

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

**LAW ENFORCEMENT RELATED INJURY 089-08**

<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>
Rampart	10/15/2008		

<b><u>Officer(s) Involved in Use of Force</u></b>	<b><u>Length of Service</u></b>
Officer E	14 years, 2 months
Officer F	12 years, 2 months
Officer G	15 years, 4 months
Officer J	18 years

**Reason for Police Contact**

Victim A was assaulted by Subject 1, who slapped him and threw a rock directly at his face. Victim A advised his supervisors of the incident, and his supervisors called 911. Officers then confronted Subject 1 in his apartment building, where Subject 1 barricaded himself.

<b><u>Subject</u></b>	<b><u>Deceased ( )</u></b>	<b><u>Wounded (X)</u></b>	<b><u>Non-Hit ( )</u></b>
Subject 1: Male, 47 years old.			

**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; 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 September 8, 2009.

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.

## **Incident Summary**

Officers A and B were wearing plain clothes with their badges affixed to their belts and driving a marked police vehicle equipped with an overhead emergency light bar.

Victim A was delivering mail to a building when he was approached by a male resident of the building (subsequently identified as Subject 1). Victim A explained to Subject 1 that he had a certified letter for Subject 1 which required his signature. Victim A then handed the certified letter along with Subject 1's other mail to him. Subject 1 tore up all of his mail and threw it to the ground. When Victim A verbally objected to Subject 1's actions, Subject 1 challenged Victim A to fight and slapped Victim A's face. Subject 1 then struck Victim A on the right side of his face with a small rock. Victim A ran from Subject 1 and telephoned his supervisors, Witnesses A and B, and advised them what had just occurred. Witnesses A and B responded to Victim A's location and then called 911. As they were awaiting the arrival of a police officer, they observed Officers A and B driving and flagged them down.

Officer A notified Communications Division (CD) that he had been flagged down by a citizen regarding an assault with a deadly weapon investigation.

As the officers interviewed Victim A, they observed Subject 1 exit the apartment building and walk onto the sidewalk. Victim A pointed out Subject 1 and identified him as the subject who struck him. Officers A and B then identified themselves as police officers and ordered Subject 1 to stop; however, he did not comply and turned his back toward the officers.

Officers A and B walked toward Subject 1 who was approximately 15 to 20 feet away. Subject 1 suddenly turned toward them, holding a knife and pointing it in their direction. As both officers began to unholster their pistols, Subject 1 advanced toward them. Officer B indicated that Subject 1 was using the knife in a threatening manner, and Subject 1 came as close as 3 feet away. So simultaneously, Officer B stepped back and unholstered his weapon.

Subject 1 then turned away from the officers and began to walk back toward the apartment building. Officers A and B held their pistols at the low-ready position as they ordered Subject 1 to stop and drop the knife; however, he did not comply and walked into the apartment building. The officers then broadcast an officer needs assistance call.

The officers observed Subject 1 standing in front of a large window on the second story of the apartment building. The officers tried to convince Subject 1 to exit his residence and talk to them; however, Subject 1 would not comply.

Officers A and B assisted the responding units in establishing a perimeter around the apartment building. A Command Post (CP) was established. The Area Commanding Officer, Captain A, assumed the role of Incident Commander. Lieutenant A was notified

of the incident and contacted Lieutenant B at the CP by telephone. Lieutenant B briefed Lieutenant A regarding the attack on Victim A, Subject 1 charging toward Officers A and B with a large knife, and that verbal attempts to persuade Subject 1 to surrender had failed. Lieutenant A decided that the circumstances met the criteria for a specialized unit deployment and responded to the CP.

Area police officers evacuated the residents from the apartment building and established a perimeter to contain Subject 1. Specialized unit personnel responded to the CP and were given various assignments for trying to negotiate with Subject 1 and for entering the premises.

The entry team, Officers C, D, E, F, and G, wore tactical gear, including tactical body armor, ballistic helmets, and radio headsets.

After the officers were briefed by Sergeants B and C, the entry team, along with Sergeants B, C, and D, loaded into a vehicle and was driven to the apartment building, blocking the driveway with their vehicle to prevent any vehicles from leaving the location. The entry team then exited and took cover behind the vehicle.

Officer H, the entry team leader, surveyed the scene and decided that additional specialized personnel were needed to contain the perimeter and replace the patrol officers. Officer H requested that gas kits be deployed with the officers positioned on the perimeter.

Additional specialized unit officers were transported to the location from the CP. Officer H positioned those officers around the apartment building. Each pair of officers was equipped with both lethal and less-lethal weapons.

Meanwhile, an officer assigned to intelligence gathering contacted Subject 1's employer and learned that Subject 1 was absent without leave and would be terminated if he did not return to work by a certain date. This information was contained in the certified letter that Subject 1 destroyed upon delivery by Victim A. Utilizing Department resources, the negotiation team learned that Subject 1 had a history of narcotics abuse, including methamphetamine, and that several firearms were registered to him. The team notified all officers at the location of this information.

**Note:** Later, after the incident had concluded, it was determined that Subject 1 did not have any firearms registered to him.

Sergeant B and Officer H were concerned about Subject 1 coming out of the apartment building and confronting the officers with firearms, so they wanted to contain the building. There was a safety issue regarding officers in the building with a mobile subject, and officers could not predict when he would come out of the apartment.

A tactical plan was devised to have the entry team enter the first floor and lock all of the apartment doors to prevent Subject 1 from entering and to limit the number of apartments to be gassed.

Contact was established with Subject 1 by cellular phone, in an attempt to engage him in negotiations. Negotiations were unable to be established. Subject 1 told the negotiating officer that he wanted to kill him and "f\*\*k" his wife, mother, and children.

Lieutenant A characterized Subject 1 as a person in distress. He had been threatened or was facing termination from his job, as well as being divorced and a heavy drug and alcohol user.

Sergeants C and D and the entry team deployed in close proximity to the side of the house, which was near the rear of the apartment building. When Subject 1 appeared at a second story window, Sergeant C verbalized with Subject 1 in an attempt to get him to surrender. Sergeant C gave Subject 1 a warning that they may have to use teargas, which would be uncomfortable and cause him to be injured.

In the event Subject 1 did surrender, officers planned that the entry team would stay concealed inside a downstairs apartment, allow him to exit the front door, and let the perimeter officers take him into custody, to avoid a cross-fire.

When Subject 1 was present at the second story window, the entry team entered. The officers found themselves inside Apartment No. 1. Officers D and E checked the door to Apartment No. 2 to ensure the door was locked so as to prevent Subject 1 from entering. The entry team then positioned themselves in Apartment No.1 for approximately two hours while other officers attempted to negotiate with Subject 1. During this period, the entry team members received constant updates via radio on the status of the negotiations.

Officer I was summoned to the CP. Officer I was a Department-certified speaker in Subject 1's primary language. Officers thought Officer I would be able to establish a rapport by speaking to Subject 1 in his primary language. Officer I spoke to Subject 1 by telephone in an attempt to engage him in dialogue; however, Subject 1 told Officer I he wanted to "f\*\*k" the officer's wife and daughters. Officers also located Witness C, a neighbor of Subject 1, who also spoke Subject 1's primary language.

Subject 1 told Officer I he would come out if he could see Officer I. The negotiating team decided to transport Officer I and Witness C in an armored vehicle to the front of the apartment building where Subject 1 could observe them through the glass windows of the vehicle in an attempt to establish a dialogue. From inside the police vehicle, a public address (PA) system was utilized to communicate to Subject 1. Witness C and Officer I tried to establish a dialogue with Subject 1; however, they were not successful.

An officer on the perimeter also observed Subject 1 in the second story window holding onto a lanyard which was attached to the ceiling. Officer O indicated that Subject 1 started putting his neck in the noose, almost like he was trying to hang himself.

**Note:** In the event Subject 1 was to hang himself, Officer H had devised a tactical plan to rescue Subject 1.

Sergeant A and Doctor A advised Captain A, Lieutenant A, and the other officers assigned to the negotiating team that Subject 1 was not responding to their attempt to negotiate. Since Subject 1's demeanor had not changed in four or five hours, the officers did not believe they would have any more success in negotiation.

A discussion with Behavioral Sciences Services (BSS) occurred to determine if there was anything else to do to establish dialogue; but BSS seemed to believe that the officers would not be able to make significant progress, especially in light of their belief he was high on methamphetamine.

A tactical plan was developed to introduce gas into the second story in an attempt to force Subject 1 to surrender.

Captain A authorized the use of chemical agents. Sergeant B then notified the officers on the perimeter positions to fire gas rounds into the second story windows. Officers fired rounds into the windows on three sides of the apartment building.

**Note:** The entry team officers donned gas masks prior to the deployment of the gas and the water to the apartment building was turned off.

After the first volley of gas was introduced, Officer H directed his entry team to exit Apartment No. 1 and deploy in the foyer area at the bottom of the stairs. Officers C, D, E, F, and G approached the stairs, all armed with specialized weapons and/or instruments.

The officers heard Subject 1 coughing and moving about on the second story. Utilizing the PA system, the perimeter officers ordered Subject 1 to exit the building and surrender.

As the entry team waited for the gas to take effect, officers observed Subject 1 descending the stairs with knives in his hands. The officers ordered Subject 1 to drop the knives; however, when he observed the entry team, he retreated upstairs.

When Sergeant C attempted to verbalize with Subject 1 to surrender, Subject 1 responded by threatening the officers. Subject 1 said he would not come down and that the officers would have to "get him." Subject 1 also said he wanted to kill the officers.

Subject 1 threw a vacuum cleaner down the stairs. Officer E then moved up the stairs and elevated a search mirror to the second story landing to observe Subject 1's location and activity. Subject 1 threw objects at the mirror when he realized Officer E was observing his movements with the mirror. Subject 1 told Sergeant C that he was bleeding, then dropped a bloody tissue down the stairs. As the officers waited on the stairs, Subject 1 threw a knife at them.

Officer E obtained another mirror, elevated it above the banister to locate Subject 1, and observed that Subject 1 had lit a fire at the top of the stairs. Officer E then observed a liquid that was splashing down the mirror onto his hands and equipment. Due to their gas masks, the officers could not smell the liquid and assumed that it was water. Shortly after the liquid was splashed down the stairs, Subject 1 threw a can of lighter fluid down the stairs. Officers feared that Subject 1 was going to attempt to light them on fire.

The entry team heard Subject 1 enter a second story apartment and then quickly devised a plan to put out the fire. Another round of gas was introduced into three sides of the second story of the apartment building.

Officer H discussed a plan with Sergeant C to deploy hot gas as encouragement for Subject 1 to surrender. Sergeant C approved this action.

Captain A authorized the perimeter officers and Officer H to introduce hot gas through the windows on three sides of the apartment building. Officer H threw hot gas onto the second story landing. Officer H said it was quiet after the hot gas was thrown. Sergeant C said that officers decided to go up the stairs to the landing so they could contain Subject 1 in a smaller area.

Prior to moving up to the second story landing, Officer H requested that Officer J obtain a specialized less-lethal projectile launcher and respond inside the building to join the entry team. The officers then moved up the stairs to the second story landing and covered the closed apartment doors. The entry team could hear Subject 1 moving about inside Apartment No. 3.

Visibility was limited on the second story due to smoke and gas. A fan was requested from LAFD and was placed on the second story landing to assist in clearing the air.

Sergeant C attempted to establish a dialogue with Subject 1 to talk him into surrendering; however, Subject 1 would not comply and the officers could hear him screaming inside the apartment.

Officers C and H then introduced hot gas into Apartment No. 3 and through an unmarked door. Due to the lack of movement inside Apartment No. 3, however, Officer F believed that Subject 1 may have carried out his suicidal threats or that he was hiding.

Outside, officers extended a camera to view inside the window of Apartment No. 3. The officers discovered that Apartment No. 3 and the unmarked door were connected. Subject 1 was observed inside what appeared to be a closet and Officer N observed him holding knives. The officers saw what appeared to be a shotgun lying on the ground. This information was relayed to Sergeant A, who then passed it on to the entry team.

Officer H and Sergeant C formulated a tactical plan to breach the doors to Apartment No. 3 and the unmarked door in order to arrest Subject 1. Sergeant C discussed the tactical plan with Sergeant B, and approval was given by Captain A to proceed.

Officer D forced the unmarked door open. However, the door was barricaded with furniture from the inside and only opened one to two feet. Officer D stepped aside, deployed his rifle, and took a barricaded position. Officer J moved up to the open door but was unable to make entry due to the limited opening. Officer J saw Subject 1 inside a closet, approximately 15 feet away. Officer J observed Subject 1 holding knives in his hand and thrusting them in his direction. When Officer J ordered Subject 1 to come out of the closet and drop the knives, Subject 1 responded with profanity.

Officer J said that Subject 1 exposed himself with about three quarters of his chest, and Officer J fired one 37-millimeter round at his chest due to his threatening and combative manner, as well as for his safety and the safety of the team. After Officer J fired, Subject 1 retreated. Officer J observed the round strike Subject 1 in the chest.

Officer H then directed Officer E to breach the door to Apartment No. 3. Officer E forcibly opened the door, then Officer G moved inside the apartment living room area followed by Officers E and H, as well as Sergeant C.

Inside the apartment, the officers found another closed door which led into the bedroom where Subject 1 was located. The officers placed a high intensity light on the bedroom door to illuminate the interior when it was opened.

As Officer G opened the bedroom door he observed Subject 1 partially outside the closet holding a knife in his hand. Officer G ordered Subject 1, "Let me see your hands." Officer G said that Subject 1 started to move his arm. Based on the subject's aggressive combative behavior, he fired one round from his specialized weapon. Officer G did not know if he hit Subject 1 because there was no reaction from Subject 1, who appeared to conceal himself more.

As Officers E, G, and H entered the bedroom door, they alerted the other officers. Sergeant C told Officer G to fire again because Subject 1 still was not complying.

Officer G observed Subject 1 coming back out of the closet, again holding the knife. As he started to raise his arms, Officer G fired two more rounds. Subject 1 then returned to the closet. Officer G moved further into the room and came up against a desk and became pinned against it when Officer E entered the room behind him.

As Subject 1 emerged from the closet again, he still had a knife in his hand. Officer G still did not know what Subject 1's intentions were, in terms of whether he would charge or throw the knife. Due to Subject 1's aggressive combative behavior, Officer G fired two rounds, and Subject 1 again went deep into the room.

After the rounds struck Subject 1, Officer E observed Subject 1 lying on his back inside the closet, and it appeared that the rounds did not have any effect on Subject 1. Subject 1 was trying to get back out of the closet and still trying to fight, so Officer E deployed his TASER against Subject 1.

The TASER darts hit Subject 1 on the left side of his body. When Subject 1 tried to stand up, Officer E activated the TASER a second time. Officer G said that while he was climbing up onto a table while Subject 1 was being Tased, Officer G saw a knife. Officer H said that officers were continually ordering Subject 1 to see his hands.

Meanwhile, Officer D removed the door to Apartment No. 3, and Officer C moved inside the bedroom to provide lethal cover to the officers. As Officer C moved closer to the closet, he became entangled in the TASER wires. Simultaneously, Officer E activated the TASER a third time; however, Subject 1 did not seem affected and attempted to stand up. Officer E believed the TASER wires had been pulled out of Subject 1's body.

Before Subject 1 could stand up again, Officer H ordered Officer F to extract Subject 1 from the closet. Officer F ordered Subject 1 to show him his hands. Subject 1 just sat forward and tried to grab Officer F. Officer F then gave Subject 1 one front kick to his chest area, in order to drive him back away from Officer F and pull him out.

After Officer F pulled Subject 1 out of the closet, he rolled him onto his stomach, then placed both knees on his back. Officer J assisted by using a firm grip to bring Subject 1's left arm behind his back while Officer E used his body weight to pin Subject 1's legs down. Subject 1 was then flex-cuffed. Officer F escorted Subject 1 out of the apartment and searched him for weapons. None were found.

Subject 1 was then taken directly to LAFD personnel at the CP and treated for contusions to his left chest area, left armpit, right forearm, a possible TASER dart wound to his lower left leg, and lacerations to his hands. Subject 1 was transported by Rescue Ambulance to a local hospital for further medical treatment. Subject 1 was admitted to the hospital for surgery for a fractured left wrist and right forearm.

Upon notification that Subject 1 had been admitted to the hospital, Sergeant A notified all of the involved officers that the incident was now a Categorical Use of Force and instructed them not to discuss 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 found Sergeants B, C, and D's and Officers C, D, E, F, G, H, and J's tactics to warrant a Tactical Debrief.

**B. Drawing/Exhibiting/Holstering**

- The BOPC found Officers C, D, E, F, G, H, and J's drawing to be in policy.

**C. Non-Lethal Use of Force**

- The BOPC found Officers E, F, and J's non-lethal use of force to be in policy.

**D. Less-Lethal Use of Force**

- The BOPC found Officers E, G, and J's less-lethal use of force to be in policy.

**Basis for Findings**

**A. Tactics**

In adjudicating this incident, the BOPC considered that:

1. An assessment was conducted before the decision was made to deploy a chemical agent. Captain A authorized the use of chemical agents and all officers at the incident were advised that chemical agents were to be deployed. Sergeant C issued a warning to the subject of the deployment of chemical agent.

Therefore, the authorization to deploy a chemical agent was appropriate since the known circumstances met the criteria for handling the situation as a barricaded suspect incident and negotiation efforts had been exhausted.

2. SWAT officers breached the door and located the subject inside the closet and ordered the subject to exit; however, he failed to comply and continually thrust the knives in the direction of the officers, which was reasonably perceived as an attack on the officers. As a result, the less-lethal warning was not provided before the

initiation of such force. The subject's actions dictated the necessity to use less-lethal force options, wherein the officers' actions were in response to the subject's actions and used to thwart the subject's attack on the officers. It should also be noted that Sergeant C throughout the incident provided Subject 1 with verbal direction to submit to arrest or there was the potential that force would be used, which could cause him injury.

Therefore, the BOPC determined that the decision to forego the warning was reasonable and within Department policy.

3. While attempting to apprehend Subject 1, multiple officers issued verbal commands to Subject 1. In this instance, it would have been preferable for one officer to have been designated to give verbal directives to Subject 1.

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 and substantially deviated from approved Department tactical training."*

The BOPC found Sergeants B, C, and D's and Officers C, D, E, F, G, H, and J's tactics to warrant a Tactical Debrief.

## **B. Drawing/Exhibiting**

The officers were confronted by an ADW subject armed with a knife who barricaded himself inside his apartment. It was believed that the barricaded subject had firearms registered in his name, making it reasonable to believe that the subject had access to a firearm and that there was a substantial risk the tactical situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officers C, D, E, F, G, H, and J's drawing to be in policy.

## **C. Non-Lethal use of Force**

As Officer F approached the subject, the subject sat forward and tried to grab him. Officer F utilized a front kick to the chest area of the subject. Officer F grabbed the subject's left ankle and Officer E grabbed the subject's right leg before they pulled him out of the closet and rolled him onto his stomach. Officer F utilized his body weight, both knees on the subject, placing the subject's arm between his knees. Officer E utilized his body weight, placing his knees and hands onto the subject's legs. Officer J assisted Officer F with the subject's hands.

In this instance, Officers E, F, and J were confronted by a subject who continued to resist apprehension. The non-lethal applications of force were used to effect the subject's arrest.

Therefore, the BOPC found Officers E, F, and J's non-lethal applications of force to be objectively reasonable and, therefore, in policy.

#### **D. Less-Lethal use of Force**

Officer W observed the subject holding two knives in his left hand and thrusting the knives in his direction. Officer J fired one 37-millimeter round at his chest due to his threatening and combative manner and for the safety of himself and his fellow officers. Officer J fired one 37mm round at the subject.

Officer G fired one 37 mm round at the subject, who still had the knife in his left hand and started to make a poking motion from where he was located, and Officer G fired two more rounds. The subject still had the knife in his hand, and Officer G did not know whether Subject 1's intention was to charge or throw the knife. With his aggressive combative behavior, Officer G fired two additional rounds, and Subject 1 again went deep into the room.

The subject was trying to get back out of the closet and still trying to fight, so Officer E fired a TASER cartridge at the subject with the TASER probes making contact with the subject's left side of his body.

In this instance, the subject displayed aggressive and combative behavior prior to each less-lethal application of force. The subject's behavior and access to and possession of edged weapons created a circumstance wherein conventional tactics would have been ineffective because it was unsafe to approach within contact range of the subject.

Therefore, the BOPC found that Officers E, G and J's less-lethal applications of force to be reasonable.

The BOPC found Officers E, G and J's less-lethal use of force to be in policy.