

INVESTIGATION

SUBJECT: LOG #1027383 / U#09-22

OFFICER #1

INVOLVED: “Officer A” (Chicago Police Officer); Male/Black; 27 years old;
On-Duty; In Uniform; Year of Appointment – 2006

OFFICER #1

INJURIES: None reported.

OFFICER #2

INVOLVED: “Officer B” (Chicago Police Officer); Male/White; 26 years old;
On-Duty; In Uniform; Year of Appointment – 2006

OFFICER #2

INJURIES: None reported.

SUBJECT: “Subject 1”; Male/White; 33 years old

SUBJECT’S

INJURIES: Gunshot wound to the left side of his forehead, the right temporal region of his head, his right cheek, a through and through gunshot wound of the left knee, and two graze wounds to the left elbow and right pinky finger. Fatal

INITIAL

INCIDENT: Stolen Vehicle

**DATE/TIME/
LOCATION OF
INCIDENT:**

16 JUNE 2009, 1833 hours. XXXX S. Talman
Beat 911

SUMMARY OF INCIDENT:

On 16 June 2009, Officer B, and Officer A, responded to a call of a domestic disturbance at XXXX S. Talman. Upon arrival, the officers learned that a man was inside, intoxicated, and armed. Officers A and B entered the home through the rear door with approximately eight other officers. The officers found the home in disarray with shell casings and three apparent bullet holes in a kitchen cabinet. Initially, the officers did not find anyone in the home. After speaking with CPD Sergeant 1, the officers searched the attic, accessible by the furnace room on the 3rd floor. Officer C and Officer B entered the furnace room by standing on duct equipment and were able to see a crawlspace. In that space they observed the subject, Subject 1, holding a gun and lying face down. Subject 1 threatened to shoot the officers and ignored repeated requests to show his hands.

On the 2nd floor below Subject 1, Officer A positioned himself just beneath the ceiling and to the right of where he believed Subject 1 was located in the crawlspace based on Subject 1's voice and movements in the ceiling. Officer B continued to give verbal commands which Subject 1 refused and which Officer A could hear. Subject 1 pointed his gun at Officer B and Soto at which time Officer B yelled "shoot" and shots were fired. Hearing this, Officer A, fearing for the lives of Officer B and Soto, fired through the ceiling and in the direction of Subject 1. After the shooting, Officer B continued to call out to Subject 1 to show his hands and exit the attic but received no response. The officers did not know if Subject 1 was wounded or merely refusing to exit the attic. As a result, the Hostage Barricade Team (HBT) was called. After the HBT team conducted a search of the area, Subject 1 was found lifeless with multiple gunshot wounds.

INVESTIGATION:

According to **IPRA Investigator A's Roundtable Report**, officers responded to a domestic disturbance at the location of XXXX S. Talman. Upon arrival, the officers were met outside by Witness 2, the brother of Subject 1, and Witness 3, the nephew of Subject 1. Witness 2 reported that Subject 1 was inside of the house in the 2nd floor apartment armed with a gun. Witness 1, Subject 1's mother, fled the home after Subject 1 started discharging his weapon. After additional officers arrived on the scene, via the back door, they announced their office. The officers entered the apartment, searched it, and failed to find Subject 1. As the officers were leaving, and under the belief that Subject 1 was no longer in the building, officers learned that there was a crawlspace inside that was only accessible via the furnace room. The officers re-entered the residence, checked out the crawlspace, and observed Subject 1 in the crawlspace. The officers ordered Subject 1 to exit the crawlspace but he refused to comply. Subject 1 brandished a chrome handgun and fired it. In fear of their lives, officers returned fire through the entrance of the crawlspace as well as through the ceiling into the area where Subject 1 was believed to be hiding. The officers again gave verbal direction to Subject 1 but did not get a response from him. The officers requested assistance from the Special Weapon and Tactics (SWAT) Unit. Officers from SWAT observed Subject 1 in the rear of the crawlspace but were still unable to get him to respond. The SWAT Unit discharged OC spray from a pellet gun into the crawlspace. The officers poked holes into the ceiling and were able to observe Subject 1 who was motionless. One of the SWAT officers climbed into the crawlspace and removed the handgun that Subject 1 was clutching to safely secure the scene. Chicago Fire Department (CFD) Personnel were called to the scene but they did not continue any additional life saving efforts after learning that Subject 1 did not have a pulse.

Witness 1 related to the **Roundtable Panel** that both she and her son, Subject 1, lived at XXXX S. Talman. Witness 1, related that on 16 June 09, Subject 1, who had been drinking alcohol earlier that day, confronted her about \$5.00 U.S.C. that he thought she took from him. After Witness 1 told Subject 1 that she did not take his money, he became more agitated and eventually threw a phone, breaking it along with a mirror and cell phone. Witness 1 stated that she asked her son what was going on and he retreated into his room only to return with a gun which he pointed at himself while threatening to kill himself. Subject 1 then fired several shots in the kitchen but did not point the gun at Witness 1 or himself. Witness 1 stated that she struggled with Subject 1 in an attempt to take the gun but was unable to get it. Witness 1 then ran out of the home to her other son, Witness 2's, home nearby; Subject 1 remained in the house. Witness 2 called the police and went to Witness 1's home to meet the police. Witness 1 stated that Subject 1 had recently become depressed after learning that his girlfriend had been having an affair. Subject 1 had become violent towards his girlfriend but had never been as violent as the day of the incident.

Witness 2, brother of Subject 1, related to the **Roundtable Panel** that on 16 June 2009, he arrived home from work around 5:00 pm and a short while later his mother, Witness 1, arrived at his home very upset. According to Witness 2, Witness 1 was upset because Subject 1 was at her house shooting a gun. Witness 2 called the police and then went to his mother's house with his son, Witness 3. Witness 2 recalled that when he arrived at the home, he related to the officers on the scene what his mother told him. After more officers arrived on the scene, the officers entered the residence. Witness 2 never saw his brother, Subject 1, or the gun he allegedly had.

Witness 3 related to the Roundtable Panel essentially the same account of the incident as his father, Witness 2. Witness 3 related that Witness 1 told him and his father that Subject 1 was shooting inside of the house. Witness 3 observed scratches and bruises on Witness 1's neck and arms. Witness 3 and Witness 2 went to Subject 1's home to meet the police. After searching the house and not finding Subject 1, the officers exited the residence and informed Witness 3 and his father that they could not find Subject 1. The officers allowed Witness 2 and Witness 3 inside the house and into the 2nd floor apartment, where they began to clean up the mess Subject 1 created in the kitchen. Some officers returned to the residence and proceeded upstairs to the attic. Witness 3 told the roundtable that he heard the officers tell his uncle, Subject 1, to come down and heard his uncle say "you guys are going to shoot me" to which Witness 3 heard officers respond "we're not going to shoot you." Later, Witness 3 heard five-to-six shots but did not hear his uncle's voice anymore. Witness 3 had last seen Subject 1 thirty minutes prior to Witness 1's arrival at his house. He stated that his uncle, Subject 1, who appeared to be drunk, had fallen asleep on the toilet.

CPD Sergeant 2 related to the Roundtable Panel that he is a member of the SWAT team that responded to the incident at XXXX S. Talman. CPD Sergeant 2 stated that when he arrived, he went upstairs to the furnace room area and observed that the subject, Subject 1, had crawled down to the east area of the attic. After receiving no verbal response, CPD Sergeant 2 stated the officers fired a small amount of OC gas in his direction. Still receiving no response, they poked holes and, using mirrors, observed Subject 1 face down with a gun in his left hand. CPD Sergeant 2 climbed up into the crawlspace and checked Subject 1's pulse. Finding none, he removed the weapon from Subject 1's hand. CPD Sergeant 2 noted that Subject 1 appeared to have one or more wounds to his face.

CPD Detective 1 related to the Roundtable Panel that he examined the body of Subject 1 as it was being removed from the crawlspace and observed gunshot wounds to his left and right temple and possible gunshot wounds to his cheek, left elbow, and left knee.

Officers A, B and C did not give statements to the Roundtable Panel due to the initiation of this CR investigation.

In a statement to the Independent Police Review Authority on 17 Jun 2009, **Witness 3** provided a statement consistent with the statement he made to the Roundtable Panel on the day of the incident.

In a statement to the Independent Police Review Authority on 17 June 2009, **Witness 1 provided** an account of events consistent with her statement to the Roundtable Panel on the day of the incident.

In a statement to the Independent Police Review Authority on 17 June 2009, **Witness 2** provided a more detailed account about the incident in question. He stated that that on the date and time in question, he was at home when his mother, Witness 1, arrived and informed him that she had gotten into an argument with his brother, Subject 1, over money. Witness 2 recalled his mother telling him that Subject 1 was breaking things in the kitchen and then went to retrieve his gun. Upon returning with his gun, his mother told him that Subject 1 started firing his gun in the kitchen. Witness 1 related that she took the gun away from Subject 1 but he took it back, at which time, Witness 1 left for Witness 2's home. Witness 2 then called the police and went to his mother's house. When he arrived at the home, he encountered two uniformed officers

outside. Witness 2 stated that he told the officers what his mother told him. While he was speaking to the officers, Witness 2 recalled that other officers arrived at the home and went inside. Witness 2 recalled the officers being in the home for about 15 to 20 minutes when several of them came out. Witness 2 stated that he entered the home after receiving permission from the officers. He retrieved a picture of his brother for the officers. Witness 2 exited the home only to re-enter it a short time later and proceed upstairs to the 2nd floor. While on the second floor, he heard officers say, "Hey get out of there," and heard his brother Subject 1 reply, "No, if I get out you are going to shoot me!" The officers responded that they were not going to shoot him. Witness 2 stated that a couple of minutes later he heard four or five shots, at which time officers ordered Witness 2 and his son, Witness 3, out of the house. Witness 2 stated that he thinks his brother was drunk and noted that his brother also used marijuana.

In a statement to the Independent Police Review Authority on 17 June 2009, **Witness 4**, who is first-cousins with Subject 1 and Witness 2, stated that he rents a room on the third floor of the building located at XXXX S. Talman. Witness 4 stated that on 16 June 2009 at approximately 4:30 pm, he was at home watching television when he heard noise coming from the 2nd floor apartment. Witness 4 recalled that it sounded like someone was throwing things around but did not know who it was and did not hear any voices. Shortly thereafter, three white male police officers entered his apartment and began asking him questions. Witness 4 did not understand the questions because he does not speak or understand English very well. Witness 4 said the officers left and shut his door. A few minutes later, Witness 4 heard the officers telling someone to "get down" but he did not know who they were talking to. Shortly thereafter, he heard approximately four gunshots. One of the officers then told Witness 4 that he had to evacuate the building.

The **Office of Emergency Management Communications records for 16 June 2009** documented that on 16 June 2009, at 17:46:23 hours, Witness 2 called 911 to report that his brother was intoxicated and firing a gun inside his mother's home located at XXXX S. Talman. The same day, at 18:33:31 hours, a female caller, who identified herself as [Girlfriend], stated that her ex-boyfriend, Subject 1, was violating an order of protection by calling and leaving messages on her phone. According to [Girlfriend], Subject 1 was threatening to kill her or the people she was with. [Girlfriend] stated that she believed Subject 1 was carrying a gun and riding around in one of his cars. [Girlfriend] further informed the dispatcher that Subject 1 uses alcohol, marijuana and cocaine and was currently staying at his mother's house located at XXXX S. Talman. At approximately 1805 hours, the dispatch communication provided the description of Subject 1 as a 30-year-old male, Hispanic with shag haircut and a left arm covered in tattoos. Dispatch communications documented that the offender was hiding in the attic of the home. A call over the radio of shots fired by police was made at 18:33:00 hours. HBT was notified at 18:43:00 because the officers could not tell if the offender had been hit or was still armed in the attic and alive.

Tactical Response Reports (TRR) were prepared by the involved officers. Officer C TRR's documented that he was standing next to Officer B when Subject 1, who was categorized as an assailant, pointed a chrome semi-automatic handgun at both of them. The only force options utilized by Officer C were his presence and verbal commands. A TRR completed by SWAT Officer I documented that he discharged a chemical weapon with proper authorization from CPD Sergeant 2 after Subject 1 had previously threatened other officers with a handgun. The TRR completed by Officer A documented that Subject 1 placed other officers in imminent

threat of battery when he refused verbal commands to drop his weapon. After Officer A heard shots fired, he discharged his weapon through the ceiling in an attempt to neutralize the threat. Officer B's TRR reported that Subject 1 placed Officer B in imminent threat of battery when he pointed a handgun at him and other officers. In response to Subject 1's threat, Officer B fired two rounds at Subject 1.

The Officer's Battery Reports documented that Officers B and C were on-duty when an offender pointed a handgun at them. The reports further stated that the subject refused verbal commands to display his hands and surrender to the officers and made verbal threats to kill Officers B and C repeatedly before producing a handgun and pointing it at the officers. Officer B's OBR additionally reported that he fired two rounds at the offender.

Domestic Battery Case Report, was generated on 16 Jun 09. According to the report, Witness 1 alleged that she was battered by her son, Subject 1, when he used his hands, feet and teeth to cause her abrasions about the body. The investigation was closed once it was determined that Subject 1 was deceased.

Justifiable Homicide Case Report, documented under HR-382026, and **Aggravated Assault to PO Case Report**, documented under HR-379025, related the same information as contained in the "Summary of Incident" section of this document as well as the accounts provided to the detectives at the Roundtable Panel.

Case Supplementary Reports documented that Subject 1 committed aggravated assault of a police officer with a handgun.

A post mortem examination of Subject 1 revealed that Subject 1 sustained a gunshot wound to the left side of his forehead, the right temporal region of his head, his right cheek, a through and through gunshot wound of the left knee, and two graze wounds to the left elbow and right pinky finger. The bullets recovered from the back of the neck and mid torso area were the same diameter while the bullet recovered from the skull/brain area was of a slightly larger diameter than the other two. The skin surrounding the entrance wound to his right temple showed stippling in an area 2.5 inches in diameter. The remaining gunshot entrance wounds showed no evidence of close-range firing. The cause of death was multiple gun shot wounds and the manner of death was ruled a homicide. The toxicologic analysis results revealed that Subject 1 tested positive for ethanol and negative for opiates and benzoylecgonine. The Medical Examiner's photographs taken of Subject 1 were consistent with the finding of the medical examiner.

Evidence Technicians who responded to the location of incident recovered and inventoried Officer B's Sig Sauer, Model P220, .45 caliber, semi-automatic handgun; Officer A's Smith and Wesson, Model 5943, 9millimeter semi-automatic handgun; and Subject 1's Phoenix Arms, Model Raven. .25auto, semi-automatic handgun. No fired evidence was recovered in the crawlspace where the shooting took place.

Illinois State Police Laboratory Reports indicated that Officer A's 9mm Smith and Wesson (Inventory# 11701622) and Officer B's .45 caliber semiautomatic Sig Sauer pistol (Inventory# 11701597) were both test fired and found to be in firing condition. The weapon recovered from Subject 1, a .25 semiautomatic Phoenix Arms pistol (Inventory #11701641), revealed no latent prints suitable for comparison and was also test fired and found to be in firing condition. Test results of the Gun Shot Residue Kit administered to Subject 1 revealed that

Subject 1 may have discharged a firearm or may have been in the environment of a discharged firearm.

On 15 June 2010, Witness 1 filed **Civil Suit** against the City of Chicago and the involved officers. The civil suit was subsequently dismissed for want of prosecution.

In a statement to the Independent Police Review Authority on 30 June 2009, **Witness Officer C** stated that on 16 June 2009, he and his partner responded to a call of a person with a gun on the 5400 block of Talman. Officer C recalled that once they arrived, they went to the rear of the address and entered the home. Upon entering, he went to the second floor where other officers were already located and saw the entire kitchen area in complete disarray. Officer C and the other officers did a room-by-room search of the home and could not find the offender. Officer C stated that the offender's brother arrived and told the officers that his brother had a chrome-colored, semi-automatic gun and also stated that his brother was a gang member. Shortly after that, Officer C recalled CPD Sergeant 1 arriving and informing the officers that he was aware of the offender from a previous incident when he hid in the attic portion of the building. At that time, Officers A, B, C and H accompanied CPD Sergeant 1; he showed them the area near the furnace, which led to a crawlspace where CPD Sergeant 1 previously found the offender hiding. Officer C recalled Officer B climbed up on the ventilation duct and raised his head to look in the area. Officer C said they then realized Subject 1 was hiding in the crawlspace. Officer C stated that he took his flashlight and CPD Sergeant 1's flashlight and shined a light on the offender in the crawlspace. Officer C gave instructions to see the offender's hands; Subject 1 replied "fuck you, you are going to have to kill me. I'm going to kill you motherfuckers." Officer C said the offender then began digging into the insulation with one hand and produced a semi-automatic handgun with his right hand. Officer C stated that he then yelled "gun," as Subject 1 twisted to point the gun toward him. Officer C stated that he said "he is going to shoot" and noted that Subject 1's weapon was pointed directly at him. Officer C recalled Subject 1 being about 10 to 15 feet away from him. Officer C recalled hearing a shot go off and pass him; Officer B returned fire. Officer C said he then let go of the ceiling which he was holding onto, grabbed Officer B's left shoulder and they both fell. Officer C recalled that then he and Officer B left the furnace room and the building. Officer C stated that the SWAT team was then called and when they arrived, he went back into the building and showed them where Subject 1 was hiding.

Upon questioning, Officer C stated that he did not hear Subject 1 state that he would kill himself and did not hear anyone tell Officer A to position himself under Subject 1. Officer C further stated that he did not witness Officer A shoot. Officer C explained that he and Officer B gave Subject 1 several verbal commands to show his hands which Subject 1 ignored. Officer C stated that he was in fear of his life when the weapon was pointed at him by Subject 1. He did not recall hearing Subject 1 tell them that he believed they would shoot him. Officer C explained that Officer B had no choice but to shoot once Subject 1 pointed his gun at them. Officer C did not learn that Subject 1 was dead until SWAT officers told him hours later.

In a statement to the Independent Police Review Authority on 02 July 2009, **Witness Officer D**, stated that on 16 June 2009 he was working with his partner, Officer B, when they responded to a call from Beat 911 of a person with a gun at XXXX S. Talman. Officer D remained in the stairwell of the building and never entered any of the units. Officer D was on the

stairs when the shots were fired and recalled hearing two rapid shots, and a half-second later, hearing four more shots.

In a statement to the Independent Police Review Authority on 02 July 2009, **Witness Officer E**, stated that he was on-duty and working with his partner, Officer F, on 16 June 2009 when he responded to XXXX S. Talman at approximately 1833 hours. Officer E was in the backyard when he heard around five shots fired. Officer E never saw the offender or the officer who fired the shots.

In a statement to the Independent Police Review Authority on 06 July 2009, **Witness Officer F**, stated that on 16 June 2009, he was on-duty and working with his partner, Officer E. The two were assigned a call of a man with a gun. Upon arrival on the scene, Officer F stated that he remained in the hallway while other officers continued upstairs and he heard a lot of shouting but could not make out what was being said. Officer F next heard five or six shots and then he exited the building to locate his partner.

In a statement to the Independent Police Review Authority on 07 July 2009, **Witness Officer G**, stated that on 16 June 2009, he was working with his partner, Officer A, when the two responded to a call of a domestic disturbance with shots fired. Officer G said that at some point he heard over the radio that HBT was on its way. Officer G recalled going outside and seeing someone trying to break out of the side window. Upon seeing this, Officer G stated that he ran inside and while inside he heard 10-13 shots fired.

In a statement to the Independent Police Review Authority on 08 July 2009, **Witness Officer H**, stated that he was on duty with his partner Officer C on 16 June 2009. He recalled that the two were in a marked Chevy Tahoe when they responded to a call for request for additional units on the scene of a drunken family member who was shooting in the home. While on the scene, a family member of the offender informed officers that the offender had been shooting at the mother and was in possession of a chrome weapon. Officer H recalled that the officers could not find the offender in the home and exited. According to Officer H, shortly thereafter, CPD Sergeant 1 came to the scene and he and other officers went upstairs in the home to check the boiler room in the attic apartment for the offender. Officer H stated that he entered the building twice. The second time was to check the third floor which was when they encountered a Hispanic male in his 50's who said he had not seen anyone. Upon questioning, Officer H explained that Officer C and Officer B were standing in the boiler room; CPD Sergeant 1 was to the right of Officer H, and Officer A was down the hallway and to the rear. Officer H explained that Officer B went on top of the vent, checked the crawlspace and let them know that the offender was up there. Officer B then asked Officer C to stand on the vent with him because he needed more light. Officer H recalled them talking to Subject 1 and asking him to come down. Officer H recalled Subject 1 yelling "you either shoot me or I'm going to shoot you." Next, Officer H heard someone saying "he has a gun, he is going to shoot." Officer H recalled one of the officers asking Subject 1 to show his hands but could not recall which officer it was. Officer H explained that he heard multiple shots but was not sure who was firing and how many shots were fired. He stated that he did not see any officer fire into the crawlspace/attic while on the floor beneath the crawlspace. Officer H further explained that there were no lights in the boiler room and everyone was using their flashlights. After the shots were fired, CPD Sergeant 1 gave the instruction to call HBT.

In a statement to the Independent Police Review Authority on 01 August 2011, **Accused Officer A**, stated that on 16 June 2009, he was working a beat car with Officer G. Officer A stated that he responded to a call of a person with a gun in the area of XXXX S. Talman. Officer A did not recall receiving a description of the offender over the radio. Upon arrival at the scene, Officer A stated that he was approached by a family member of the offender who informed him that the person inside was intoxicated and was shooting at his mother. Officer A stated that there were other officers on the scene, including Beat 911, and Officers B, E and F. Officer C arrived shortly after Officer A. After speaking with the male relative, Officer A stated that he and Officer B entered the house in an attempt to clear it. Officer A recalled that the second floor of the home was in complete disarray, with tables and appliances flipped over and shell casing in the kitchen. Officer A recalled that the bedroom was also in disarray, with a machete lying on the bed. Officer A stated that he asked Officer C to secure their backs while they cleared the second floor. The officers did not find anyone on the second floor. It was then that Officer A recalled CPD Sergeant 1 arrived on the scene and told them that there was an attic. Officer A stated that the officers next went to search the attic for the offender. Officer B located a small crawlspace in the attic which was where the offender was hiding. Upon questioning, Officer A explained that there was a little area that resembled a closet in the attic. If one stepped into that area, there is something that resembled a furnace that you could stand on and see into the roof. Officer A recalled Officer B instructing the offender to put down his gun and come out of the space. Officer A stated that, in response, the offender yelled "I wonder if I can kill you" and "leave me the fuck alone. I'm not comin' out. I'm not puttin' down the gun."¹ Officer A recalled that Officer C was right next to Officer B holding a flashlight to permit him to see into the crawlspace. Officer A stated that the offender was trying to get on the roof of the building by punching holes into the roof. Officer A stated that he then positioned himself underneath where the offender was hiding. Officer A knew where this was by the offender's yelling and movements in the ceiling.

Upon questioning, Officer A stated that he recalled Officer C yell, "he's shooting," and "shoot him."² Officer A recalled hearing three shots fired when Officer C yelled "shoot him." Officer A also saw Officer C fall and scream. Officer A did not know at the time who fired the three shots. Officer A stated that he then shot approximately 10 times into the area where he knew the offender was. At the time, Officer A did not know if Officer B discharged his weapon but later learned that he did. Upon questioning, Officer A stated that CPD Sergeant 1 was in the vicinity immediately prior to the shooting. After the shooting, the officers secured the area and someone called for HBT. Upon questioning, Officer A stated that he fired his weapon into the ceiling although the subject was not visible to him. Officer A stated that he fired his weapon because he feared for his life and for the life of his fellow officer who was screaming that the offender was shooting. Officer A clarified that the supervisor present with him was aware of the fact that there was an offender in the crawlspace with a gun. Officer A denied violating any HBT policies and procedures.

In a statement to the Independent Police Review Authority on 03 August 2011, **Accused Officer B**, stated that on 16 June 2009, he was working with his partner, Officer D, when the two responded to an assist call of a domestic relation incident with shots fired in the vicinity of XXXX S. Talman. Upon arrival, Officer B recalled observing numerous marked and unmarked

¹ Statement of Officer A, P. 19, Lines 17-19.

² Statement of Officer A, P. 21, Lines 10-13.

police units on the scene and the perimeter was set up around the house. Officer B learned that there was an armed gunman in the house who had last been seen in the second floor apartment and was agitated and possibly intoxicated. Officer B explained that to his knowledge, the offender had already discharged his weapon inside the home. Upon learning this information, Officer B stated that he and Officer A made entry through a rear-enclosed staircase and called for a few officers to assist in securing the landing so the two of them could make entry into the second floor apartment. Officer B stated that upon entering the second floor apartment, it was found to be ransacked with broken glass and turned over appliances. Inside the kitchen, Officer A observed casings and what appeared to be bullet holes in the metal cabinet. After clearing the house from the rear to the front without finding anyone, Officer B exited to the front of the home where he met CPD Sergeant 1. Officer B stated that CPD Sergeant 1 related to the group that one week prior, an offender with a gun had been chased into the exact house and there was a crawlspace on the third floor in which the offender hid the week prior. Officer B stated that the space he described had not yet been checked. Officer B stated that upon learning this, he and CPD Sergeant 1 relocated to the 3rd floor apartment with Officers A, C and H to clear the crawlspace.

Officer B explained that in the attic there was a small furnace room and inside the furnace room was a small crawlspace. Officer B stated that he announced his office continuously through the staircase, into the apartment and into the furnace room. Upon arrival into the attic, Officer B stated that he stepped on some ductwork in order to gain a sight line on the crawlspace. Officer B stated that it was then that he observed the subject, now known to be Subject 1, at the rear of the crawlspace, lying face down into some rafter and insulation. Officer B recalled asking Subject 1 to show his hands. Officer B recalled that Subject 1 rolled from a laying position onto his knees and his hands were buried in the insulation and he was sweating. Officer B recalled him appearing irate and saying "Fuck you. If you come up here I'll shoot you. Don't you fuckin' come up here. You know I have a gun. My mom told you I have a gun."³ Officer B recalled him repeating these statements over and over. Upon questioning, Officer B stated that he could see Subject 1 as a result of his flashlight and Officer C's flashlight. Officer B stated that he was able to confirm that Subject 1 was alone in the crawlspace and about 15 feet toward the rear of the house; he relayed this information to the officers on the landing in the third floor apartment. Officer B did not know where CPD Sergeant 1 was at that moment. Officer B explained that the space through which he was viewing the offender was so tight that he and Officer C were pinned together and pressed up by a load bearing beam behind them. Officer B recalled that at one point, Subject 1 attempted to thrash his elbows into the interior of the attic, as if attempting to make a hole to get free. Officer B recalled the offender holding a nickel-plated handgun. Officer B unsuccessfully attempted to negotiate with him to come out for four minutes. Officer B next recalled the offender raising his weapon and pointing it at him, at which point Officer B screamed, "Gun, he's got a gun, shoot" and fired two shots at Subject 1.⁴ Officer B stated that after he fired his second shot, Officer C fell trying to take cover. Upon questioning, Officer B stated that he did not know if the offender shot at him or not. Officer B stated that immediately following his shot, he heard about 8 more shots. Officer B explained that he later learned Officer A discharged his weapon as well. Officer B explained that very shortly after the shooting occurred, he learned that HBT was being called. Officer B explained that when he

³ Statement of Officer B, P. 11, Lines 18-20.

⁴ *Id.* at P. 15, Lines 13-18.

called out to Subject 1 after the shooting, he did not respond and they were not sure what his condition was. Upon questioning, Officer B stated that when he yelled, "shoot!" it was to anyone who felt they had available options to help him.⁵ Officer B stated that he was in fear of his life and for the lives of other officers around him when Subject 1 pointed his weapon at him.

In a statement to the Independent Police Review Authority on 10 August 2011, **Accused CPD Sergeant 1**,⁶ stated that on 16 June 2009, he was on duty and monitoring the radio when he heard a call of shots fired and a male with a gun at the address of XXXX S. Talman. CPD Sergeant 1 reported that when he arrived at the address, he recalled that he had been at the same address approximately a week or two weeks prior while assisting 009th district tactical officers who were chasing a man with a gun. The man they were chasing, CPD Sergeant 1 recalled, ran into the same house, and the police searched for the man in the attic. When he arrived onto the scene on the date of the incident, CPD Sergeant 1 recalled encountering several other officers, including Officers A, B and C. The officers present provided CPD Sergeant 1 with information about the offender. CPD Sergeant 1 recalled being told that an offender by the name of Subject 1 had been engaged in a fight with his family that resulted in him trashing the house, pulling a handgun out and shooting. The officer related to CPD Sergeant 1 that they could not find Subject 1 in the home; he told them about the attic and crawlspace. At that point, CPD Sergeant 1 and Officers A, B and C re-entered the home to search again for Subject 1. When they arrived in the attic, Officer B went into the furnace closet area and yelled "He's up here, he's up here."⁷ CPD Sergeant 1 next recalled that Officer B gave commands to see the offender's hands. CPD Sergeant 1 also recalled the officers announce their office upon arrival. CPD Sergeant 1 recalled Officer B standing on some metal or duct work in the furnace closet so he could see into the crawlspace that runs the entire length of the building. CPD Sergeant 1 recalled Subject 1 threatening to kill the officers in response to Officer B's demand that he show his hands and come out. CPD Sergeant 1 explained that Officer B and Soto were the officers with a view of the offender and they were using flashlights to see him. CPD Sergeant 1 stated that at some point, Officer B stated that Subject 1 was moving. CPD Sergeant 1 recalled standing below where the offender was and following his movements through the ceiling. Officer B then told the officers that Subject 1 was trying to kick his way through the roof. CPD Sergeant 1 stated that the entire time Subject 1 was moving, Officer A was following him from below because he could see the drywall flexing. CPD Sergeant 1 explained that he was going back and forth between where Officer B and Officer A were located. At some point, CPD Sergeant 1 heard Officer B yell, "He's got a gun. Drop the gun," and then he heard multiple shots.⁸ When he initially heard the first shots, CPD Sergeant 1 was standing to the right of Officer A and knew they did not come from him. CPD Sergeant 1 clarified that the second set of shots came from Officer A. CPD Sergeant 1 recalled that the second set of shots came immediately after the first set of shots. Upon questioning, CPD Sergeant 1 stated that when he arrived on the scene, he learned that there was evidence of a discharged weapon inside the home.

CPD Sergeant 1 confirmed that after the shooting, he heard nothing from Subject 1. CPD Sergeant 1 further stated that he did not recall when HBT was called or if he called them. Upon questioning, CPD Sergeant 1 stated that he believed HBT arrived within a half hour of the

⁵ *Id.* at P. 20, Lines 20-23.

⁶ Although he was a sergeant at the time of the incident, his current rank is Lieutenant.

⁷ Statement of CPD Sergeant 1, P. 14, Lines 19-20.

⁸ Statement of CPD Sergeant 1, P. 20, Line 19.

discharge of weapons. After the shooting, but before HBT arrived, CPD Sergeant 1 recalled the officers staying on the third floor and one officer still trying to get a response from the offender because they did not know if he had been hit or not.

According to the Chicago Police Department's **Deadly Force** General Order 02-08-03:

II. Department Policy

- A. "A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
1. to prevent death or great bodily harm to the sworn member or another person, or:
 2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

III. Department Prohibitions for Use of Deadly Force

"Use of firearms in the following ways is prohibited:

- A. Firing into crowds.
- B. Firing warning shots.
- C. Firing into buildings or through doors, windows or other openings when the person lawfully fired at is not clearly visible.
- D. Firing at a subject whose action is only a threat to the subject himself (e.g., attempted suicide)."

IV. Affirmation of Protection of Life Policy

Sworn members will not unreasonably endanger themselves or another person to conform to the restrictions of the directive.

According to the relevant portions of the Chicago Police Department's **Hostage/Barricade/Terrorist (HBT)** Incident General Order 05-05(III)(A):

2. The first Bureau of Patrol supervisor to arrive on the scene will immediately assess the situation. The decision to implement an HBT Plan rests with the Bureau of Patrol supervisor at the scene. He/she will advise the Office of Emergency Management and Communications (OEMC) dispatcher of the circumstances, and:
 - b. supervise the apprehension of the offender(s), if practical.

CONCLUSION:

The R/I recommends a finding of **Unfounded** for **Allegation #1** that **Officer B** failed to follow the provisions as set forth in the Use of Deadly Force Policy. The policy documents that a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary to prevent death or great bodily harm to the sworn member or another person. The investigation revealed that Officer B was in compliance with the Department's policy. Substantial evidence exists supporting the account of the incident described by Officers B and C. Officer B related that Subject 1 refused to show his hands and then raised his weapon and pointed it at the officers. Officer B's account of the incident is corroborated by Officer C. CPD Sergeant 1 stated that he heard Subject 1 making threats to kill the officers. Additionally, Subject 1's refusal to cooperate with the responding officers while holding a gun, which he previously discharged in his own home with his mother present, placed Officer B and Officer C at risk of sustaining great bodily harm. Officer B reasonably believed that he was preventing death or great bodily harm to himself and others when he fired his weapon at Subject 1.

The R/I recommends a finding of **Unfounded** for **Allegation #2** that **Officer B** failed to follow the provisions as set forth in the Hostage/Barricade/Terrorist Incident policy. Officer B followed the instructions of CPD Sergeant 1. The decision to implement an HBT plan rests with the first Bureau of Patrol supervisor on the scene and not the patrol officers.

The R/I recommends a finding of **Unfounded** for **Allegation #1** that **Officer A** failed to follow the provisions as set forth in the Use of Deadly Force Policy. The policy prohibits a sworn officer from firing into buildings or through doors, windows, or other openings when the person lawfully fired at is not visible. Officer A admitted that he was positioned on a level below the offender and the offender was not clearly visible to him when he shot at him. Although this investigation revealed that Officer A could not see Subject 1 when he shot through the ceiling from below and into the crawlspace, the General Order further states, "Sworn members will not unreasonably endanger themselves or another person to conform to the restrictions of the directive." Officer B described the area through which he was viewing Subject 1 as being so tight that he and Officer C were pinned together and pressed up by a load bearing beam behind them. After Officer B fired his weapon the second time, Officer C fell to the ground trying to take cover. Having heard three shots and seen another officer fall to the ground, Officer A was reasonable to fear for the safety of his fellow officers, when he discharged his weapon into the crawlspace. The spirit of the ordinance is to protect innocent bystanders from harm. The involved officers had already searched the home and evacuated the tenants, thus, they knew that Subject 1 was the only person inside of the home. Both CPD Sergeant 1 and Officer A stated that they could tell where his location was from the flexing of the ceiling when Subject 1 moved around. The investigation revealed that Officer A reasonably believed that he was preventing death or great bodily harm to Officers B and C, when he discharged his weapon at Subject 1.

The R/I recommends that a finding of **Unfounded** for **Allegation #2** that **Officer A** failed to follow the provisions as set forth in the Hostage/Barricade/Terrorist Incident policy. The decision to implement an HBT plan rests with the first Bureau of Patrol supervisor on the scene and not the patrol officers.

The R/I recommends a finding of **Unfounded** for **Allegation #1** that **CPD Sergeant 1** failed to follow the provisions as set forth in the Hostage/Barricade/Terrorist (HBT) Incident

policy. According to General Order G05-05, the decision to implement an HBT Plan rests with the Bureau of Patrol supervisor on the scene. Though it could be argued that an armed offender hiding in a crawlspace was grounds to implement an HBT plan, CPD Sergeant 1 had the ability to assess the situation at that given moment and exercised his authority to attempt to apprehend Subject 1. CPD Sergeant 1's actions were within the guidelines of the HBT policy.