

INDEPENDENT POLICE REVIEW AUTHORITY
Log# 1009279/U# 07-28

INVESTIGATION

NUMBER: Log# 1009279/U# 07-28

OFFICER

INVOLVED #1: “Officer A” (Chicago Police Officer); Male/Black; 55 years old;
On Duty; Civilian Dress; Year of Appointment – 1986

OFFICER #1’s

INJURIES: None reported

OFFICER

INVOLVED #2: “Officer B” (Chicago Police Officer); Male/Black; 50 years old;
On Duty; In Uniform; Year of Appointment – 1982

OFFICER #2’s

INJURIES: None reported

SUBJECT: “Subject 1”; Male/Black; 20 years old

SUBJECT’S

INJURIES:

INITIAL

INCIDENT: Shots fired

DATE/TIME

OF INCIDENT: 14 Sep 07, 1009 hours

LOCATION:

527 E. Browning
Beat 212

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INVESTIGATION:

CPD Detective 1 told the Roundtable panel that on 14 September 2007, between approximately 1000 and 1030 hours, Officers A and B were working Beat 212H in civilian dress. The officers were doing a follow-up investigation of shots fired in the vicinity of Chicago Housing Authority residences at 527-540 E. Browning. When the officers went to the vicinity of 527 E. Browning, citizens informed them that Apartment XXX in that building was known as a location where guns and narcotics were stashed. Officers A and B checked with CHA personnel, who said Apartment XXX was supposed to be vacant. The officers radioed for an assist car. Officer C and his partner, Officer D, responded to 527 E. Browning. Officers A and B had Officer C and Officer D remain outside and watch for any guns or narcotics that might be dropped out of Apartment XXX.

CPD Detective 1 continued that Officers A and B entered Apartment XXX and found Subject 1 and Witness 1 inside. The officers did not handcuff them. Officer B searched one room in the apartment and found suspect rock cocaine. Subject 1 then attempted to flee the apartment. Subject 1 struggled with Officers A and B in the apartment and out the doorway. Subject 1 broke free and fled down a stairwell. Officer A chased Subject 1 while Officer B returned inside the apartment to recover the suspect narcotics and to detain Witness 1.

CPD Detective 1 said that on the third floor, a confrontation occurred between Officer A and Subject 1 in which Subject 1 gained control of Officer A's gun, which discharged, wounding Officer A in the left arm. As Officer A fell, he gained control of his gun and fired three shots at Subject 1, wounding him. Ambulances and assist units were summoned.

CPD Detective 1 added that Officer A's revolver contained four spent .38-cal. casings

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and two live rounds. A pool of blood was on the third-floor hallway floor, approximately one foot south of Officer A's weapon. The weapon was swabbed for DNA, and fired bullets were located outside of Apartment 3XX; north of the north stairwell; and south of the blood pool in the hallway.

Witness 2 related to the Roundtable panel that at the time of the incident, she was with Witness 3 inside a bedroom in Apartment 3XX at 527 E. Browning, where she was living without a lease. Witness 2 heard four rapid gunshots and then "jumped" into a closet. She remained in the closet until Witness 3 shook her. Witness 3 was sitting on the bed when the shots were fired. Witness 2 did not hear anything before the gunshots. After the gunshots, she heard someone's voice and the person sounded as if they were in pain.

Witness 1 related to the Roundtable panel that she was homeless and had been "squattling" in Apartment XXX for approximately one month. Witness 1 said that the front door of the unit was damaged in the past and that she was aware that drug dealers used the unit "from time to time." Witness 1 had attached plywood to the front door to try to repair it. At the time of the incident, Witness 1 was awakened by "banging" on the front door and she heard, "Police. Open the door." Witness 1 stated that she went to open the door and saw a man she knew as [Subject 1] in the front room.

Witness 1 continued that an officer knocked off the bottom of the front door. Witness 1 unlocked the door for Officers A and B, whom she knew from the neighborhood. The officers, who had their stars around their necks, entered the apartment. The officers told Witness 1 and Subject 1 to "get on the wall" several times. Witness 1 complied at the first command, and Subject 1 seemed to be complying. Officer B searched the apartment. Subject 1 eased his way

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towards the door. Officer B told Subject 1 to “get against the wall.” Officer A drew his gun and Subject 1 pushed Officer A. Subject 1 struggled with both officers, though prior to that, no officer had placed their hands on him. The two officers and Subject 1 fell to the floor and struggled. At one point, Subject 1 was on top of Officer A. Subject 1 tried to crawl through the opening at the bottom of the door. Officer B attempted to pull Subject 1 back, but Subject 1 broke free and fled. Officer B exited the apartment and said that Subject 1 was running down the stairs. Officer B went back inside the apartment and entered the front bedroom. When he exited the bedroom, he was holding a plastic bag. Officer B was with Witness 1 in the front room when Witness 1 heard three or four loud gunshots.

Witness 1 said she heard someone hollering. Officer B yelled to “First Name” [Officer A] and asked him if he had been hit. Officer A replied, “Yes.” Officer B left the apartment with Witness 1 still inside. Witness 1 stated that she did not witness the shooting. Witness 1 was able to identify a photo of [Subject 1].

CPD Detective 2 related to the Roundtable panel that she spoke with the CHA manager A, who stated that she told Officers A and B that Apartments 3XX and XXX were supposed to be vacant.

Officer C informed the Roundtable panel that he and Officer D met with Officers A and B and then positioned themselves to watch for contraband that might be thrown out of the windows of Apartment XXX. Officer C heard an officer yell something like, “Get down!” An officer also yelled for help. Officer C and his partner went up the rear stairs across from the elevators inside 527 E. Browning. Officer C was between the second and third floors of the building when he heard an officer yell, “He’s running downstairs!” Officer C observed the

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offender [Subject 1] at the top of the third-floor stairwell. Subject 1 entered the third-floor hallway. Officer C and Officer D pursued Subject 1, and they were almost at the top of the third floor stairs near the stairwell exit when Officer C heard at least three gunshots, with no pause between the shots. Officer C then entered the third-floor hallway and saw Officer A on the floor with blood near him. Subject 1's legs were protruding into the hallway from the north stairwell. Subject 1 shouted that he had been shot in the back. Officer C handcuffed Subject 1 and stayed with him until an ambulance arrived. Officer C estimated that two or three seconds elapsed between when he last saw Subject 1 in the stairwell and when he heard the shots.

Officer D told the Roundtable panel that after he and Officer C positioned themselves below the fifth floor at 527 E. Browning, Officer D heard an officer from inside the building say, "Get down on the floor on your stomach." Officer D and Officer C began to go up the stairs, and between the second and third floors, Officer D saw a black male on the third floor approaching the doorway of the stairwell. Officer C said something to the black male. The black male "froze," turned and ran into the third-floor hallway. Officer D and Officer C continued up the stairs and started to exit the stairwell. Officer D heard three or four gunshots. Officer C entered the hallway and turned the corner. Officer D saw Officer A lying on the floor. A revolver and blood were on the floor. Officer D saw legs sticking out of the doorway leading to the north stairs, and that person [Subject 1] was screaming. Officer C handcuffed Subject 1. Officer D estimated that four to five seconds elapsed between when he saw Subject 1 at the third floor stairwell doorway and when he heard the shots.

Officer B related to the Roundtable panel that he and Officer A learned that there had been multiple calls of shots fired at 527 E. Browning, and they went there for a follow-up

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investigation. Citizens in the area told the officers that Apartment XXX was known as the apartment where offenders dropped their guns and narcotics when officers came into the area. Officer B went to the CHA management office and spoke with CHA manager A, who said that Apartment XXX was vacant and that the officers were allowed to enter the unit for an investigation. Officers A and B radioed for an assist car and then Beat 214 responded. After meeting with Beat 214, Officers A and B walked upstairs to Apartment XXX. Officers knocked and said, "Police," but no one answered. Officer B heard footsteps inside of the apartment. Officer B knocked and announced his office again. Officer B broke out the bottom panel of the door and saw two sets of legs inside. Officer B knocked on the door again, and a female voice said, "Okay." A female [Witness 1] opened the door and the officers entered. The officers told Subject 1 and Witness 1 to get against the wall and then onto the floor. Witness 1 followed the order, but Subject 1 only squatted. Officer B began to search the apartment for other persons, as well as for guns and drugs. Officer A guarded Subject 1 and Witness 1. Officer B saw narcotics, cutting materials and baggies in the front bedroom.

Officer B stated that when he exited the front bedroom, Subject 1 jumped up and grabbed Officer A. Officer B told Subject 1 to "get down," and Officer A grabbed Subject 1's waist. Officers A and B struggled with Subject 1 for about thirty seconds. Subject 1 "crashed" through the front door while Officer A held onto him. Officer B also went through the doorway. Subject 1 freed himself from Officer A and entered the stairwell. Officer B thought that Subject 1 had escaped. Officer B reentered the apartment to recover the narcotics. Officer B then heard two or three gunshots, and he screamed, "[First Name, First Name]", you all right?" referring to Officer A. Officer B heard no response and then went to the third floor hallway where he saw Officer A,

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who was on the floor and not moving. Officer B believed that he saw two uniformed officers in the hallway. Officer A told Officer B that Subject 1 “bum-rushed” him and tried to take his gun. Officer B radioed for ambulances and secured the scene. Officer A’s firearm was one or two feet from him. Officer A said that when he heard the shots, he heard one shot and then there was a pause. Then the other shots were fired.

CPD Detective 3 told the Roundtable panel that Officer A was admitted to Northwestern Memorial Hospital in serious but stable condition. CPD Detective 3 spoke with Officer A for approximately five minutes before medical personnel cut off the interview. Officer A told CPD Detective 3 that he and Officer B were making a premise check at 527 E. Browning. The officers eventually forced entry into an apartment, which was supposed to be vacant. The officers observed a black male and a black female inside and told them to “get on the wall.” Officer A guarded Subject 1 and Witness 1 as Officer B searched the apartment. Officer B found contraband, and Officer A told Subject 1 and Witness 1 to get on the floor. Officer A said that Subject 1 was combative and struggled with both officers before fleeing. Officer A chased Subject 1 down the stairwell. Officer A ran down two flights of stairs and entered the hallway. Subject 1 jumped out and grabbed Officer A’s right arm and hand, in which he was holding his firearm. Officer A and Subject 1 struggled over the gun and Subject 1 turned the gun towards Officer A’s body. The gun fired, and Officer A was shot in his left arm. Officer A and Subject 1 continued struggling for the gun as Subject 1 tried to gain control of it. Officer A gained control of the gun and, as he was falling, he fired two shots at Subject 1. Officer A did not say where Subject 1 was positioned when he fired at him. Officer A sustained an entry wound on the inside of the arm, with the exit wound on the outside, and possible nerve damage to the arm.

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CPD Detective 4 related to the Roundtable panel that he interviewed Subject 1 while he was being treated at Stroger Hospital for a through-and-through gunshot wound to his left thigh and a gunshot wound to his right flank, with the bullet lodged near his spine. Subject 1 said he was in Apartment XXX with “Auntie” [Witness 1]. Officers knocked on the apartment door and then kicked in the door. Two officers entered the apartment with their guns drawn, and one officer [Officer A] hit Subject 1 on his head with a gun. Officer A put Subject 1 against a wall in the apartment and holstered his weapon. The other officer [Officer B] went to a window and said, “We’re okay.” Subject 1 was afraid and tried to break away, turning and running to the third floor. Subject 1 saw two uniformed officers and then went to the fourth floor. Subject 1 then went downstairs, where he was confronted by Officer A, who told him, “Freeze.” Subject 1 then heard three shots. Subject 1 did not struggle with Officer A and did not touch the officer’s gun. Subject 1 said that Officer A probably shot himself or had his partner shoot him to “make it look right.” Subject 1 refused a buccal swab and denied any gang affiliation. He said he had been shot in the past.

In an interview with IPRA¹ on 21 September 2007, Witness 1 provided an account that was generally consistent with her Roundtable account. However, Witness 1 stated that she recalled that before Subject 1 struggled with Officers A and B inside Apartment XXX, Officer B said, “Do you need help getting on the floor?” after which she thought that Officer B hit Subject 1 on the top of the head with his gun.²

¹ The Independent Police Review Authority replaced the Police Department’s Office of Professional Standards.

² Subject 1 said that she did not say anything about Officer B hitting Subject 1 with the gun at the Roundtable because she did not remember it happening. In addition, approximately six hours prior to taking Subject 1’s statement on 21 September 2007, Subject 1 told the R/I that neither officer made any contact with Subject 1 before Subject 1 pushed Officer A.

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The summary of the police radio transmissions indicated that Officer A's gunshots were reported immediately and that two persons, including an officer, were reported to have been shot. Two ambulances were requested. One female 911 caller, who refused to identify herself in a subsequent call to her, told IPRA she did not witness the shooting, but called 911 because an ambulance was needed. The ambulance was needed because shots had been fired.

The **canvass** produced no witness.

The R/I viewed **television news broadcasts** [disc provided by CPD News Affairs] related to the incident, but they did not include an interview with anyone who claimed to be a witness.

In a To-From-Subject report dated 14 September 2007, **CPD Assistant Deputy Superintendent A** reported that he was briefed by Officer B about the incident. The information about the incident indicated that after Subject 1 fled to the third floor, he caught Officer A and attempted to disarm him. Subject 1 fought Officer A and there was a struggle over Officer A's gun. Subject 1 briefly gained control of the gun, which resulted in Officer A being shot in the left arm. The struggle continued and Officer A and Subject 1 fell. The weapon discharged and Subject 1 was struck in the groin area. A fourth round was discharged, striking Subject 1.

Subject 1's Arrest Report indicated that he was charged with aggravated battery and attempted murder of Officer A.

A **Crime Scene Processing Report**, indicated that Forensic Services administered a gunshot residue test to Subject 1 at Stroger Hospital.

An inventory record indicated that on 16 April 2008, a **buccal swab** was collected from Subject 1.

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A report from the Illinois State Police (“ISP”) Division of Forensic Services dated 13 November 2007 indicated that the results of the GSR test were that Subject 1 may not have discharged a firearm with either hand and if he discharged a firearm, the particles were removed by activity, were not deposited or were not detected.

An ISP report dated 04 February 2009 indicated that low levels of a male DNA profile were identified from swabs of Officer A’s weapon. That profile did not match Subject 1’s DNA profile.

Attempts to interview Subject 1 were unsuccessful.

Subject 1’s medical records from Stroger Hospital indicated that he had a gunshot wound in his right flank and another in his left lateral thigh.

Doctor A, who was one of the medical personnel who treated Subject 1 at the hospital, related to IPRA on the incident date that the gunshot wound to the left leg was through-and-through, but he did not know which of those two wounds was the entry and which was the exit.

Officer A’s **Tactical Response Report** indicated that he was less than 5 feet from Subject 1 when the first shot was fired in the incident.

Forensic Services photographs depicted the broken door of Apartment XXX; the third-floor hallway where the shooting occurred; fired evidence; Officer A’s weapon and clothing; Subject 1 lying in a hospital bed; and what appear to be red scratches on Subject 1’s neck and right ear.

Officer A’s medical records from Northwestern Memorial Hospital indicated that he suffered a single gunshot wound to his left forearm, causing two wounds. The words “accidental self inflicted GSW” appeared on the emergency room record. On another page of that record,

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there was a notation that appeared to say, “Reportedly involved in altercation resulting in discharging his gun subsequently shot once. No other injury.” A consultation note from Doctor B included the following under “History of Present Illness”: “The patient presents with complaint of GSW of left upper extremity. It is characterized by Patient is a police officer (sic) who was in a struggle with a suspect while holding a gun in his right hand and accidentally shot himself in the left forearm.”

On 19 September 2007, the **Detective Division** requested that the Illinois State Police Division of Forensic Services examine Officer A’s weapon for both firearms and fingerprint evidence.

The Crime Scene Processing Report, indicated that four fingerprint lifts were taken from Officer A’s weapon on 09 April 2008.

The Latent Print Evidence Evaluation Report indicated that the four fingerprint lifts were not suitable for comparison.

An ISP report dated 09 October 2007 indicated that the substance recovered by Officer B in Apartment XXX was cocaine.

An ISP report dated 18 January 2008 indicated that Officer A’s weapon was examined, found to be in firing condition and test fired. The four .38 Special (+P) cartridge casings recovered from the weapon were found to have been fired from it. Three fired bullets were also found to have been fired from the weapon. The report indicated that examination of five holes in Subject 1’s t-shirt did not reveal characteristics indicating the passage of a bullet or the discharge of a firearm. The result was the same for the examination of one hole in Subject 1’s tank-top shirt and one hole in his blue denim pants. Examination of Officer A’s pants and t-shirt

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did not reveal characteristics indicative of the passage of a bullet or discharge of a firearm.

The detectives' **Case Supplementary report** included an account of the incident from Officer B that was consistent with his Roundtable account. In addition, Officer B said that when he went to the third-floor hallway, Subject 1 was on the hallway floor approximately 10 feet north of Officer A, partly in the north stairwell entrance.

The Case Supplementary report included accounts from Witness 1 and Witness 2 that were consistent with their Roundtable accounts. Witness 3, who was with Witness 2 in Apartment 3XX or 3XX when the incident occurred, told detectives that when he heard four shots, he took cover on a bedroom floor. He heard someone call out in pain. He was told by an officer to remain in the apartment. [Individuals 1 and 2], both homeless, told detectives they were sleeping in apartments inside 527 E. Browning when they heard shots. Officer C and Officer D provided accounts consistent with their Roundtable accounts. The account from Officer A, as related to reporting detectives by CPD Detective 3 and CPD Detective 5, was consistent with CPD Detective 3's Roundtable summary. The account from Subject 1, as told to reporting detectives by CPD Detective 4, was consistent with CPD Detective 4's Roundtable summary. In addition, Subject 1 told CPD Detective 4 that he turned to run before being shot by Officer A.

The Case Supplementary report indicated that detectives interviewed Officer A after he was released from Northwestern Memorial Hospital. His account was consistent with the account provided at the Roundtable by CPD Detective 3. In addition, Officer A said that after Subject 1 fled from Apartment XXX, Subject 1 ran to the north stairwell. Officer A ran down the center stairwell and eventually into the north stairwell. He exited the north stairwell and went down the

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third floor hallway toward the center stairwell. Subject 1 emerged from the center stairwell and ran into Officer A, who ordered him to halt. Subject 1 grabbed Officer A's shoulders, and then Subject 1's left hand covered Officer A's right hand and the revolver. Officer A and Subject 1 struggled over the revolver. Subject 1 turned the barrel end of the revolver toward Officer A's chest. Officer A attempted to push the barrel end of the revolver away from his center. Subject 1 discharged the revolver once, striking Officer A's left arm. Officer A began to fall but fired his revolver two or three times at Subject 1 as Subject 1 spun from Officer A. Officer A believed that his first shot hit Subject 1 from approximately two to three feet. Officer A observed Subject 1 down on the floor at approximately the north stairwell. Officer A dropped his gun in order to stem bleeding from his left arm.

Within **several letters** he apparently wrote, Subject 1 made allegations against Officers A and B related to the incident on 14 September 2007. In the letters, Subject 1 said that after Officers A and B [referred to in some letters as "John Doe"] entered Apartment XXX, Officer B punched him, and both officers kicked him. After Subject 1 fled the apartment and went to the third floor, he observed Officer A standing in the hallway. Officer A called him a "motherfucker" and told him to freeze or he would shoot him. Subject 1 was then shot twice, falling to the floor. An unidentified girl came up the stairs, called an ambulance and took pictures of him on her cell phone. Subject 1 then heard a third shot. Police and paramedics arrived. Subject 1 said his hands were tested for gunpowder as he lay on the floor. Subject 1 denied taking Officer A's weapon and shooting his left arm. Subject 1 alleged that either Officer B shot Officer A or Officer A shot himself as part of a coverup.

In a **witness statement to IPRA on 09 October 2008, Officer D** [formerly Officer D]

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provided an account that was consistent with his Roundtable account. In addition, Officer D said that while he and Officer C were outside 527 E. Browning, they heard verbal commands given to an offender. He and Officer C went upstairs “to see how things were going.” At the third-floor landing, they observed the offender [Subject 1] standing near the elevator on the third floor. Officer D and Officer C ordered Subject 1 to put his hands on the wall, but he did not comply and took off northbound, running down the hallway. Approximately five seconds “or so” later, Officer D and Officer C heard three or four loud reports. Officer D did not recall hearing any voices before the loud reports. They proceeded cautiously through the doorway and into the hallway and saw Officer A and Subject 1 “down.” After Subject 1 was handcuffed, the officers secured the scene. Subject 1 was approximately 10 feet from Officer A.

In a **witness statement to IPRA on 04 June 2008, Officer C** provided an account that was generally consistent with his Roundtable account. In addition, Officer C said that three to five seconds elapsed between when he saw Subject 1 in the stairwell and when he heard the gunshots. Officer C added that before he and Officer D entered the third-floor hallway from the south stairs, they heard a couple of shots and stopped and pulled their guns. They heard more shots and then entered the hallway and saw Officer A and Subject 1. Officer C also said that an unidentified black female walked down the stairwell from an upper floor during the incident and he later realized she took a picture that he saw on television later that evening. Officer C estimated that when he observed Officer A and Subject 1, Subject 1 was approximately 20 feet from Officer A.

In his **accused statement to IPRA on 13 April 2009, Officer B** provided an account that was consistent with his Roundtable account. In addition, Officer B said that he did not walk

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up to Subject 1 after finding the suspect narcotics and punch Subject 1's face. Officer B did say that during the struggle inside Apartment XXX, he believed he punched Subject 1 a couple of times on the back of his head when Subject 1 went around Officer A's waist. Officer B denied kicking Subject 1 and did not see Officer A kick him. Subject 1 swung his arms while Officer B tried to grab him, and he "bull-rushed" Officer A, who blocked the apartment door. Officer B said he went back inside Apartment XXX, rather than join Officer A in pursuit of Subject 1 because he wanted to "get the dope" and to preserve evidence. Officer B also thought that Subject 1 had gotten away.

When Officer B spoke with Officer A after the shooting, Officer A told Officer B, "The guy tried to take my gun," or "The guy took my gun." Officer A did not ask Officer B to shoot his left arm as part of an attempt to justify Officer A shooting Subject 1, and Officer B did not shoot Officer A. Officer B did not recall Officer A calling Subject 1 a "motherfucker" at any time and Officer B did not hear Officer A tell anyone to "freeze" or he would shoot him. Possibly one second elapsed between the first shot Officer B heard and the following shots. He did not know of a female who was on the stairs after Subject 1 was shot.

In his witness statement to IPRA on 06 May 2008, Officer A provided an account that was generally consistent with the accounts he provided to detectives. In addition, Officer A said that before Subject 1 got into the sprint-type of position inside Apartment XXX, Officer A did not make any physical contact with him, and Officer A did not observe Officer B make any such contact. Regarding the shooting incident, Officer A said that before he was shot, he punched Subject 1 in his chest or shoulder area. He also said that after Subject 1 pulled the trigger of Officer A's gun, he wrenched the gun from Subject 1 and fired at him. Subject 1 was eight

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inches to a foot away from Officer A when he fired at Subject 1. Officer A fired because he felt his life was in danger from Subject 1, who, knowing he was a police officer, had gone for Officer A's weapon and shot him. Subject 1 fell down a foot and a half from Officer A, who also went down. Subject 1 was on his stomach and no more than a foot away the last time Officer A saw him. Officer A did not recall seeing Subject 1 move after Officer A put his weapon down. Officer A did not know how Subject 1 came to be located in the north stairwell entrance. Officer A said that he shot Subject 1 "a fraction of a second" after Subject 1 had shot him. He added, "There was no real pause."

In his first accused statement to IPRA on 13 April 2009, Officer A related that he and Officer B had their guns displayed when they entered Apartment XXX for officer safety. Officer A denied kicking Subject 1 in Apartment XXX or calling him a "motherfucker," and said he did not observe Officer B kick him or punch his face. It was possible that Subject 1 suffered a cut to his right ear and scratches to the right side of his neck during the struggle inside Apartment XXX. Officer A denied telling Subject 1 to "freeze" or he would shoot him. Officer A said he fired at Subject 1 because after Subject 1 shot him, Officer A was about to fall down and was afraid that Subject 1 would take control of his gun and harm him or someone else. Officer A did not recall seeing Subject 1 crawl away from him after he fired at him, and he did not fire at Subject 1 after he was several feet from him. Officer A did not recall seeing Subject 1 moving along the floor toward the north stairwell at any time. Officer A denied having Officer B shoot his left arm to create a reason for having shot at Subject 1. Officer A did not know the name of any female who was in one of the stairwells after Subject 1 was shot.

In his second accused statement to IPRA on 10 July 2009, Officer A related that at no

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time did he tell any personnel at Northwestern Memorial Hospital that his gunshot wound was “accidental” or “self-inflicted.” Officer A also noted that when he gave his first IPRA statement on 06 May 2008, he was still taking pain medication for his gunshot injury, and he did not know if the medication affected any of his answers. He said the medication was “heavy,” and he was sleepy all of the time.

In testimony at Subject 1’s criminal trial on 21 July 2009, Witness 1 testified that she opened the door of Apartment XXX after hearing, “Police, open the door.” Officers A and B, who had their badges displayed and whom Witness 1 knew, entered the apartment and told her and Subject 1 to “get against the wall.” Officer A stayed in the front room while Officer B, whom Witness 1 knew as “[Nickname],” went further into the apartment. Witness 1 placed her back against the wall [she did not remember telling a detective later that she faced the wall and could not see what was happening]. Subject 1 “went to get against the wall,” but then moved toward the door to pick up his hat, which was near the door. Officer A was between Subject 1 and the door and told Subject 1 to “get against the damn wall.” Subject 1 went toward the door. Officer B came out of a room and asked Subject 1 if he needed any help getting on the “fucking” wall and told him to get his “ass” on the wall. Officer A reached at Subject 1 as if to “help” him get on the wall. Officer A then told him and Witness 1 to “get on the fucking ground.” The two officers and Subject 1 engaged in “tussling” for three to five minutes, and Subject 1 dragged the officers to the door. The officers had their guns out. Subject 1 crawled under the damaged door and ran out of the apartment. Officer A ran behind him. Officer B stayed with Witness 1 and also searched the apartment. Officer B came out of the front bedroom with a plastic bag containing what looked like crack cocaine. Witness 1 testified that at the time of the incident, she used

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heroin and crack cocaine, but the bag of apparent crack cocaine discovered by Officer B was not hers. Witness 1 also testified that she had used heroin on the day of her court testimony, but was not feeling the effects of the heroin during her testimony.

Witness 1 continued that after Officer B displayed the bag of apparent crack cocaine, she heard a shot and then some more shots. Officer B hollered for Officer A and then ran out of the apartment. Witness 1 stayed in the apartment for “a while” and later spoke with Police Department personnel and IPRA. Witness 1 stated that she did not remember telling IPRA [during her interview on 21 September 2007] that Officer B had struck Subject 1 over the head with a weapon. Witness 1 did not recall if either officer struck Subject 1’s head with a gun, but the officers appeared to be pushing, pulling and punching Subject 1 as he tried to get away from the officers. Witness 1 denied telling IPRA [during the 21 September 2007 interview] that she would change her story or would add information to her statement if IPRA bought her dinner.

On 22 July 2009, **Officer C provided trial testimony** that was consistent with his Roundtable account. In addition, he stated that as he approached the top of the stairs at the third floor landing, he heard a single gunshot and then other shots. Officer C said that because the first shot “jolted” him and his partner, it was hard to say whether there was a cadence in the shots. He could not remember if there was a “particular pattern” or just rapid fire. He and other officers recovered a couple of cell phones from Subject 1.

Also on 22 July 2009, **Forensic Investigator 1** testified that when he and his partner entered Apartment XXX, he observed drug paraphernalia including razor blades, foil, cellophane wrappers and a powdery substance, which were inventoried. A razor blade recovered from the hallway outside the apartment also was inventoried. Parts of Officer A’s weapon were swabbed

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for DNA.

Officer B also testified on 22 July 2009. He related that CHA Manager A told him that Apartment XXX was vacant and no one had the right to be inside it. When Officers A and B went to Apartment XXX, Officer B knocked on the door and then pulled off plywood that had been used to cover a hole in the door. Officer B observed a pair of feet and legs going back and forth inside the apartment, and a female voice said she would open the door. When Witness 1 opened the door, Officer B recognized her as someone he had contact with in the past. Officers A and B entered the apartment, and Officer B had his weapon drawn. At some point, the officers closed the front door. Officer B told Subject 1 and Witness 1 to get against the wall. Witness 1 faced the wall. After Subject 1 slowly went to the wall, Officer B told both of them to get on their knees. Witness 1 got on her knees while still facing the wall, and Subject 1 squatted as if he were a catcher and then got on his knees while facing the wall. Witness 1 and Subject 1 had their hands up. Officer B pointed his weapon down and by his leg. Officer A had his weapon pointed down.

Officer B testified that he entered the hallway and went into the first bedroom to the right. He observed suspect crack cocaine on a mirror, small zip-loc plastic bags and a couple of razor blades. Officer B stepped out of the bedroom and gave Officer A a “look” to indicate that there was contraband “or something is going on; to be on the alert for any activity that may cause a defendant to try to escape ...” Subject 1 had gone back into a catcher position again and was facing Officer B. When Officer B gave Officer A the “look,” Subject 1 jumped up and went towards the door while Officer A was between Subject 1 and the door. Officer A blocked Subject 1, who went around Officer A’s waist and gunbelt. Officer B got behind Subject 1 and struck

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him “upside the head” with the barrel of his weapon; however, Subject 1 was unaffected by this.

Officer B holstered his weapon and attempted, with Officer A, to wrestle with Subject 1. At some point after holstering his weapon, Officer B radioed for assistance. During the struggle, Officer A holstered his weapon. Officer B punched at Subject 1 with his left hand as Officer A tried to bring Subject 1 to the ground [floor]. Subject 1 dragged Officer A through the opening in the door while Officer A was around Subject 1’s hips. Officer B was “kind of on Officer A.” Subject 1 went through the door, Officer A was half through the door and Officer B’s head was out the door. Subject 1 got loose from Officer A and ran around the corner [in the hallway] and disappeared. Officer B told Officer A that he was going back to the get the “dope.” Officer B screamed, “He’s going down the stairs.” Officer A said he would look around for Subject 1.

Officer B went into the apartment and recovered the crack cocaine. Officer B went back to the front of the apartment, got on his hands and knees to exit through the door opening and then heard a gunshot. Officer B “froze” for a second and then heard three more gunshots. Officer B crawled through the door and started screaming for Officer A. After receiving no response, Officer B entered the first stairwell, went to the fourth floor, looked around and screamed out Officer A’s name again. There again was no response. Officer B went to the third floor and screamed Officer A’s name. Officer B heard someone moaning and screaming loudly. Officer B went around a corner and saw Officer A on the floor in a pool of blood. Subject 1 was the person moaning and screaming. Officer A was not moving, and Officer B asked if he was all right. Officer A told Officer B, “[First Name], he bum-rushed me. He bum-rushed me. ... He tried to take my gun.” Officer B asked if Officer A was all right and then went to the stairwell where Subject 1 was half-in and half-out of the stairwell doorway. Officer B saw Officers C and D in

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the stairwell and told Officer C to handcuff Subject 1. Up to that point, Officer B had not had an opportunity to search or pat-down Subject 1 for weapons. Officer B radioed for ambulances for Officer A and Subject 1 and remained with Officer A until paramedics arrived. Officer B denied that he pistol-whipped Subject 1 before the struggle began in Apartment XXX. Witness 1 was not arrested.

Forensic Investigator 2 testified on 22 July 2009 that he administered a gunshot residue test to Subject 1 at Stroger Hospital at approximately 1150 hours on the date of the incident.

ISP Forensic Scientist A testified on 22 July 2009 that she could not determine conclusively that any of the holes in Subject 1's clothing were bullet holes. She said that the substances [nitrates, copper and lead] she looked for in such an examination could have been dislodged before her examination, or blood on the clothing could have removed the substances.

Officer E, a supervising latent print examiner for the Police Department, testified on 22 July 2009 that the fingerprints lifted from the barrel and cylinder of Officer A's weapon were not suitable for comparison. He said a gun has few clear surfaces on which an impression can be left, and Officer A's weapon had been "blued" to inhibit corrosion, which makes it harder to recover fingerprints from the gun.

Detective Rose testified on 22 July 2009 that he was assigned to investigate the incident involving Officer A and Subject 1. CPD Detective 1 stated that when he obtained the evidence from the case before the trial began, the only evidence that was not available was Officer A's revolver, which had been released to Officer A after it was processed by the State Police Crime Lab. CPD Detective 1 related that after he made an initial request for fingerprint analysis on Officer A's weapon, he waited for the results but did not follow-up on that request. CPD

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Detective 1 also testified that he did not request that Witness 1 be arrested for trespassing at 527

E. Browning because no one who was trespassing at that building was arrested. No one was charged with possession of the cocaine in Apartment XXX because no officer saw anyone in possession of the cocaine. No request for fingerprint testing of the plastic wrap that was recovered near the cocaine was made because the plastic had been handled by possibly three officers.

In discussing a stipulation in court on 23 July 2009, Assistant State's Attorney A stated that ISP Forensic Scientist B would testify that the results of the GSR test administered to Subject 1 indicated that he may not have discharged a firearm with either hand. ISP Forensic Scientist B also would have testified that if Subject 1 discharged a firearm, the GSR particles could have been removed by normal hand activity, by how the weapon was fired, by the passage of time, by the handcuffing procedures, the presence of blood and emergency room treatment procedures.

During the trial on 23 July 2009, ISP Forensic Scientist C testified that she analyzed DNA recovered from Officer A's revolver and Subject 1's buccal swab. ISP Forensic Scientist C had to combine the six swabs from the revolver to have enough DNA to analyze. The low levels of a human male DNA profile from the revolver swabs did not match Subject 1's DNA profile. ISP Forensic Scientist C testified that it is possible that a DNA profile matching Subject 1 was not detected on the revolver because Subject 1 did not touch the revolver; or because Subject 1 did not handle the gun enough to leave such a profile; or that he is a person who does not shed skin cells easily; or because the DNA profile of the owner of the gun might be stronger than that of someone who touched it only once. ISP Forensic Scientist C said it is typically more difficult

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to find a DNA profile utilizing possible cellular material or skin cells compared to using blood or a semen sample.

During the trial on 23 July 2009, Officer A testified that when he entered Apartment XXX, he saw Witness 1 and Subject 1 and told them to “get on the wall.” Witness 1 put her hands on the wall and Subject 1 moved around and was kind of nervous. Subject 1 “kind of got both” hands on the wall. Officer B said, “Get down on the floor.” Subject 1 obeyed that command. Officer B went down the hallway to secure the location so that no one would “jump out” on the officers. Officer B “popped into a bedroom” for seconds and then came back out. Officer A had his gun out but to the side. He had his finger on the [trigger] guard. Subject 1 got to his feet, and Officer A ordered him to get back on the floor. Subject 1 began to get back down. Officer B came out of the bedroom and kind of gave Officer A a nod as if he found something. Subject 1 had gotten into a “sprinter stance,” a crouched position. Officer A was between Subject 1 and the front door, which Officer A recalled was closed a little bit. Officer A thought he might be “rushed” and began putting his gun back into his holster so his hands would be free.

Officer A testified that Subject 1 rushed him, but he was able to get his gun into the holster after Subject 1 had his arms around the lower part of Officer A’s body. Subject 1 and Officer A were “tussling” as Subject 1 pushed Officer A toward the door. Officer B became involved in the incident, but Officer A did not see much of what he was doing. Subject 1 and Officer A crashed through the door and fell to the floor. Officer B was on top of Subject 1 and Officer A. Subject 1 got away and turned right down a hallway. Officer A told Officer B he was going after Subject 1. Officer A began going to the fourth floor and unholstered his weapon. After not seeing Subject 1 on the fourth floor, he entered the third floor from the north exit, away

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from the elevator.

Officer A testified that he looked to the right, did not see anyone, and then turned left, toward the elevator exit. Officer A held his gun along the trigger guard. Subject 1 came from the corner, from the exit in front of the elevator. He was “about ten feet” from Officer A, who brought his gun up and said, “Police.” Subject 1 went toward Officer A, who testified that he “allowed him to get too close to me.” Officer A’s finger was not on his gun trigger. Subject 1 grabbed Officer A’s shoulders, “like in a stopping motion.” Subject 1’s left hand dropped onto Officer A’s right hand, in which he held his gun. Subject 1’s hand came off Officer A’s left shoulder. Officer A felt his gun being turned, with pressure on his hand, and the gun was turned toward Officer A. Officer A tried to push away with his “gun hand.” He testified that he “punched up” to Subject 1 with his left hand, and he turned to hit Subject 1. A struggle occurred, Officer A threw a punch, and the gun went off and Officer A was shot in his left arm. Officer A testified that his finger was not on the trigger, “so it had to be Subject 1.” Officer A did not know how badly he was hurt and he was worried about Subject 1, who started going behind him. Officer A thought Subject 1 was going behind him to harm him, to get control of him, and Officer A would not be able to defend himself while hurt. Neither Officer A nor Officer B had been able to search Subject 1 before the shooting incident, and Officer A did not know if he had any guns on him. Officer A was afraid that Subject 1 would take his gun, “use” it on him and possibly someone else. As Officer A fell, he turned with Subject 1, and, thinking Subject 1 was going behind him, he fired his gun. As Officer A went down, he saw Subject 1 going down to his right, and Subject 1 was two or three feet away from him. Officer A put down his gun on his right side and looked at Subject 1 to make sure he was not moving. Officer A lay his left arm on

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the concrete and put pressure on it because he thought an artery might have been hit, given the amount of blood he saw.

Officer A testified that he sustained extensive nerve damage to his arm. He did not have complete feeling in the arm and he experienced extensive muscle spasms he could not control. Officer A said the bullet entered the lower part of his left forearm, toward the inside, and it exited at a point closer to his left wrist toward the rear. In his 34 years as a police officer, he had never discharged his weapon, other than during the incident.

On cross-examination, Officer A testified that when two detectives interviewed him at Northwestern Memorial Hospital on 14 September 2007, he was “under a lot of medication” and he did not remember saying that Subject 1 “jumped out and grabbed” his arm and handgun. Officer A did not recall telling detectives at the hospital that after he was shot in the forearm, the struggle over the handgun continued. Officer A recalled that he spoke to CPD Detective 1 on 25 September 2007 at his home and that he “guessed” he told CPD Detective 1 that Subject 1 popped out from the center stairwell and was “right on top of” him. Officer A testified that Subject 1 had his left hand over Officer A’s “gun hand,” not on his gun. Officer A said that as he “punched up” to hit Subject 1, Subject 1 pulled the trigger of the gun. Officer A’s finger was still on the trigger guard, and he did not know if Subject 1 touched any other part of the weapon. Subject 1 was a few “inches” from Officer A when the trigger was pulled.

Officer A continued that when he fired at Subject 1, without aiming, Subject 1 was approximately 8 to 12 inches from one side of Officer A’s body, but two to three feet from his gun. When Officer A went down and looked at Subject 1, Subject 1 was one or two feet from him. Officer A looked at Subject 1 to see if he was moving and Officer A turned. After that,

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Officer A did not see Subject 1 again until when he testified in court. Officer A said he was told he fired three times, even though he thought he fired twice. Officer A did not see Subject 1 crawl away from him or move toward the north stairwell.

Officer A testified that he did not recall telling Doctor B at Northwestern Memorial Hospital that he had accidentally shot himself, and he also testified that he did not make that statement to the doctor. Officer A stated that he did not swing at Subject 1, but “came up to punch him” and might have made contact.

During the trial on 23 July 2009, Doctor B testified that when he spoke with Officer A on 14 September 2007, Officer A told him that he was in a struggle with a suspect, that Officer A had his gun in his right hand and that while struggling, the gun went off and his left arm was injured. Doctor B at first testified that Officer A told him that he accidentally shot himself, but upon further questioning, Doctor B testified that Officer A “never said it was an accident.” Doctor B also testified, “Not for a hundred percent I can’t say that he said it was an accident.”

In discussing stipulations in court on 23 July 2009, defense attorney Attorney A stated that ISP Forensic Scientist A would testify that on 16 October 2007, she handled Officer A’s weapon(s) without gloves. Attorney A also stated that medical personnel from Stroger Hospital would testify that Subject 1 was treated there for two gunshot wounds. One wound was in the right lower flank, with no exit, the bullet lodging in the spinal area. The other gunshot wound was in the left thigh, with the entrance wound at the rear and the exit wound at the front. On 23 July 2009, the jury found Subject 1 **not guilty** of attempted first degree murder of a peace officer, not guilty of aggravated battery with a firearm and not guilty of disarming a peace officer.

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An amended complaint filed on 29 July 2009 in U.S. District Court by Subject 1 alleged that Officer A's shooting of Subject 1 was unjustified and that Officers A and B unjustifiably used physical force against him. The lawsuit also alleged that the officers falsely arrested Subject 1.

The report of the **judgment in the lawsuit**, dated 15 November 2010, indicated that the jury found for the city of Chicago and the two officers and against Subject 1.

A record from the **Illinois Department of Corrections** indicated that Subject 1 is in custody at the Shawnee Correctional Center as a result of subsequent convictions.

General Order G03-02-03 states 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 to another person or to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested has committed or has attempted to commit a forcible felony which involved the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or is attempting to escape by use of a deadly weapon or otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

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CONCLUSION AND FINDINGS:

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #1 that **Officer A** physically maltreated Subject 1. Even though Witness 1's accounts of what occurred inside Apartment XXX sometimes varied, her accounts did not describe maltreatment of Subject 1 by Officer A.

The Reporting Investigator recommends a finding of **NOT SUSTAINED** for Allegation #2 that **Officer A** directed profanities at Subject 1. Subject 1 alleged that Officer A called him a "motherfucker" in the third floor hallway, but Officer A denied saying that. There is insufficient evidence to prove or disprove the allegation.

The Reporting Investigator recommends a finding of **NOT SUSTAINED** for Allegation #3 that Officer A threatened to shoot Subject 1 because Officer A denied making the threat. There is insufficient evidence to prove or disprove the allegation.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #4 that Officer A used deadly force without justification. Even though Officer A's and Subject 1's accounts contradicted each other, and the available physical evidence was not conclusive, the preponderance of the evidence indicated that Subject 1 caused Officer A's revolver to fire, wounding Officer A. It is reasonable that Officer A then believed that Subject 1 was still a danger to him and, under General Order 03-02-03, he was justified in firing at him to prevent death or great bodily harm. Subject 1 had already resisted the officers in Apartment XXX. Subject 1 committed a forcible felony on the third floor by resisting Officer A and by either pulling the trigger of the weapon or causing the trigger to be pulled. Under the same General Order, Officer A was justified in firing at Subject 1 as Subject 1 continued to flee the building

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because he had committed a forcible felony involving the infliction of physical force likely to cause death or great bodily harm and was attempting to escape.

Subject 1 denied that he struggled with Officer A on the third floor. It is reasonable to believe that some kind of struggle or physical contact occurred between Subject 1 and Officer A on the third floor because of the accounts from Officer A, in which he consistently stated that his revolver fired after Subject 1 grabbed his gun hand. It is not reasonable to believe that a police officer would shoot his own arm to excuse his firing, justifiably, at a subject who had already resisted and injured him. Subject 1's account of what occurred in Apartment XXX has some credibility because Officer B testified that he hit Subject 1's head with his gun during the struggle. However, Subject 1's perception of what occurred on the third floor is not reliable because he said he heard three, rather than four, shots and that he was tested for gunshot residue there, rather than in the hospital, where it was documented that the testing occurred. In addition Subject 1 said he heard two shots and then a third shot, while Officers A and B's descriptions were that there was one shot fired, and then three more. Officer B also denied that he shot Officer A.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #5 that Officer A searched and seized him without probable cause. Officers A and B did not search Subject 1 and attempted to "seize" Subject 1 only after the cocaine was discovered in Apartment XXX, which was reasonable and lawful.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #6 that Officer A wrongfully detained Subject 1, using the same reasoning for the finding for Allegation #5.

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The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #7 that Officer A attempted to cover up the incident by having Officer B shoot Officer A's left arm. No evidence corroborated the allegation.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #8 that Officer A made a false report. As already stated, Officer A consistently stated that his revolver fired after Subject 1 grabbed his gun hand. The preponderance of evidence did not corroborate the allegation.

The Reporting Investigator recommends a finding of **NOT SUSTAINED** for Allegation #1 that **Officer B** physically maltreated Subject 1. Officer B related that he struck Subject 1 with his gun, but Subject 1 was around Officer A's waist and gunbelt at the time. Witness 1's accounts were not consistent regarding what Officer B did during the fight, and Subject 1 did not admit to fighting. The evidence did not prove or disprove the allegation.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #2 that Officer B searched and seized him without probable cause using the same reasoning for the same allegation (#5) against Officer A.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #3 that Officer B wrongfully detained Subject 1 because the officers attempted to detain him only after the suspect cocaine was found and after Subject 1 was involved in the shooting.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #4 that Officer B attempted to cover up the incident by shooting Officer A's left arm. No evidence corroborated the allegation.

The Reporting Investigator recommends a finding of **UNFOUNDED** for Allegation #5

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that Officer B made a false report. Officer B accurately reported that a fight with Subject 1

occurred inside Apartment XXX after he resisted the officers and attempted to flee.

FINDINGS:

Accused #1 Officer A

Allegations #1,
#4-#8 **Unfounded**
Allegations #2, #3 **Not Sustained**

Accused #2 Officer B

Allegation #1 **Not Sustained**
Allegations #2-#5 **Unfounded**