

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

OFFICER INVOLVED SHOOTING - 030-05

<u>Division</u>	<u>Date</u>	<u>Duty-On () Off(x)</u>	<u>Uniform-Yes() No(x)</u>
Wilshire	4/4/05		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	3 years, 5 months

Reason for Police Contact

An off-duty officer confronted a suspect who earlier had made several threatening telephone calls. The suspect appeared outside the officer's home shouting and the officer believed that the suspect was vandalizing the officer's personal vehicle parked on the street. The officer confronted the suspect and an officer involved shooting occurred.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (x)</u>
Subject 1: Female, 28 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 Chief 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 March 28, 2006.

Incident Summary

In the evening hours of April 4, 2005, Subject 1 called the residence of off-duty Officer A, asking for Officer A's nephew. Officer A's nephew had been staying with the officer's family. Officer A responded that his nephew was not home and the caller then requested to speak to another person. At this time, Officer A inquired who was calling and the suspect responded angrily, cursing at Officer A. Not recognizing the caller and not wanting to deal with the caller's hostility, Officer A hung up. Within seconds of

hanging up, the caller called again demanding to know why she was hung up on and demanding to know whom it was on the telephone. During this conversation, Subject 1 continued to curse and to verbally abuse Officer A. Again, Officer A hung up. Subject 1 called again, however this time Officer A had his wife answer the telephone. Subject 1 then became verbally abusive to Officer A's wife. Officer A heard the call conclude with his wife's comment "You're a bitch." Almost immediately, the telephone rang again. Officer A picked up the telephone and hung it up without answering. The telephone rang again and Officer A did the same with the telephone, picking it up and immediately hanging it up.

Officer A retired to shower. When Officer A returned, his wife informed him that Subject 1 had called again and threatened her. According to Officer A's wife, Subject 1 stated that she knew where they lived and that Subject 1 threatened to come to the house with friends to "fuck up" Officer A's wife. Officer A did not consider the threat from the unknown caller to be credible. There was an additional telephone call from the same caller that Officer A's wife let cycle to an answering machine. The message recorded stated: "Who's laughing now, scaredy-cat."

Approximately 45 minutes after the first call to Officer A's residence, Officer A's wife heard a disturbance outside the residence. Looking outside, she observed two males and two females in the street directly outside the residence. She also observed one of the females make a throwing motion that appeared aimed at Officer A's vehicle parked in front of the residence. Officer A was watching television when he heard his wife shout that someone was out front. Officer A's wife also believed she told her husband the people outside were vandalizing the family vehicle.

Officer A retrieved his service pistol from its holster located in his duffel bag in the room where he was watching television. Officer A proceeded outside to deal with the individuals in the street. At this time he was carrying the weapon down to his side. As he left the house he instructed his wife to call the police. When Officer A left the residence, he was attired in sweatpants and a blue T-shirt with no markings or identification to suggest that Officer A was a law enforcement officer. He carried no equipment other than his service pistol. When Officer A retrieved his pistol, he also did not retrieve his badge or any identification of the Los Angeles Police Department. When addressing the group, Officer A did not identify himself as an off-duty police officer.

Officer A, with his pistol held alongside his leg, moved across the front lawn of his residence to obtain a view of the individuals in the street. Unknown to Officer A, his wife had followed him from the residence to the curb of the street. Officer A addressed the group, instructing them to keep their distance and that if they had an issue with his nephew, they should take it up with him and not come to his (Officer A's) residence. When members of the group observed Officer A with his pistol, three of the group moved to the opposite side of the street. Remaining across the street from the group, Officer A directed his wife to return to the residence and to call the police. When Officer A's wife left to return to the house, Subject 1 grew verbally abusive, taunting Officer A and his wife about calling the police when it was Officer A that had pulled a gun on her.

Once inside the residence, Officer A's wife instructed another nephew to call 911. She then returned to the street with her husband, where she heard Subject 1 state that she had family in the Mexican Mafia and further threaten Officer A for brandishing his gun on her. When Officer A's wife returned to the street, Subject 1 seemed to become more agitated with her presence. Subject 1 walked to Officer A's wife challenging her to fight. Officer A attempted to push Subject 1 away from his wife, but Subject 1 reached out and grabbed the front of Officer A's wife's shirt. Officer A's wife, in response, pushed Subject 1 away, freeing her of Subject 1's grip on her clothing.

Subject 1 walked back to the curb where the other three individuals were, reached down and picked up an object, circled around her friends to the front lawn of the residence across the street from Officer A's residence. Both Officer A and his wife remained in the street when Subject 1, making a stabbing style motion with the object in her hand began to advance on Officer A and his wife. When Officer A's wife observed the object in Subject 1's hand, she warned: "She has a knife."

As Subject 1 advanced toward Officer A and his wife with what they perceived to be a knife, Officer A fired a single "warning shot" into the lawn between Subject 1 and the three individuals that accompanied her to the location. The round struck the lawn approximately 25 feet from where Officer A fired it.

The item retrieved by Subject 1 that was perceived by Officer A and his wife to be a knife was a dinner fork that Subject 1 had brought to the scene. Several witnesses observed Subject 1 pick up an object and those witnesses described that object as a number of things ranging from a "metal object" to a fork.

Subject 1 fled the scene to the back residence of the nearby home. She walked into that residence through an unlocked door surprising the 14-year-old male occupant who was in the residence playing video games. Subject 1 then used the telephone in that back residence to call 911. Meanwhile, the mother of the teenager heard the gunshot and attempted to call 911, but could not get through. The mother went to check on her son and found Subject 1 there with her son on the telephone with the 911 operator. When the jurisdictional law enforcement agency arrived, the mother escorted Subject 1 to the front door of her residence to meet the officers. The jurisdictional law enforcement spoke to Subject 1 and took her into custody.

As the officers of the jurisdictional law enforcement agency arrived, Officer A identified himself as a Los Angeles Police Department officer. He placed his service pistol on the ground and complied with the commands of the jurisdictional law enforcement agency officers and was handcuffed pending a preliminary investigation by that agency. Officer A and Subject 1's three friends who were also taken into custody were later released. Subject 1 remained in custody and was charged with, and later convicted of, one count of making terroristic threats.

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 Officer A's tactics deficient warranting administrative disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC found Officer A's drawing and exhibiting to be out of policy, warranting administrative disapproval.

C. Non-Lethal Use of Force

The BOPC found Officers A's non-lethal use of force to be in policy.

D. Lethal Use of Force

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

Basis for Findings

A. Tactics

The BOPC noted that Officer A received several telephone calls of a threatening nature from an unknown female and that, approximately 45 minutes later, Officer A was alerted by his wife that someone was throwing objects at his vehicle, which was parked in the street in front of his residence. The BOPC considered that Officer A ignored the earlier warning signs and threats that were made by Subject 1, and that Officer A failed to give clear direction to his family to remain in the residence where they would be safe and to ensure that the local police were notified. The BOPC also noted that Officer A armed himself with his personally owned pistol, drawing it from a nylon holster, and left the holster in his residence. Officer A elected to confront the subjects, who were possibly committing a property crime, in front of his house. The BOPC observed that Officer A's tactical decisions left him with few tactical options and placed him at a tactical

disadvantage because he did not have the equipment items an on-duty officer would routinely have such as a uniform, identification card, radio, body armor, handcuffs, baton, Oleoresin Capsicum Spray, etc.

Further, the BOPC noted that Officer A exited his residence and, as he did so, instructed his wife to notify local law enforcement. However, there was no urgency to confront the subjects. The subjects were possibly committing a property crime only and posed no immediate threat to Officer A. The BOPC would have preferred that Officer A had remained inside his residence, stayed with his family, personally notified the local law enforcement agency and identified himself as an off-duty Los Angeles Police officer. The BOPC was also concerned that when Officer A exited his residence, his wife accompanied him outside. The BOPC noted that as Officer A confronted the subjects he did not adequately utilize cover afforded to him such as his vehicle, but stepped into the middle of the street while attempting to verbalize with the subjects. The BOPC also noted that Officer A did not maintain distance from the subjects and did not identify himself as a police officer, which may have diffused the situation.

The BOPC determined that Officer A's deficient tactics unnecessarily placed himself and his family at risk of injury. The BOPC noted that while the law is specific in recognizing that an officer does not have to retreat and is not considered the aggressor when dealing with criminals, confronting subjects without the benefit of sufficient backup, tactical equipment and communications constitutes poor tactics.

The BOPC determined that Officer A's tactics were seriously deficient warranting administrative disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC noted that Officer A exited his residence with an unholstered pistol to confront the subjects. The lack of a holster as well as his attire (wearing sweatpants and a T-shirt during the incident), precluded Officer A from having the ability to secure his pistol. The BOPC further noted that when Subject 1 approached and physically assaulted his wife, Officer A placed his pistol close to his body as he utilized his free hand to push Subject 1 away. The BOPC considered that Officer A's tactical and use of force options were severely limited as the incident unfolded. Further, the BOPC considered that when Officer A unholstered his firearm inside his residence, there was no threat which would have reasonably led him to believe that a deadly force situation may occur. In addition, the decision of Officer A's to unholster his pistol was premature as, at that time, the subjects posed no immediate threat and his decision to unholster his weapon limited his tactical and use of force options.

The BOPC found Officer A's drawing, exhibiting and holstering to be out of policy warranting administrative disapproval.

C. Non-Lethal Use of Force

The BOPC noted that as Officer A attempted to verbalize with the subjects, Subject 1 approached and physically assaulted his wife by grabbing the front of her T-shirt. In response, Officer A placed his pistol close to his body and utilized his free hand to push Subject 1 away.

The BOPC found that Officer A's non-lethal use of force was reasonable to overcome Subject 1's actions and was, thus, in policy.

D. Lethal Use of Force

The BOPC considered that Officer A's wife alerted him that Subject 1 was armed with a knife. Officer A then focused his attention on Subject 1 and observed a metallic object, which he believed to be a knife, in Subject 1's hand. Officer A ordered Subject 1 to drop the weapon but she failed to comply and advanced toward Officer A and his wife while making overhand stabbing motions. The BOPC noted that Officer A, believing Subject 1 posed an immediate threat to him and his wife and in an effort to dissuade Subject 1 from further aggressive action and prevent the situation from escalating to the point where lethal force was necessary, opted to fire a single "warning shot" from a distance of approximately 25 feet. Officer A fired the "warning shot" in a downward direction into the grassy area near where Subject 1 was standing. When Officer A fired the "warning shot," he was aware there was a residence with a large plate glass window behind Subject 1.

The BOPC noted that although "warning shots" are generally prohibited, in this incident it was reasonable for Officer A to believe that Subject 1 posed an immediate threat of serious bodily injury or death. As a result of firing the "warning shot," Subject 1 stopped her advance and ran away. The BOPC found that it is likely that Officer A's decision to fire a "warning shot" prevented him from having to use lethal force on Subject 1.

The BOPC found Officer A's use of lethal force, a "warning shot," to be in policy, but warranting formal training.