of time, and paramedics were immediately called in to treat him.

The Subject was transported to the hospital, where he was treated and admitted for observation.

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 of a firearm 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 made the following findings.

A. Tactics

The BOPC found Lieutenant A's tactics, along with those of Sergeants A, B, C and D, and those of Officers A, B, C D, and E to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Sergeant A's, along with Officers B, C and D's drawing and exhibiting of a firearm, to be in policy.

C. Less-Lethal Use of Force

The BOPC found Officers B, C and D's use of less-lethal force to be in policy.

D. Lethal Use of Force

The BOPC found Officer A and E's use of lethal force to be out of policy.

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC considered the following:

1. Functional Supervision

Officer B assumed the role of a functional supervisor when he formulated a tactical plan, which included designating specific roles for each officer.

Additionally, Officer B attempted to corroborate the existence of a female inside the Subject's apartment by gathering information from the neighbor. Officer B also facilitated the positioning of officers onto the neighbor's balcony in order to monitor the Subject's actions from his apartment balcony. Officer B further maintained his position as a contact officer, while he attempted to establish dialogue with the Subject.

2. Back Up request

When Officer B learned the Subject was standing on the ledge of his balcony and could potentially jump off the balcony, Officer B requested the supervisor and additional responding units en route to upgrade their response to Code Three.

Although, officers are given discretion regarding the appropriate time to request additional resources during an incident, in this instance, Officer B believed the Subject may attempt to flee. Officer B knew there were no officers outside of the Subject's apartment and was aware of his continual display of aggressive actions and non-compliance with the officers' verbal commands. Consequently there was potential that the Subject could harm someone if he escaped on foot. With that in mind, Officer B believed the circumstances warranted the immediate response of additional resources and requested that the units respond Code Three instead of initiating a request for back-up.

3. Effective Encounters with Mentally Ill Persons

Based on the Subject's behavior, Officers B believed the Subject possibly suffered from a mental illness and requested additional resources and less-lethal force options.

Over an approximate two hour period, several officers attempted to communicate with the Subject, in English and Spanish, at different junctures throughout the incident. All attempts by sworn personnel were met with incoherent and/or a

verbally abusive responses from the Subject while he continuously threw objects at the officers. Sergeant A was aware that the Subject's erratic behavior was consistent with someone suffering from a mental illness. Even though the Subject continuously assaulted the officers, the officers showed great restraint throughout the incident. Furthermore, the on-scene personnel continuously assessed the tactical situation, before and during their encounter with the Subject, making adjustments and balancing everyone's safety.

In conclusion, the BOPC found Lieutenant A's tactics, along with those of Sergeants A, B, C and D, and those of Officers A, B, C D, and E to warrant a Tactical Debrief.

B. Drawing/Exhibiting

- Sergeant A, along with Officers B, C, and D, responded to a radio call of a "hot prowl in progress" at the Subject's residence, and believed the situation could rise to escalate to a deadly force situation.

Based on the officers' training and experience, burglary in-progress type calls often involve subjects that are armed; therefore, they believed the situation could escalate to a deadly force situation. Consequently, Sergeant A, and Officers B, C, and D, drew their respective service pistols.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Sergeant A, and Officers B, C, and D, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

In conclusion, the BOPC found Sergeant A, and Officers B, C, and D's drawing and exhibiting of a firearm to be in policy.

C. Less-Lethal Use of Force

- **Officer C** – (six rounds, Beanbag Shotgun, fired six sock rounds, in four volleys)

Upon initially forcing entry into the Subject's apartment, the Subject threw objects at the officers to prevent them from entering. Officer C discharged one sock round at the Subject's abdomen, as he was unsafe to approach.

Officer C fired five additional sock rounds from his beanbag shotgun at the Subject in three separate sequences, as he continuously assessed the tactical situation.

- **Officer B** – (one TASER activation, probe mode)

Officer B discharged his TASER following the entry team's redeployment to the hallway and as the Subject was pre-occupied with members of the entry team.

- **Officer D** – (one TASER activation, probe mode)

After the Subject retrieved a ladder and began “jabbing” it at the members of the entry team positioned near the front door, Officer D discharged the TASER.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers B, C, and D, would reasonably believe it was not safe to approach the Subject and therefore the application of less-lethal force to stop the Subject’s actions was reasonable and would have acted in a similar manner.

In conclusion, the BOPC found Officers B, C, and D’s, less-lethal use of force to be objectively reasonable and in policy.

D. Lethal Use of Force

- At the time these officers discharged their TASERs at the Subject, he was in an elevated position and would foreseeably fall onto a hard concrete surface if incapacitated. Under these specific circumstances, the use of the TASER created a substantial risk of serious bodily injury. Indeed, this risk was realized when the Subject struck the ground with his head and sustained a serious injury.

Although the TASER is designated primarily as a less-lethal force option, the manner and circumstances under which each individual use occurs will dictate whether the force is less-lethal or lethal. According to the Department’s use of force policy, deadly force is defined as that “force which creates a substantial risk of causing death or serious bodily injury.” (Emphasis added.) “Serious bodily injury is defined as including, but not limited to:

- Loss of consciousness;
- Concussion;
- Bone fracture;
- Protracted loss or impairment of function of any bodily member or organ;
- A wound requiring extensive suturing; and,
- Serious disfigurement.

When TASERs are used in the dart mode, as they were in this case, they have the ability to cause “neuromuscular incapacitation,” which is the stimulation of the motor nerves causing uncontrollable muscle contractions that inhibit a subject’s ability to perform coordinated movement. This typically causes the subject to fall to the ground. Additionally, the loss of muscle control may also result in the subject not being able to reach out and break his/her fall.

Given that the likely outcome of using a TASER on a subject is that he/she will become incapacitated and fall, both the manufacturer (TASER) and the Department caution officers about using a TASER on a subject who is in an elevated position

because of the increased risk of injury. The Department's Use of Force Directive on Electronic Control Devices states, "Generally, officers should avoid using the TASER when the subject is [...] [i]n danger of falling which would likely result in death or serious bodily injury." Furthermore, the instructions for law enforcement from TASER include the following warning, "When practicable, avoid using a CEW (Conducted Electrical Weapon) on a person who: is on an elevated or unstable surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, or stair)."

It is important to note that these standards do not absolutely preclude an officer from using a TASER on a subject standing on an elevated platform, or under other dangerous circumstances. However, if a TASER is to be used in an environment where an uncontrolled fall creates a substantial risk of death or serious bodily injury, such force would only be appropriate if lethal force was authorized by Department policy.

In this case, the Subject was standing on top of a 5 ½-foot-tall refrigerator and it was likely that the use of a TASER would cause him to fall onto the concrete walkway below. Given that effective activation of the TASER would have caused neuromuscular incapacitation such that he would not likely be able to break his fall, such a fall presented a substantial risk of serious bodily injury. Accordingly, the use of a TASER given these circumstances constituted lethal force.

After dropping down out of the bathroom window, the Subject stood on top of a refrigerator that measured approximately 2½ feet wide by 2 feet deep and stood 5½ feet tall. The refrigerator was resting on a concrete walkway bordered on one side by the apartment building and on the other side by a planter and a block wall. The only avenue of escape was jumping off the refrigerator and fleeing along the walkway to the front or rear of the building, which was contained by numerous officers.

As the Subject stood on top of the refrigerator, he held his dog in one arm, with his cell phone in his hand, and in his opposite hand he held the wooden board he proceeded to swing toward the officers. The wooden board measured 19 inches long by 3½ inches wide and ½ an inch thick. Due to the short length of the board, the Subject could not extend his reach while holding on to the board to anyone beyond 12-18 inches away from the refrigerator.

Video evidence shows that the Subject swung the board, but did not attempt to throw the board, and that the officers were well out of his range of reach.

When the Subject was standing on top of the refrigerator swinging the wooden board, there were no exigent circumstances that required the officers to take immediate action to take physical custody of him. The area was surrounded by officers and the Subject was fully contained. Furthermore, the risk he posed had a limited range given the size of the wooden board and his limited mobility on top of the refrigerator. As there was no apparent means for the officers to safely remove

the Subject from on top of the refrigerator at that time, the appropriate course of action would have been to continue to contain him.

Deadly force can never be used for the sake of expediency, absent circumstances that would authorize the use of such force, and the difficulty of otherwise removing the Subject from the refrigerator in no way validates the lethal force used to take him into custody.

The BOPC found that at the time Officers A and E discharged their TASERs, there was no basis to reasonably believe that they or others were facing an imminent threat of death or serious bodily injury. As such, the BOPC found that the officers' use of the TASERs under circumstances that created a substantial risk of serious bodily injury was not objectively reasonable and was in violation of Department policy.