

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Interim Chief Diaz

DATE: 6/14/10

FROM: A/C Jim Pugel
Investigations Bureau

SUBJECT: FRB 10-001

General Information:

Officer Matt Hendry Serial #6320, SWAT
Intentional Discharge, Incident # 10-166254
Non-injury
Entire incident occurred and ended in City of Seattle

In accordance with the Seattle Police Department Manual, Section 1.305, a Firearms Review Board (FRB) was convened on Tuesday, June 15, 2010, in classroom #1 of the Advanced Training Section, located at Park 90/5, 2203 Airport Way South, at 0900 hours. The FRB reviewed and investigated the circumstances surrounding the discharge of a firearm by Officer Matt Hendry. This discharge occurred on Thursday evening at about 2245 hours, May 20, 2010, in the City of Seattle.

FRB members each received a FRB notebook prior to the hearing. Evidence considered included verbal testimony, memorandums, two assault-style weapons owned/used by subject Michael Wight, a PowerPoint presentation, statements and other related documents. The FRB visited the scene at 3010 NW 73rd Street prior to the convening of the review board. The FRB heard testimony from the two Homicide detectives, Jeffrey Mudd and Timothy Devore, as well as Officer/Negotiator Patrick Chang and Officer Matt Hendry.

Members of the Firearms Review Board:

Assistant Chief Jim Pugel, Criminal Investigations Bureau
Captain James Dermody, East Precinct
Captain Neil Low, Training Section
Lieutenant Michael Teeter, Employment Services

Observers:

Suzanne Adams Citizen Observer
Sergeant Rich O'Neill Seattle Police Officers Guild

Presenting Detectives:

Detective Jeffrey Mudd, Homicide/Assault, Unit#715
Detective Timothy Devore, Homicide/Assault, Unit#715

From: A/C Jim Pugel
Subject: FRB 10-001

Witnesses:

Officer Patrick Chang
Officer Matt Hendry

Chronological Summary of Incident:

Officer Matt Hendry, a member of the SWAT Unit, received a page at 2012 hours on May 20, 2010, directing him to respond to a barricaded and suicidal man situation at 3010 NW 73rd, with additional information that the subject was armed with a rifle.

King County Mental Health Professionals, Christie White and Joseph Miletello, reported to officers that they had responded to a suicidal male call at 3010 NW 73rd Street, where they were confronted/assaulted by the resident. When subject Wight didn't answer his door at 1930 hours, they contacted him by cell phone, and he told them to leave his property. As they were exiting his front porch, Wight opened the door, brandished a rifle, pointed it at them, and yelled for them to leave his property. [REDACTED] called 911 and reported the confrontation/assault.

Responding police officers set up containment around Wight's residence. They were subsequently relieved by SWAT officers. After several attempts to contact Wight by telephone, which included text messaging, Officer/Negotiator Patrick Chang made phone contact with him at approximately 2218 hours. Wight accused the officers of harassing him and demanded that they go away. Chang advised they couldn't, and Wight hung up the phone.

When negotiations failed, SWAT personnel deployed Flash Bang devices to get the subject's attention, and they broke out a south side window. Wight re-contacted Officer Chang by phone and again yelled for him and the police to go away. Chang explained that in light of the circumstances surrounding the MHPs the police couldn't do that. Wight admitted he had been depressed and suicidal earlier in the day, but he insisted he was okay now. When asked about the incident with the MHPs, Wight explained that they had come onto his property, and that he had a right to defend himself. At some point Wight told Chang he had used an "Airsoft" weapon when confronting the MHPs, but then repeated that he had a right to defend himself, which seemingly would imply that he had more than an Airsoft replica/weapon at his disposal for his defense. Wight offered to bring the weapon out and throw it on the ground to prove it wasn't real, but Officer Chang advised him that this would be risky behavior, because the officers couldn't be sure of his intentions. Wight's mood appeared to swing again, with him saying that he was "going to come out fully loaded and cocked," again implying that he had a real weapon, and that if officers came in after him they "better come fully loaded."

Upon his arrival, Officer Hendry paired up with Officer G. Rice and took a position of cover in the yard just north of Wight's residence. From behind a fence and next to a shed, Hendry could see inside of Wight's residence, which SWAT had illuminated with a very bright flood light. While in position there, Hendry heard other SWAT members giving directions to subject Wight over their public address speaker. After deployment of the Flash Bang (NFDD) device on the south side of the house, Hendry heard Wight respond by yelling at the SWAT members. When Wight again broke off contact with the officers, Officer Hendry received instructions from his sergeant to deploy wooden dowels from his 40mm less lethal launcher at the side of Wight's house, which he did. Once again, Wight re-contacted the officers.

Wight continued to refuse to come out of his house, began pacing his floors, and then he opened the window to complain about the police harassing him. Wight ceased communication, so SWAT officers

broke a window on the south side of the house with wooden dowels, and when Wight went to that side of the house to yell at them, Officer Hendry discharged another container of dowels, partially breaking the north side windows. Wight immediately yelled, "If you wanna throw things at me, I'll throw things at you!" Wight then disappeared from view and returned with what Hendry recognized to be a black semi-automatic rifle (no orange tip on the barrel). Wight held the rifle in the low-ready position and turned inside an inner kitchen doorway to advance toward the window. Hendry feared that Wight would raise the weapon and begin firing at him and his cover partner, Officer Rice, whose only protection was a wooden fence they were concealed behind, so fearing for his life and that of his partner he fired three shots from his department issued Colt Commando through the window at Wight. Wight immediately ducked down and out of view.

Wight re-emerged through the same doorway un-injured, without the weapon, and yelled profanities at the officers for shooting at him. Officer Hendry demanded Wight show his hands, which he didn't do, but then after pacing around his house for several minutes, Wight finally surrendered to officers on the south side of the residence.

Photographs and the visit to the crime scene reveal that two bullets struck the interior plaster and lath wall, close to where Wight had been standing in the doorway. A third shot was partially deflected by the window frame and glass, which resulted in its fragments spraying into the wall and kitchen cabinet nearby where Wight had been standing.

Following his arrest, subject Wight denied that he was trying to provoke the officers into helping him complete the act of "suicide by cop." But Wight would not explain why he had painted over the orange tips of the Airsoft rifles with black paint, which made them appear to be actual weapons.

Determination:

- A. The discharge occurred while the employee was on duty.
- B. The discharge was intentional.
- C. N/A
- D. The discharge was intentional and directed at a person and was in accordance with department guidelines.
- E. The use of the firearm was necessary to arrest or apprehend a person who the officer reasonably believed had committed, had attempted to commit, was committing or was attempting to commit a felony.
- F. Considering the circumstances known to the officer at the time it would not have been a reasonable alternative to allow the suspect to escape without resorting to the use of force.
- G. The immediate actions of the officer did not contribute to the need to fire.
- H. The officer's actions were found to be justified with no further action recommended regarding his use of force. (See issues/recommendations for other recommendations)

Findings:

- The firearm discharge by Officer Matt Hendry was found by the FRB to be justified.

Issues/Recommendations:

Apparently as part of their normal routine, SWAT officers picked up the Flash Bang (NFFD) device containers, which they had deployed, apparently intent on reusing/recycling them. This occurred before the Homicide/CSI Detectives responded and had a chance to process the intact scene. Although it makes good

From: A/C Jim Pugel
Subject: FRB 10-001

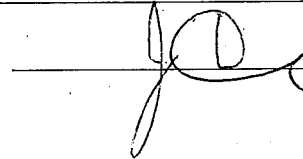
sense to salvage and reuse these devices, they are in fact evidence until the Crime Scene investigators say otherwise. SWAT should leave these containers in the positions where they landed until they are advised they can retrieve them.

Board comments/observation

Evidence: (See: Above: SWAT reusing/recycling tactical devices which have become part of the crime scene.)

Training: Additionally, the FRB observed that Officer Hendry's three bullets were partially deflected by the glass windows he fired through, which was more the case for the one deflected by the window frame. It is recommended that SWAT incorporate shooting through glass into its training curriculum, noting how it can possibly change the intended direction of the shot(s).

Approval/Comments/Date



John Diaz
Interim Chief of Police

Attachments: FRB Procedures Guidelines

cc: Deputy Chief Nick Metz, Operations
Deputy Chief Clark Kimerer, Administration
Assistant Chief Mike Sanford, Operations Bureau 1
Assistant Chief Paul McDonagh, Operations Bureau 2
Captain James Dermody, Board member
Captain Neil Low, Board member
Lieutenant Michael Teeter, Board Member
Suzanne Adams, Citizen Observer
Rich O'Neill, Bargaining Unit Observer/Representative

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: John Diaz
Chief of Police

DATE: 9/15/10

FROM: Deputy Chief Nick Metz
Chief of Operations



SUBJECT: Firearms Review Board: 10-002

General Information:

Officer Chris Anderson, Serial #6609/623
Intentional Discharge, Incident # 10-286279
Officer Involved Shooting: Fatality
Entire incident occurred and ended in City of Seattle

In accordance with the Seattle Police Department Manual, Section 1.305, a Firearms Review Board (FRB) was convened on Monday, September 13, 2010, in the Lower Level Conference Room of the Seattle Justice Center, 610 5th Avenue, at 1000 hours. The FRB reviewed and investigated the circumstances surrounding the discharge of a firearm by Officer Chris Anderson on Monday, August 16, 2010, at the QFC store located in the 8400 block of 35th Avenue NE, City of Seattle.

FRB members each received a FRB notebook prior to the hearing. Evidence considered included verbal testimony, in-store video footage from QFC, memorandums, diagrams, photographs, a PowerPoint presentation, statements, and other related documents. The FRB visited the scene at 8400 35th Avenue NE prior to the convening of the review board. The FRB heard testimony from the Homicide Detective Alan Cruise and CSI Detective Kevin O'Keefe, as well as Officers Brian Whicker, Duane Goodman, and Chris Anderson.

Members of the Firearms Review Board:

Deputy Chief Nick Metz, Chief of Operations
Captain Dave Emerick, South Precinct
Captain Neil Low, Training Section
Lieutenant Joel Guay, East Precinct

Observers:

Suzanne Adams Citizen Observer
Director Greg Schmidt Communications
Sergeant Rich O'Neill Seattle Police Officers Guild

Presenting Detectives:

Detective Al Cruise, Homicide/Assault, Unit#715
Detective Kevin O'Keefe, CSI

From: Deputy Chief Nick Metz
Subject: Firearms Review Board: 10-002

Witnesses:

Officer Brian Whicker
Officer Duane Goodman

Chronological Summary of Incident:

Officers Chris Anderson and Brian Whicker responded to the QFC store located in the 8400 block of 35th Avenue NE to follow-up on a Felony Domestic Violence call from the previous night. Partial information provided to Communications by the night manager was that Ariel Rosenfeld, a subject the police were looking for the night before, was working in the Meat Department of the QFC, doing clean up [REDACTED] the manager, called back an hour later to report that Rosenfeld was still there, but it was believed that he would leave in the next twenty minutes. [REDACTED] did not know the reason the police were looking for Rosenfeld, but he assumed that it was pretty serious, because three officers had come to the store looking for him.

Officer Brian Whicker stated that he heard the radio call the previous night and spoke with the responding officer at the end of his shift. Before entering the store on Monday evening, Whicker called the other officer on his cell phone to better determine what the situation was that they might be facing, wanting to know more about what made this a felony domestic violence case. He learned that it had been a domestic violence assault in which the suspect strangled his mother to unconsciousness, perhaps not knowing if he left her dead or not.

Dispatched at 2007 hours, Officers Whicker and Anderson entered the Meat Department at 2017 hours and addressed subject Rosenfeld, while blocking his exit. Rosenfeld was at the far end, bent over, cleaning something with a hose. The subject, wearing dark sunglasses, turned to face the officers, who were standing on a wet, soapy floor. He continued to spray the hose in their general direction, ignoring their presence and commands, and then he fled into an adjoining room, past an array of butcher knives. Anderson and Whicker pursued the subject into the small cooler, where packaged meat products and other items were stacked and stored, some on roll-away carts, greatly reducing mobility and obstructing egress/access. The subject was trying to get past the stacks to the door, which led to an ante-room that would allow the subject access to the backroom or to the hallway through which the officers had just entered.

Officer Anderson caught up with Rosenfeld by the inside door and grabbed him by his leg, holding onto him, but he couldn't take him down to the floor or gain the leverage necessary to control him. Given Anderson's strength and large size, Officer Whicker couldn't get close enough to help in the tight space, so he went out and around to where he could approach Rosenfeld from the other side of the door. From there, Whicker grabbed onto Rosenfeld and pulled him down and through the door, beginning what would become a four-minute and thirty-eight second struggle.

Visible on the store's videotape, employees watched the struggle for some time, before the manager directed some of them to return to their clerking duties.

Well into the battle, after trying unsuccessfully to handcuff Rosenfeld, Officer Whicker got on his radio and called for a back-up.

From: Deputy Chief Nick Metz
Subject: Firearms Review Board: 10-002

Officer Goodman responded immediately from ten blocks away. When he reached the back room, Goodman found Anderson and Whicker still struggling with Rosenfeld, who had somehow reached the stairs that led up to an employee area. The officers said the fight was so long and intense that they didn't know how they had gotten to that point. Goodman saw that Whicker had hold of Rosenfeld's right arm, while Anderson struggled with Rosenfeld's left. Goodman knelt on Rosenfeld's neck, attempting to help pin him down.

During this entire struggle, as verified by store employees, the officers continued to give direction to Rosenfeld, ordering him to quit struggling, while administering body blows and punches, hoping to break his resistance. None of the officers were equipped with *Tasers*. Rosenfeld never responded to the officers' demands, but only grunted and "gurgled." At one point, Rosenfeld kicked Whicker in the stomach, causing him to lose his grip on Rosenfeld's arm.

Goodman and Whicker say that before the shot, Anderson yelled something about the subject having a gun. Either: "Shit, he's got a gun!" or "Fuck, he's got a gun." QFC employees also heard a gun warning. Goodman said he saw a flash of the chrome slide in the subject's hand, before he heard a "pop" and saw the shell fly out past him. At this point, Goodman wasn't sure who fired a gun and/or who--if anybody--had been hit, including himself. Goodman tried to call Radio three times before he finally got through. Later, other officers told Goodman they had heard him on their radios each of the three times.

Whicker adds that he first caught a glimpse of the gun fully in a holster/pouch tucked inside the waistband of the subject's pants, right after Anderson's warning of a gun. Whicker immediately re-focused his efforts on keeping Rosenfeld's right hand away from the gun, and then he saw the subject's left hand beginning to grip the gun, just before he heard a gunshot.

Officer Anderson said that he saw the gun, saw Rosenfeld grab it, saw Rosenfeld's finger on the trigger, and fearing for his life and those of the other officers, he shot the subject "in the stomach." He didn't realize until later that Rosenfeld had pulled the gun from a holster.

Officer Whicker handcuffed the subject, picked up the gun and cleared it, noting that no round ejected from the chamber.

Detective Cruise reports that the subject has an extensive arrest history, which includes violence towards police officers. Rosenfeld's mother had a DV Protection Order against him, and she reports that he was taking anti-anxiety medication. She contacted the detectives and wanted to personally apologize to Officer Anderson, as well as she offered her opinion that her son committed "suicide by police officer."

Detective Cruise also reports that the tale of how the handgun came into Rosenfeld's hands is dubious. The person who actually sold it to him told him to the effect: "the gun was untraceable. All he had to do if he used it was to get rid of it."

Determination:

- A. The discharge occurred while the employee was **on duty**.
- B. The discharge was **intentional**.
- C. N/A
- D. The discharge was intentional and directed at a person and was **in accordance with department guidelines**.

From: Deputy Chief Nick Metz
Subject: Firearms Review Board: 10-002

- E. The use of the firearm was **necessary** to arrest or apprehend a person who the officer reasonably believed had committed, had attempted to commit, was committing or was attempting to commit a felony.
- F. Considering the circumstances known to the officer at the time it would **not** have been a reasonable alternative to allow the suspect to escape without resorting to the use of force.
- G. The immediate actions of the officer **did not** contribute to the need to fire.
- H. The officer's actions were found to be **justified** with no further action recommended regarding his use of force. (See issues/recommendations for other recommendations)

Findings:

- The firearm discharge by Officer Chris Anderson was found by the FRB to be **justified**.

Issues/Recommendations:

Apparently, meaning to be helpful in securing the scene, Officer Whicker picked up the firearm, cleared it, and made sure it is safe. This may be the result of military training or good intentions, but it needs to be communicated to officers that they must leave the guns where they found them—in the exact condition they found them, to maintain their evidentiary value.

Board comments/observation

Evidence: (See: Above: Officers securing weapons.)

Training: Additionally, the FRB observed that the area in which the officers physically engaged the subject worked entirely to the subject's advantage. Rosenfeld knew the layout of the store, knew his possible escape routes, and his smaller size, agility, and fitness made it difficult for the officers to get the leverage and traction to bring him under control. This is duly noted and will be discussed at Advanced Training, but it is not clear that Training could replicate this very scenario without raising the level of risk to trainer and students.

On Scene Visit: The FRB made an on scene visit to the QFC store and found the visit and walk-through with Homicide detectives to be very helpful for understanding the situation the officers faced. The Meat Department was an extremely small and congested area with multiple doors that could contribute to confusion during a story's retelling. The walk-through set the stage and proper context.

Presence of Communications at the FRB: The FRB also found that it was very helpful to have a representative from Communications at the hearing to help explain procedures and Communication's perspective. Issues, such as having an operator run the previous event number to check the call before dispatching officers, operators running the subject's name for Hazard information, and/or the officer's radio not transmitting until his third attempt were all addressed with the Section Commander who can do the most about correcting those problems.

Equipment: The FRB believes that if the officers had been equipped with *Tasers*, they would have had more tools at their disposal for attempting to restrain the subject before the situation escalated to where a firearm had to be used. Officer Whicker was already signed up to take the class later that week, which he did.

On the other hand, tear gas would have worked against the officers' efforts because of the tight restricted space. It is very likely they could have been incapacitated by its deployment.

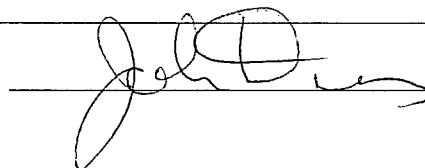
From: Deputy Chief Nick Metz
Subject: Firearms Review Board: 10-002

The FRB also discussed radio ear pieces and their utility. Although Whicker's fell out during the struggle, he believes it is a very helpful piece of equipment.

Post Shooting Treatment of Officers: All three officers said they were treated well by the Department during the entire process. Union President Rich O'Neill also had positive comments about the new process.

Officer Anderson took advantage of the new process to take his wife to the psychologist on an additional visit. He said this was very helpful for the both of them, and he compares that to a shooting he was involved in nine years ago, where these services were not available. He said that earlier shooting was very difficult for his wife to adjust to, where the psychologist's visit on this occurrence was very much appreciated by him and her.

Approval/Comments/Date



John Diaz
Chief of Police

Attachments: FRB Procedures Guidelines

cc: Deputy Chief Clark Kimerer, Administration
Assistant Chief Mike Sanford, Operations Bureau 1
Assistant Chief Paul McDonagh, Operations Bureau 2
Assistant Chief Jim Pugel, Investigations
Captain Dave Emerick, Board Member
Captain Neil Low, Board Member
Lieutenant Joel Guay, Board Member
Suzanne Adams, Citizen Observer
Rich O'Neill, Bargaining Unit Observer/Representative
Kathryn Olson, OPA Director.
Asst. Chief Dick Reed.

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: John Diaz
Chief of Police

DATE: February 15, 2011

FROM: Clark Kimerer
Chief of Staff

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SUBJECT: FINAL REPORT AND RECOMMENDATIONS, FIREARMS REVIEW BOARD #10-03

In accordance with Seattle Police Department Manual, Section 11.030, a Firearms Review Board (FRB) was convened on Monday, October 4, 2010 at 0900 Hrs. to investigate and review the circumstances surrounding the firearm discharge on August 30, 2010 at Howell Street and Boren Avenue by Seattle Police Officer Ian Birk, #7507.

FIRST CONVENING OF FRB #10-03 ON OCTOBER 4, 2010

Members of FRB #10-03 were as follows:

Deputy Chief Clark Kimerer, Chair
Captain Richard Belshay, Homeland Security Section
Captain James Dermody, East Precinct
Lieutenant Scott Bachler, Training Section
Rebecca Roe, Citizen Observer
Sergeant Rich O'Neill, Bargaining Representative Observer

Also in attendance was SPD Legal Advisor Reni Bispham.

The investigative file was distributed to all FRB #10-03 members in advance of the hearing.

It is the policy of SPD that every officer involved shooting which results in a death will have a Deputy Chief assigned as chair of the Firearms Review Board. As Chair, I personally selected the voting members of FRB #10-03. The nature of this officer involved shooting incident clearly indicated that training, tactics and policy would all be focal points of the inquiry and deliberations of this FRB. Both Captains Dermody and Belshay have extensive tactical experience at both the practitioner and command levels, and have served on the SPD SWAT Team, as have I. In addition, Captain Belshay has commanded the Training Section. Captain Dermody currently commands a patrol Precinct (East). Finally, Lieutenant Bachler has held positions in both the Audit and Policy Section and is currently assigned (as he has been for the last several years) to the Training Section.

In preparation for FRB #10-03, I directed Homicide Lieutenant Steve Wilske, who oversaw the investigation, to undertake a thorough records search to ascertain if there had been any contact

FRB #10-03: FINDINGS AND RECOMMENDATIONS

D/C Kimerer to COP Diaz

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documented between Officer Birk and John T. Williams in the past. No documented contacts were found. Throughout the investigation by the Homicide Section, Assistant Chief Jim Pugel and I were regularly briefed, and the investigative file – as it was being assembled – periodically reviewed. Both Assistant Chief Pugel and I made various requests for follow-up or clarification.

In addition, I asked Sgt. Tom Ovens of the Training Section to provide a comprehensive overview of the use-of-force training curriculum objectives and philosophy in effect when Officer Birk attended the Basic Law Enforcement Academy, SPD Post-Basic Training and Field Training. Sergeant Ovens supervises use-of-force training for the SPD Training Section. The summary he authored was distributed to all voting members and observers of FRB #10-03, and is attached to this memorandum. Sergeant Ovens provided testimony and responded to FRB member questions at the October 4, 2010 hearing.

FRB #10-03 commenced with a site visit to the intersection of Howell Street and Boren Avenue at 0900. FRB #10-03 members Kimerer, Belshay, Dermody, and Bachler were present, as was Citizen Observer Roe. The site visit was coordinated by SPD Investigating Detectives Jeffery Mudd and Timothy Devore. Other Homicide Unit and CSI Detectives were present to answer FRB #10-03 questions, as was Homicide Unit Lieutenant Steven Wilske. The purpose of this site visit was to walk through the incident scene, obtain perspective and pose questions to investigators. Following this site visit, FRB #10-03 convened at SPD Headquarters, 610 5th Avenue, in the lower-level conference room at approximately 1000 hours. At this time, the investigative summary was presented by Homicide Detectives Jeffery Mudd and Timothy Devore. Crime Scene Investigative Unit (CSI) Detectives were also present to answer questions.

The investigation into this incident, and resulting file, was one of the most exhaustive which I have seen in my career, which included involvement in over 50 Firearms Review Boards. This observation is validated by the peer review undertaken at your direction by the San Diego and Austin Police Departments.

Following presentation of evidence from Homicide and CSI, civilian witnesses [REDACTED] and [REDACTED] were asked to voluntarily testify. (Witness [REDACTED] was also asked to voluntarily testify, but was unable to attend the hearing). It is within the rules of the SPD FRB process that – at the discretion of the Chair – incident witnesses may be asked to appear before the FRB and provide testimony and information. This is rarely done, as officer involved shooting investigative files include witness statements, most often transcribed from a detective interview. As Chair, I wanted FRB #10-03 to have the most exhaustive range of testimony and information available to the voting and non-voting members. While the testimony of witnesses [REDACTED] and [REDACTED] was entirely consistent with their transcribed interviews, their appearance served the important function of helping validate the accuracy and completeness of the investigative file. As the SPD FRB process is administrative and does not

FRB #10-03: FINDINGS AND RECOMMENDATIONS

D/C Kimerer to COP Diaz

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include subpoena powers, the willingness of witnesses [REDACTED] and [REDACTED] to voluntarily appear and give testimony was commendable, and the Department extends its sincere appreciation to them.

Following the investigative summary and testimony of two civilian witnesses, Officer Birk was asked to testify. At the conclusion of Officer Birk's testimony, and following extensive questions from the members of FRB #10-03, the Board members relocated to the Chief of Police Conference Room, 8th Floor of SPD Headquarters, to begin discussion and then, following dismissal of FRB #10-03 Observers and the Department Legal Advisor, Renni Bispham, begin formal deliberations.

By policy and past practice, a SPD Firearms Review Board is asked to submit findings in response to a set of standard questions. These questions, as well the overall format of the FRB, were presented to both the voting members and observers at the beginning of FRB #10-03, including distribution of the "Firearms Review Board Protocol" and "Firearms Review Board Procedure Guidelines-Findings-Recommendation" publications (copy attached). I personally went over all facets of the roles and responsibilities of the voting members and observers at the beginning of FRB #10-03, and on several occasions during the process. The preliminary findings and recommendations of the voting members of FRB #10-03 on October 4, 2010 were unanimous, as follows:

1. The firearms discharge occurred while Officer Birk was on-duty.
2. The firearms discharge was intentional and directed at a person.
3. The use of the firearm was not necessary to apprehend a person who the officer reasonably believed had committed, was committing or was attempting to commit a felony.
4. The officer did not have probable cause to believe the suspect, if not apprehended, posed a threat of serious harm to the officer or threat of physical harm to others.
5. Reasonably effective alternatives to the use of a firearm appeared to exist.
6. Considering the circumstances known to the officer at the time, it would have been a reasonable alternative to allow the suspect to escape without resorting to the use of a firearm.
7. The actions of the officer contributed to the need to fire.

The totality of these findings lead to an unequivocal conclusion: The use of deadly force by Officer Birk resulting in the death of John T. Williams was unjustified.

I met with Chief John Diaz in person at the conclusion of FRB #10-03, and verbally communicated to him the findings listed above. In my role as both Board Chair and SPD Chief of Staff, I presented Chief Diaz with the following recommendations:

FRB #10-03: FINDINGS AND RECOMMENDATIONS

D/C Kimerer to COP Diaz

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1. That Officer Birk be relieved of all police authority, and that his Department-issued weapon and badge be surrendered. (It should be noted that Officer Birk was already on administrative reassignment to home, and had not been returned to duty from the time of the incident through October 5th).
2. That the incident be referred to the Office of Professional Accountability (OPA) for investigation of excessive force
3. That the Training Section undertake a thorough review of use-of-force training as it relates to edged weapons, viz. the so-called "21 foot rule" otherwise known as the Tueller Drill.*

As this incident resulted in the death of John T. Williams at the hand of Officer Birk, the hearing conducted on October 4, 2010 was for the purpose of determining preliminary findings concerning the personnel status of Officer Birk, whether the shooting was justified based upon evidence available as of October 4, 2010, and whether immediate policy or training actions were required in light of the circumstances of the incident. As this fatality incident fell under the jurisdiction of King County, pursuant to Executive Order (PHL 7-1-1) mandating an Inquest to investigate "any death involving a member of any law enforcement agency within King County while in the performance of his/her duties", and consistent with Seattle Police Department Policy as detailed in SPD Manual Section 11.030, FRB #10-03 did not issue a final report and recommendations until the King County Inquest process concluded, and a filing decision by the King County Prosecutors Office was finalized.

Chief Diaz concurred with the recommendations. I communicated the preliminary findings and referred the complaint of excessive force in person to OPA Director Kathryn Olson on October 5th. This referral to OPA was for the purpose of opening a misconduct investigation once the Inquest had concluded and the King County Prosecutor issued a filing decision.

I directed Officer Birk and his bargaining unit representative to meet me in the Human Resources office at 1400 hours on October 5th, at which time I informed him of the Board's preliminary findings and recommendations, and relieved him of all police authority.

*This analysis preceded the convening of FRB #10-03. In point of fact, COP Diaz directed that the Training Section undertake a top to bottom review of all use of force training - with particular attention paid to the so-called "Tueller Drill" - immediately following the Williams shooting. It is important to emphasize at this juncture that FRB #10-03 found (see Page 3, above) that the "Tueller Drill" was properly taught and has relevance and utility to police officers, but that Officer Birk misapplied it and gave it undue importance in his decision-making process.

FRB #10-03: FINDINGS AND RECOMMENDATIONS

D/C Kimerer to COP Diaz

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RECONVENING OF FRB #10-03

This final report and recommendation is submitted following announcement that the decision of the King County Prosecutor on whether to file criminal charges concerning the actions of Officer Birk would be announced on February 16th. The reconvening of FRB #10-03 was not predicated upon whether the King County Prosecutor intended to file criminal charges, or not. In either event, the conclusions of FRB #10-03 would be the same. Consequently, the voting members of FRB #10-03 – SPD Lieutenant Scott Bachler, SPD Captains Richard Belshay and James Dermody, and myself as Board Chair – reconvened to complete our responsibilities to issue a final report and recommendations.

As in the case of the initial, preliminary hearing and review into this incident, non-voting FRB #10-03 members Rebecca Roe, Citizen Observer and Rich O'Neill, SPOG President were provided an opportunity to voice their opinions concerning the evidence and testimony presented during the course of the FRB, but were not involved nor present during either the deliberations undertaken by the voting FRB members assigned to the preliminary review and hearing on October 4, 2010, nor when the voting FRB members reconvened for final deliberations following the decision of the King County Prosecutor to decline the filing of criminal charges.

ANALYSIS

The following analysis of the voting members of FRB #10-03 represents a synthesis of both the October 4, 2010 hearing, the King County Inquest into the death of John T. Williams, and the reconvening of the FRB to finalize the review process. Captain Richard Belshay was assigned by me to attend the King County Inquest, and was present in the courtroom. Captain Jim Dermody also attended the majority of the Inquest. A complete transcript of the Inquest was provided to FRB #10-03 voting members, OPA Director Kathryn Olson and was made available on request to FRB #10-03 observers.

Incident Summary [Provided by Captain Jim Dermody]

To provide context to the analysis and conclusions of FRB #10-03 voting members, a brief summary of the August 30, 2010 incident is in order. As the facts and circumstances of this incident have been presented in various forums in detail, and – moreover – are not in dispute, this summary will be concise.

On August 30th, 2010 Officer Ian Birk #7505 was assigned to the West Precinct, Second Watch David Sector. He was working Unit 2-David-33 as a one-officer car, in uniform and in a marked patrol vehicle, and was patrolling in the area of Boren Avenue & Howell Street just after 4pm.

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While facing s/b on Boren Avenue in the curb lane and stopped for the red light with no other car in front of him, Officer Birk took notice of a pedestrian walking in the crosswalk from east to west. Birk noted the pedestrian, later identified as John T. Williams, was approximately ten feet in front of him. Birk reportedly observed a knife in Williams' right hand, while holding a piece of wood in his other and either stabbing or scraping the wood. Birk's impression was that Williams appeared to be under the influence of alcohol or possibly some other substance. Birk also described Williams as he passed in front of Birk's patrol car as either oblivious to his presence or showing complete disregard for it.

Birk's above description of his observation of Williams led Birk to believe Williams' behavior was unusual, causing Birk to be "immediately concerned that [Williams] might be the cause of a disturbance, or pose a potentially lethal threat to other citizens who might be in the area." Birk made the decision to contact Williams in order to "attempt to determine whether or not he might be a risk to himself or others."

Officer Birk activated his emergency lights, notified SPD Radio (Dispatch) he was on a "shake" (which is shorthand for officer contact of suspicious person) and exited his patrol car. Birk drew his weapon, held it in the "Sul" position (a tactical weapon placement, drawing the duty weapon from the holster and positioning it in a "low ready" position in front of the officer's belt to facilitate immediate raising of the weapon to be on-target) and approached Williams as he walked w/b on Howell St. At this point, Williams' back was facing Birk and Birk stated that he could not see Williams' hands.

Officer Birk called out to Williams and Birk later reported that Williams initially ignored or failed to acknowledge his efforts to stop him. In his FRB #10-03 testimony, and again at the Inquest, Birk stated that after multiple attempts to verbally stop Williams, Williams turned towards him "slowly and deliberately." Birk reported that the way that Williams turned toward him "led [Birk] to believe [Williams] was either seriously detached or knew [Birk] was trying to stop [Williams] and [Williams] was attempting to avoid contact with the police." At that point, Birk had closed to approximately ten feet between him and Williams. Birk stated that when Williams began to turn toward him, he was still holding the knife in his right hand and was "brandishing" it in a "very confrontational posture." Birk then noted that Williams' "jaw was set" and his "expression was stern." After ordering Williams to drop the knife at that point, Williams continued to look in Birk's direction with a "serious expression on his face." Birk reported that he again ordered Williams to drop the knife.

Williams did not drop the knife at that point, according to Birk, and Birk testified that Williams' demeanor continued to become more aggressive, noting Williams' fist was tightly clenched around the knife and Williams kept holding it up in front of him as if were preparing to fight. Birk perceived Williams' expression as either noncompliance, defiance or a "thousand yard stare." Birk then notes in his written statement that all of the above are what he learned in training were "pre-attack indicators."

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Birk states that at that point Williams "might be considering or formulating a plan to close the distance between [Williams and Birk] and attack [Birk] with the knife." Birk then describes in his statement the "Tueller Drill" (described below) which he calls the "21-foot rule" and notes that he is aware that he is at approximately half the distance described in the above named training drill.

Birk reports that at that moment, he orders Williams a third time to drop the knife, almost yelling at that point. Birk then wrote in his compelled statement the following:

"Knowing that he could attack at any moment, that he had failed to comply with my lawful orders, and that he was so close that he could attack me before I could react, I made the decision to fire. This decision was based on my immediate concern for my own life and the previously mentioned training I have received."

After firing and seeing Williams collapse, Birk notified SPD Radio that shots had been fired and added "The subject wouldn't drop the knife."

Backing Officers soon arrived and an arrest team was assembled with Officer Birk in the lead. Once Williams was secured, SPD EMT Officer Oshikawa-Clay provided First Aid until SFD Medics arrived to take over medical aid.

While on-scene, Officer Birk provided information to an SPD Sergeant for what is called a "Public Safety Statement" as required by Department policy. Homicide & Assault detectives and supervisors as well and CSI (Crime Scene Investigations) were called to the scene to investigate as prescribed by Department policy.

Key Conclusions

The initial decision to stop and speak with John T. Williams based upon the circumstances observed by Officer Birk on August 30, 2010 was justified, appropriate and warranted. Officer Birk was assigned to the patrol sector wherein the fatal encounter with John T. Williams occurred. His observations of a man with a knife on a public street, apparently suffering from some form of impairment, was sufficient justification for any Seattle Police Officer to initiate contact to determine if there was a crime, or a threat to the public. It is central to the duties of a police officer – and a stated priority of the Seattle Police Department – to confront suspicious circumstances and take appropriate steps to ascertain the nature of what he/she observes, and whether a threat exists. Officer Birk has been consistently credible in his belief that it was his duty to determine if John T. Williams constituted a threat to himself or others. His precise observations, which have not been substantively contradicted, include the facts that John T. Williams had an exposed knife, was in a cross walk amidst pedestrians

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crossing his path, and that his behaviors were out of the ordinary and suggested impairment. The knife he was using appeared to have an exposed blade. Whether the blade was of a certain length, or was fixed or collapsible, was not known to Officer Birk, and were facts of little material relevance. Officer Birk's intentions, based upon the scant information he had available to him at the time, were honest and appropriate, and in keeping with the mission of the Seattle Police Department. We now know that John T. Williams was a First Nation's carver, and other details of his life which contribute to our understanding of the tragedy of his death, but Officer Birk did not know, nor should he be expected to know, facts and circumstances which came to light only after the incident ended. The community expects that police officers will initiate contacts and put themselves in harm's way to keep them safe, in spite of every reasonable human inclination to avoid risk. Hindsight does not change that essential expectation.

Officer Birk failed to properly identify the circumstances of his attempt to contact John T. Williams, or to follow proper procedures of logging out via radio and requesting back-up. Officer Birk logged out with 911 dispatch on a "shake" - shorthand for contacting a suspicious person - at Boren Avenue and Howell Street. He provided no other details of why he initiated this contact, nor did he convey urgency in his voice or other "clues" in his routine-sounding dispatch. In his testimony at both the FRB and Inquest, Officer Birk suggested that this was in keeping with Department policy and procedures, as well as his training. FRB #10-03 emphatically disagrees. Contacting a possibly impaired man with a knife on a public street demands a full and conscientious description of the situation via radio, both to the inform the 911 dispatcher of the nature of the call (and risk), begin the process of dispatching other units to the call, and broadcast to other officers the nature of the stop, with a view towards eliciting back-up response. Officer Birk intimated in his testimony to FRB #10-03 that patrol officers have some kind of intuition or "sixth sense" whereby they would know the situation he was confronting, based on his elliptical and calm broadcast of being on a "shake". FRB #10-03 concluded that nothing in policy or training would lead a Seattle Police Officer to depend upon this formulation, and the fact that Officer Birk was in the relative safety of his patrol vehicle when the broadcast was made confirms that this omission was inexcusable, and contributed to the tragic events which unfolded. Proper procedures dictate that Officer Birk should have clearly stated that he observed a man with a knife, provided a description and direction of travel, and requested a back-up unit. If this situation originated as a dispatched 911 call, two officers at a minimum would be dispatched, and - training and policy dictate - an arriving officer will wait for the back-up unit to arrive prior to initiating contact. Oftentimes, a dispatched call of this nature would include a request for a Crisis Intervention Team officer and a TASER officer. The realities and expectations of the Department concerning situations of this kind do not change dependent upon whether 911 dispatches a call, or an officer initiates contact (called on "on-view" incident). We now know, and Officer Birk - as a district patrol officer with at least a year on the street - should have known that there were other patrol officers and bicycle officers immediately adjacent to his location (as the aftermath of the shooting incident demonstrated, within 20 seconds);

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that there were TASER officers immediately adjacent to his location; that there were Crisis Intervention Team officers immediately adjacent to his location; and that there were Supervisors immediately adjacent to his location. Moreover, the 911 dispatch center tracks the location of all patrol units via Automatic Vehicle Locator (AVL) technology continuously. Back-up will respond quickly if they know the nature of a contact, or if requested. Neither event occurred, and it was within Officer Birk's power and responsibility to affirmatively initiate these events, and not assume they will occur absent explicit information being provided by him via radio broadcast.

Officer Birk did not appropriately assess the potential risks inherent in his attempt to contact John T. Williams, and did not employ proper tactics in light of this risk. The representations of Officer Birk about his view of the threat posed by John T. Williams have been inconsistent. On the one hand, Officer Birk conveyed that he simply wanted to address a suspicious circumstance, with the expected result of a peaceful resolution. At various times he testified that his attempt to contact John T. Williams was part of a community caretaking function. On the other hand, Officer Birk emerged from his patrol vehicle with his handgun at the low ready position, which is not consistent with an assessment that he was confronting a non-threatening scenario. Officer Birk's actions – rather than his testimony alone – are contradictory, specifically his decision to close the distance between himself and John T. Williams, and not assess the cover options immediately available to him (e.g. the substantial signal control box a few steps from the location he fired, as well as the raised parking lot containing numerous vehicles which could be used for cover). FRB #10-03 concludes that these decisions were inappropriate and not consistent with training and proper procedures. Moreover, Officer Birk's actions were incongruous with his characterization of this "shake" as being part of a "community caretaking" function.

Officer Birk did not properly identify himself as a Seattle Police Officer, or provide sufficient direction to John T. Williams to control the situation. Both the in-car video evidence and Officer Birk's testimony establish that at no time did Officer Birk clearly state that he was a Seattle Police Officer, and direct that John T. Williams follow his explicit instructions (viz. "Seattle Police: Stop; Keep your hands visible" ... etc.). The fatal encounter, which lasted about 7 seconds, consisted of Officer Birk using a hand gesture and saying "Hey..." to an individual he suspected of being impaired, and who had his back to him, followed by the statement "Put the knife down" repeated quickly three times before 4-5 shots were heard. At the Inquest and FRB #10-03, Officer Birk represented that he had success with a more casual, non-authoritarian approach to contacting suspicious persons. This account is unacceptable, and inconsistent with training and standard patrol procedures. As noted above, this situation was not properly assessed by Officer Birk, and was certainly not (as Officer Birk's actions demonstrated) a low-risk, community caretaking, social contact. Not wanting to appear authoritarian does not negate the fact that Officer Birk was exercising authority, and that his authority derives from being recognized as a uniformed police officer.

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During both the Inquest and FRB #10-03, Officer Birk testified that John T. Williams turned his head and looked over his shoulder at him (Officer Birk) prior to and separate from the turn Williams made when he was shot, leading to Officer Birk's conclusion that John T. Williams recognized that he was being summoned by a Seattle Police Officer. (This testimony, by the way, was not consistent with Officer Birk's written statement, which made no mention of William's prior turn towards him, only stating that "I called out to the individual, who initially ignored or failed to acknowledge my efforts to stop him). Whether this belief was correct – and there are ample grounds to doubt it – Officer Birk was not excused from the very basic responsibility to take reasonable steps to ensure that John T. Williams was given sufficient warning that he was being directed by a Seattle Police Officer. Whether or not Williams had the capacity to understand this warning is a question FRB #10-03 is not in a position to answer.

The so-called "21 foot rule" does not constitute a sufficient defense for Officer Birk's decisions. The concept of the "21 foot rule" is a part of virtually every police officer's training, Seattle being no exception. The crux of this training centers upon the well researched and verified phenomenon that an ordinarily capable individual armed with an edged weapon* can cover the distance of 21 (or more) feet faster than an ordinarily capable police officer can mentally process the attack, draw his/her weapon, attain target acquisition and fire two accurate shots. This "rule" is also called the "Tueller" drill, and was authored by Lewinski, now with the Force Science Institute. In point of fact, this is not a "rule" at all – a fact which Lewinski himself acknowledges – rather, it is the description of a well demonstrated physical reality. It is important information for every police officer, and is intended to inform the totality of an officer's decision-making process about the use of force. It was never intended to provide an absolute defense for a use of force directed at any person within 21 feet of an officer. Officer Birk testified the "21 foot rule" was a critical element of his decision-making, both at FRB #10-03 and the Inquest. This

*The questions concerning the functionality of William's knife and its status (i.e. whether it was open or closed) at various points of the incident on August 30, 2010 have been the subject of intense scrutiny. At FRB #10-03, testimony based upon forensic testing was presented which established that the locking mechanism of this collapsible (or "folding") knife was flawed, and that the knife was subject to closing without engaging the spring release mechanism. Testimony at the Inquest, and Birk's own statements, establish more likely than not that the knife was "closed" when secured following Williams being shot. FRB #10-03 heard testimony which satisfied the Board that due care was given to protecting the incident scene, to the point of an officer being assigned to stand guard over the closed knife until relieved by crime scene detectives. While the debate over the status of the knife resulted in various speculations, FRB #10-03 found that Officer Birk based his decisions on the reasonable belief that at the time he first observed John T. Williams, he had in his possession a knife which appeared to be open and that this knife was a potentially deadly weapon. The Board concluded that Birk had no reason to believe that this dynamic had changed at the time he used deadly force. Other theories and conclusions are not materially relevant to FRB #10-03, and are speculative, at best.

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being said, FRB #10-03 did not find the essential elements of this so-called "rule" – actually a guideline, or, more properly, an informative description of statistically probable outcomes – were applied in an inconsistent and contradictory manner by Officer Birk to explain his decision to use deadly force. First, it was Officer Birk who closed the distance between himself and John T. Williams - including a voice command and gesture for Williams to come towards him even as he was advancing on Williams - stopping at a little under 10 feet; second, William's back was turned to Officer Birk, and consequently he did not have the element of surprise which makes up a substantial part of the reaction phenomenon which underpins the 21-foot guideline; third, Officer Birk had his weapon drawn and in a low-ready position, which is designed to quickly facilitate the process of obtaining target acquisition; and fourth, the actions of John T. Williams did not materialize to the point of moving from "pre-attack" to a fully developed attack. (This last point will be discussed in the next, and final, statement of Key Conclusions) FRB #10-03 was unable to justify the employment of this guideline by Officer Birk in light of the fact that Officer Birk, fully aware and articulate in his recounting of this guideline (as evidenced by his reliance on it to explain his decisions) apparently chose to ignore it in his decision to close the distance between himself and John T. Williams. Disregarding a guideline and then relying upon it as a defense is contradictory. In a real sense, Officer Birk created the situation which he claims he had to use deadly force to get out of. The fact should be reemphasized that relying upon the "Tueller Drill", "21 foot rule" or other such practical guidelines to explain and defend the actions of Officer Birk, is inconsistent with training and sound patrol procedures.

At the point Officer Birk decided to use deadly force, FRB #10-03 concluded that John T. Williams had initiated, but had not fully completed, actions which would have predicated a justifiable use of deadly force. The Board could not concur with the perspective of Officer Birk that John T. Williams was in the process of initiating an attack which could plausibly lead to an imminent threat of death or serious bodily injury. This conclusion was reached even though FRB #10-03 could not dispute that the so-called "pre-attack" indicators described by Officer Birk were perceived by him to be immediate and credible, inasmuch as that 1. Board cannot presume to enter Officer Birk's mind at the time of the incident; and, 2. the RCW allows that "a peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section". (It is important at this juncture to note that FRB #10-03 did not find that Officer Birk acted with malice, although it should be emphasized that the purpose of this review is administrative, and the FRB is not charged with determining criminal fault) The question which was the focus of the Board's attention was whether John T. Williams' actions crossed the threshold between being "pre-attack" and actual attack. Forensic evidence provided during FRB #10-03 established that John T. Williams was likely perpendicular to the stance of Officer Birk, or just initiating a turn to face him. Four rounds from Officer Birk's duty weapon struck John T. Williams at points of impact and trajectories which indicate that Williams presented his profile – or right side – to Officer Birk. In Officer Birk's testimony, this orientation,

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coupled with William's apparent refusal to drop the knife, was sufficient to establish an imminent threat requiring the use of deadly force. In the view of FRB #10-03, however, Officer Birk's decision to use deadly force was premature.

The above findings, and the last key conclusion in particular, find their basis in the overarching Seattle Police Department guideline concerning necessary use of force, which is taken verbatim from the Revised Code of Washington: "No reasonably effective alternative to the use of force appeared to exist, and the amount of force used was reasonable to effect the lawful purpose intended."

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As stated above, on February 14, 2010, following review of the transcripts of the King County Inquest, and upon being informed that the King County Prosecutor was going to announce a filing decision on February 16, 2010, the voting members of FRB #10-03 reconvened to conduct final deliberations. Based upon this review, and in light of the Key Conclusions listed above, FRB #10-03 unanimously concluded that the discharge of a firearm by Officer Ian Birk to be **unjustified and outside of policy, tactics and training**. The initial findings of the October 4th convening of FRB #10-03, found on P. 3 of this memorandum, remain unchanged.

My final thoughts are intended to provide context for the next steps in this investigation. First, and foremost, as a result of these findings and recommendations, **Officer Birk must remain stripped of all Seattle Police powers and authority**, as he was on October 5th, 2010 when he surrendered his gun and badge.

At this point in the investigation of the actions of Officer Birk by the Department, only two steps remain: First, to allow Officer Birk the opportunity to provide a statement to the Office of Professional Accountability, and for Officer Birk to have the opportunity to speak with you at a Loudermill hearing. It is important to emphasize these long-standing and well-established constitutional protections are matters of law, not Departmental preference, and that the consequence of not adhering to these rules is the risk of having your decision overturned. However frustrating this process has been, due process and adherence to law must prevail. I doubt that these tasks will consume more than several more weeks. Therefore I recommend that the Department undertake the last remaining due process requirements concerning the OPA investigation into the actions of Officer Ian Birk, and complete them with all deliberate speed and thoroughness.

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CHIEF OF POLICE REVIEW/COMMENTS/CONCURRENCE/DATE:

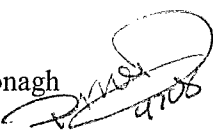
Attachments: Overview of SPD Force Training
"Firearms Review Board Protocols" et al.

Cc: FRB Voting Members, SPOG and Civilian Observers
Assistant and Deputy Chiefs
Legal Advisor
Kathryn Olson, OPA Director
file

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: John Diaz
Chief of Police

DATE: 10/01/10

FROM: A/Chief Paul McDonagh
Special Operations 

SUBJECT: Firearms Review Board: 10-004

General Information:

Sergeant Steve Strand, Serial #5689/673
Officer Andrew Peloquin #5980/673
Officer Mark Gallegos #7582/673
Intentional Discharge, Incident # 10-309178
Officer Involved Shooting: Non-Fatality
Entire incident occurred and ended in City of Seattle

In accordance with the Seattle Police Department Manual, Section 1.305, a Firearms Review Board (FRB) was convened on Thursday, September 30, 2010 at Park 90/5, Bldg C, Training Room 1, 2203 Airport Way South, at 1000 hours. The FRB reviewed and investigated the circumstances surrounding the discharge of a firearm by Sgt. Steve Strand, Officer Andrew Peloquin, and Officer Mark Gallegos on Friday, September 3, 2010, at 6114 SW Admiral Way, City of Seattle.

FRB members each received a FRB notebook prior to the hearing. Evidence considered included verbal testimony, 9-1-1 recordings, in-car recordings, diagrams, photographs, a PowerPoint presentation, weapons; rifle, pistol, statements, and other related documents. The FRB visited the scene at 6114 SW Admiral Way prior to the convening of the review board. The FRB heard testimony from Homicide Detective Cloyd Steiger and CSI Detective Don Ledbetter, as well as Sgt. Steve Strand, Officer Andrew Peloquin, and Officer Mark Gallegos.

Members of the Firearms Review Board:

A/Chief Paul McDonagh, Special Operations Chief
Captain Ron Wilson, Metropolitan Section
Captain Neil Low, Training Section
Lieutenant Deanne Nollette, East Precinct

Observers:

Rebecca Roe Citizen Observer
Director Greg Schmidt Communications
Sergeant Rich O'Neill Seattle Police Officers Guild

Presenting Detectives:

Detective Cloyd Steiger, Homicide/Assault, Unit#715
Detective Donald Ledbetter, CSI

Witnesses:

Sergeant Steve Strand
Officer Andrew Peloquin
Officer Mark Gallegos

Chronological Summary of Incident:

On 9-03-10, at 2045 hours, subject Thomas Qualls' daughter called 9-1-1 to report that her father was extremely intoxicated, depressed over his wife leaving him, and had expressed suicidal ideations. While talking with her father, the daughter heard a gunshot over the telephone line, followed by silence, in which she could no longer reach her father. The daughter reported to 9-1-1 that there were several weapons in Qualls' house. Sgt. Strand responded, along with Student Officer Mark Gallegos and Field Training Officer Andrew Peloquin, who was wearing tactical plain clothes. Sgt. Strand had a citizen observer who he dropped off nearby.

As Sgt. Strand got out of his patrol car he heard a "pop" sound, coming from the alley way behind the residence in question. Strand advised Officers Gallegos and Peloquin upon their arrival as to what he had heard. As the sergeant and officers approached the alley, they could see a light on in the back of the house. They encountered a neighbor, who asked them what was going on. She had not heard the noise that Strand had. The sergeant and officers then took positions in the alley, where they observed an open back door in the porch area of Qualls' house. Strand and Gallegos entered the yard through a gate, and Peloquin followed, observing the front porch from just inside the fence. Gallegos and Strand paused for a moment to watch the house from strategic positions which offered low level cover/concealment, while Peloquin's position offered only concealment, not protection.

The pathway to the house was blocked by a large pile of loose firewood. As the primary officer, Gallegos started to approach the house and the pile of firewood, Sgt. Strand told him to stay back and call out to the subject. Officer Gallegos called out: "Sir, Seattle Police." Inside the kitchen area, which was just past the raised porch, protected by a half-wall wooden barrier instead of a railing, the police greeting was met by Qualls' hostile grumbling. The officers saw subject Qualls approaching the open backdoor with an AK-47 type assault rifle in his hands, and so Sgt. Strand and Officer Gallegos drew their pistols. Nearby them in the alley, Officer Peloquin already had his pistol in his hand. Qualls aimed the rifle immediately, which alarmed Strand, because he knew the AK-47 round could easily penetrate the vests the officers were wearing. Strand started shooting, as the subject pointed his rifle and fired in the direction of Gallegos. As Strand started shooting to disable the subject, Qualls swung his rifle toward Strand and fired it, and as Strand remembers it, this is when Officers Gallegos and Peloquin joined in the battle, firing their weapons at the subject.

The subject disappeared from view, and at this point Sgt. Strand wasn't sure if he had retreated into the house or was taking cover behind the solid half-wall of the porch. Strand fell back and re-positioned himself behind the subject's parked pick-up truck, further up the alley, seeking better protective cover. Strand did a tactical reload of his weapon. Once he was ready to engage Qualls again, Strand called out to Gallegos to make sure that he was okay. He then called for Gallegos to join him at the pickup truck.

Officer Gallegos is retired military, with twenty years experience, including three tours in Iraq. He states that when he called out to the house, Qualls responded, "Get off my property!" Gallegos had no doubt that Qualls knew who they were. When Qualls aimed the AK-47, Gallegos knew Qualls was pointing it at him. Gallegos was concerned because Qualls "was in a better tactical position than we were." Gallegos

immediately stepped to his right for better cover/concealment, drew his weapon, and returned fire, shooting at Qualls. When Qualls disappeared from view, Gallegos scanned for additional threats. After withdrawing

to a better tactical position, Gallegos also did a reload, because he didn't know what, if any, threats continued to exist. From this new position, Gallegos could hear Officer Peloquin giving direction to the subject, advising officers that he was down, and his weapon was down on the porch.

Officer Peloquin states that as they approached the backyard, he un-holstered his weapon, because of the nature of the call they were on. Almost immediately after Gallegos announced they were the police, a male voice from inside the house yelled for them to get off his property. Instantaneous to that, subject Qualls came out on the back porch armed with a rifle. The subject fired at the officers, in a sweeping motion, keeping the rifle level to his waist. Peloquin saw the muzzle flashes and heard at least three shots. Knowing that they all had inadequate cover, he immediately returned fire, trying to hit and disable the subject. Peloquin then retreated through the gate to the alley, trying to find the subject on the porch while obtaining a better tactical position. Peloquin heard Strand and Gallegos say they were not injured, and he advised them of the same, regarding his own condition. He also notified radio to the "shots fired."

Moving down the alley toward the house, Peloquin observed Qualls down on his back on the rear porch. Peloquin saw the rifle lying on the porch next to him, the muzzle pointed in his direction. Officer Peroquin advised radio that they had a "man down." Qualls responded that he wasn't down. Peloquin gave Qualls loud commands to show his hands.

When other officers arrived, Peloquin passed off his cover duties to Officer Ferreira, and then he helped form and lead the contact team, they secured the subject, his weapon, and the house.

A .45 caliber pistol was removed from the subject's pants pocket, two rounds ejected, and the magazine cleared. Also, the officers removed a rifle from inside the house and brought it out to the rear porch. They did this so they could closely observe it.

While clearing the house, officers found several marijuana plants in the kitchen area. Also found in the house was a camera monitor displaying six active camera angles showing the police officers outside of Quall's house in "real time." These cameras were showing four separate views of the exterior of his house. Officers and detectives also found several notes, possibly motivational, that said things like: "out for blood," "locked and loaded," and "spill as much blood as you can."

CSI/Homicide detectives were unable to locate all the shell casings to the rounds expended. Additionally, they were unable to locate the three shell casings to the subject's weapon. Later, a firearms test of the weapon showed that it ejected rounds much farther away than the detectives had anticipated (later test fired to an average distance of 32 feet). Which means that fired from the height of the deck, the casings could have crossed the alley and cleared the neighbor's high fence, possibly destroyed when she next mowed her lawn. Detectives did revisit the location in an attempt to locate casings, but were unsuccessful.

The board also learned that when tactically reloading his pistol, Officer Peloquin picked up his unspent round and pocketed it. He said that at this point in the battle he was unsure if he would need that round or not.

Later, detectives learned that there had been a radio call, earlier in the day on Alki, near the subject's residence, where a man with a rifle had been reportedly seen. The description and close proximity sound similar to subject Qualls, but this information has not yet been verified.

Determination:

- A. The discharge occurred while the employee was **on** duty.
- B. The discharge was **intentional**.
- C. N/A
- D. The discharge was intentional and directed at a person and was **in accordance with department guidelines**.
- E. The use of the firearm was **necessary** to arrest or apprehend a person who the officer reasonably believed had committed, had attempted to commit, was committing or was attempting to commit a felony.
- F. Considering the circumstances known to the officer at the time it would **not** have been a reasonable alternative to allow the suspect to escape without resorting to the use of force.
- G. The immediate actions of the officer **did not** contribute to the need to fire.
- H. The officer's actions were found to be **justified** with no further action recommended regarding his use of force. (See issues/recommendations for other recommendations)

Findings:

- The firearm discharge by Sgt. Strand, Officers Peloquin and Gallegos was found by the FRB to be **justified**.

Issues/Recommendations:

Apparently, meaning to be helpful in securing the scene, Sgt. Strand and the involved officers picked up subject Qualls firearm, cleared it, and made sure it was safe. They also removed a pistol from the subject's pants pocket, cleared it (twice) and rendered it safe. They also found another rifle inside the house, near the back door and brought it out to porch, where the shooting had just occurred. This essentially introduced another weapon to the crime scene. Sgt. Strand slung the rifle over his shoulder, muzzle down, until the officers were sure the house was clear and the scene safe, and then it was set down on the porch railing.

All three employees also made tactical reloads during the firefight, Peloquin because he thought his pistol was empty, and Strand and Gallegos because they were unsure at the time whether the threat to their safety was over and they might need more ammunition than what was left in their pistols. The officers and sergeant said that this is what they have been taught while at the Police Range, explaining that it better protects them in case of a continuing threat.

The tactical reload procedures used were the correct actions based on the scenario the officers faced. Regarding the clearing of the suspects weapons there are competing interests involved: officer safety versus crime scene integrity. Officers and supervisors must first be mindful of their safety and that of the public, but then the "best evidence rule" requires police to preserve the scene in the exact condition it was in when the shooting stopped, when possible. Whenever possible Officers should secure weapons and evidence in an unaltered position or state until processed.

Supervisors and detectives should not use the same officers who were engaged in a firearms discharge or a significant use of force situation to assist in other duties, like continuing with the arrest and conducting post incident searches. Other, non-involved officers should be assigned these duties and tasked with standing guard/protecting recovered firearms in their original condition.

Homicide detectives should contact and take a statement from Sgt. Strand's citizen observer from the night of the shooting, who was dropped off nearby the Alki location.

Homicide detectives should also follow-up on the earlier "Man with a Gun" call on Alki, contacting complainant/witnesses to determine if the man they had seen with the rifle might have been Mr. Qualls.

With regards to under-gun lights, Officer Gallegos noted that despite his firearm training with flashlights, it is still difficult to match up a weapon with the light beam. From his military experience, Gallegos understands light discipline, realizing if used incorrectly it could give away his position, but he believes the benefits outweigh the detractions.

Officer Gallegos also commented on his accumulated training, both police and military. As a 20-year soldier who served three tours in Iraq, Gallegos said that the training he received from the Seattle Police Advanced Training Unit in Post BLEA was "some of the best I've ever had." He added that there was a natural flow to it, and the "scenarios helpful." By contrast, he believes the State's Basic Academy training for this kind of a situation was so general that it was worthless.

Officer Peloquin also commented, saying, "Training was good—ingrained."

Board comments/observation

Evidence: (See: Above: Officers securing fired weapons and introducing other firearms to a crime scene.)

Training: Additionally, the FRB observed that the area in which the officers physically engaged the subject worked entirely to the subject's advantage. With his video cameras, which were unknown to the officers until after the shooting, the subject knew where the officers were. His weapon placement indicated he knew Officer Gallegos exact location. The subject had the "high ground" and was behind a solidly built half-wall, where the officers were navigating through concealment but not protection. The large wood pile posed a serious threat to the officers trying to approach the house, and thanks to the leadership of Sgt. Strand, the officers called out to Qualls, rather than climbing over the wood pile and approaching the porch directly, which would have made them very vulnerable in a field of fire. The Training Unit should include in the departments ongoing officers training the need to scan for cameras on approach to all locations as an officer safety tool.

On Scene Visit: The FRB made an on scene visit to the shooting scene and found the visit and walk-through with Homicide detectives to be very helpful for understanding the situation the officers faced, getting an idea of what they could see from their positions. Although the wood pile had been moved for medical evacuation of Qualls and scene processing, the walk-through set the stage and proper context for the review.

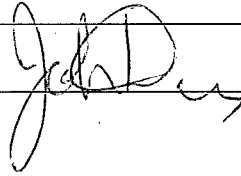
Presence of Communications at the FRB: The FRB also found that it was very helpful to have a representative from Communications at the hearing to help explain procedures and the Communication's perspective.

Equipment: The FRB notes that if the officers had been equipped with under-gun lights this might have helped them control their shot groupings better, particularly where stable footing is dubious.

Post Shooting Treatment of Officers: All three employees said they were treated well by the Department during the entire process. As Officer Gallegos said about the treatment, "Very professional." One officer said he would like to have seen Chaplain Oas called to the scene, but it is unclear if an attempt was made to reach the chaplain. Perhaps Communications should have Chaplain Oas listed on their routine contact list for critical incidents, because given how busy a serious event scene can get, not every scene commander is

going to think to call him. Union President Rich O'Neill also had positive comments about the new officer involved shooting process.

Approval/Comments/Date



John Diaz
Chief of Police

Attachments: FRB Procedures Guidelines

cc: Deputy Chief Clark Kimerer, Administration
Assistant Chief Mike Sanford, Operations Bureau 1
Assistant Chief Dick Reed, Field Support
Assistant Chief Jim Pugel, Investigations
Captain Ron Wilson, Board Member
Captain Neil Low, Board Member
Lieutenant Deanna Nollette, Board Member
Rebecca Roe, Citizen Observer
Rich O'Neill, Bargaining Unit Observer/Representative

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: John Diaz
Chief of Police

DATE: November 9, 2011

FROM: Deputy Chief Nicholas Metz
Chief of Operations



SUBJECT: **Firearms Review Board #10-05**

In accordance with the Seattle Police Department Manual, Section 11.030, a Firearms Review Board (FRB) was convened on Thursday, December 16, 2010 at 1000 hours at the Park 90/5 Training Center. The FRB investigated and reviewed the circumstances surrounding the discharge of a firearm by:

Officer Shawn Benshoof #6776

Assignment: SWAT, Day shift
Years of Service: Eight
Prior Experience: Five years (Mesa, AZ)
Training: Basic Academy (Lateral)
Street Skills
SWAT Basic, Basic, Intermediate and Advanced Sniper
Firearm: Colt M16A2 Commando, 5.56 millimeter, S/N A0015243 (Department issued),
Passed armorer inspection
Ammunition: Department authorized and issued

Officer Evan Ehring #6703

Assignment: SWAT, Day shift
Years of Service: Eight
Prior Experience: No
Training: Basic Academy
Street Skills
Firearm: Colt M16A2 Commando, 5.56 millimeter, S/N A0015264 (Department issued),
Passed armorer inspection
Ammunition: Department authorized and issued

Officer William Geoghagan #5971

Assignment: SWAT, Day shift
Years of Service: Fifteen
Prior Experience: No
Training: Basic Academy
Street Skills
Firearm: Colt M16A2 Commando, 5.56 millimeter, S/N A0119438 (Department issued),

From: Deputy Chief Nicholas Metz
Subject: **Firearms Review Board #10-05**

contacted this subject, he produced a handgun and held it to his head. Fire personnel retreated to cover and called for a "fast backup".

- ❖ Officers Shawn Benshoof, William Geoghagan and Evan Ehring were on duty and in the SWAT offices when they heard the "fast backup" call. They responded from the office at the Park 90/5 complex, arriving at approximately 1428 hours. Geoghagan and Benshoof were in one SWAT vehicle while Ehring was in another.
- ❖ Benshoof stopped his vehicle in the intersection at 14th Av. S. and S. Atlantic. Benshoof moved to a car-port on the SE corner of the intersection. Benshoof observed the suspect vehicle backing out of the alley onto S. Atlantic Street.
- ❖ Geoghagan took cover behind a car parked on the north side of S. Atlantic, just east of the intersection. Geoghagan was able to see the suspect vehicle backing out of the alley, and watched as the vehicle backed completely out of the alley, stop against the south curb, then turn to the west and begin driving towards 14th Av and the officers.
- ❖ Ehring arrived at the intersection and made contact with the fire fighters. They pointed out the location of the suspect vehicle. Ehring moved to a position at the intersection where he was able to see the vehicle, which was parked but running. When it began to back out, Ehring warned the other officers by yelling that the vehicle was coming out of the parking lot it was in. Ehring then moved to a position of cover on the south side of S. Atlantic. All three officers were to the west of the suspect vehicle.
- ❖ As the suspect began driving west on S. Atlantic, all three officers clearly saw him and saw the gun he was holding. Geoghagan issued a series of commands to "Stop the car", "Drop the gun", and "Show me your hands". The suspect initially responded by stopping the car momentarily.
- ❖ The driver raised and lowered the gun, and raised and lowered both of the front windows. The driver then began driving the car again. Geoghagan reports the car began backing and turning, while Benshoof and Ehring report the car began driving westbound towards their position.
- ❖ All three officers made a roughly simultaneous decision to fire. All three officers report firing. After the shots were fired, the car and suspect stopped moving.
- ❖ With the assistance of other officers on scene, Geoghagan and Ehring secured both the suspect and the weapon.
- ❖ SFD personnel still on scene administered first aid but the suspect was deceased.

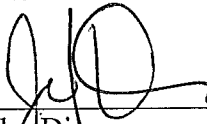
The following determinations were made as it pertained to Officer Shaw Benshoof:

1. The discharge occurred while the officer was on-duty.
2. The discharge was intentional.
3. The discharge was directed at a person.

From: Deputy Chief Nicholas Metz
Subject: **Firearms Review Board #10-05**

Questions and concerns regarding this report should be brought to the attention of Deputy Chief Nicholas Metz

Approval / Comments / Date:



John Diaz
Chief of Police

Attachments: FRB Procedures Guidelines

Cc: Chief John Diaz, Chief of Police
Deputy Chief Clark Kimerer, Chief of Staff
Deputy Chief Nick Metz, Chief of Operations
Assistant Chief Mike Sanford, Patrol Operations Bureau,
Assistant Chief Jim Pugel, Criminal Investigations Bureau
Assistant Chief Dick Reed, Field Support Bureau
Assistant Chief, Paul McDonagh, Special Operations Bureau
Director Kathryn Olson, OPA
Captain Ron Mochizuki, Special Crime Victims
Captain Steve Brown, Training
Director Greg Schmidt, Communications
Lieutenant Pierre Davis, Operations SW Pct.
Lieutenant Scott Bachler, Training
Sergeant Richard O'Neill, SPOG President
Rebecca Roe, Citizen Observer
Firearms Review Board File

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Chief John Diaz
Chief of Police

DATE: February 11, 2011

FROM: Assistant Chief Dick Reed
Field Support Bureau

SUBJECT: Firearms Review Board # 10-06

In accordance with Formal SPD guidelines, a Firearms Review Board (FRB) was convened on January 5, 2011 at 1000 Hrs. in the SPD Headquarters lower level training room. A site visit was conducted with FRB members prior to convening the FRB panel at 3rd Avenue and Yesler Street. The FRB was called to investigate and review the circumstances and use of force surrounding a 911 call on December 7, at 2201 hours SPD Incident #10-422297, by West Precinct patrol officers.

Involved Officer

Officer Chris Myers #5452

Assignment: West Precinct Patrol – 3rd Watch

Years of Service: 20 years with SPD

Prior experience: No prior law enforcement experience

Training: Current with all department required certifications; optional certification in Taser and Patrol Rifle.

Equipment used: Glock Model 22, .40 & X26 Taser

Suspect

Jose, Manuel Cardenas-Muratalla, H-M-12-11-72 (38) (aka Manuel R Perez, H-M-12-19-71)

Criminal history: 1 Felony conviction Violation of Uniform Controlled Substance Act, 3 Gross Misdemeanors and 1 Misdemeanor. Per Immigration and Customs Enforcement suspect is listed as an official illegal Alien.

Weapon: Ruger Mark II, .22 caliber semi-auto. Listed as stolen under King County Sheriff. Successfully test fired by a detective and was noted it appeared to function appropriately.

Injury: Survived a single gunshot wound to the torso. The wound was described as superficial by medical officials.

Board Members:

Assistant Chief Dick Reed, Field Support Bureau

Captain Steven Brown, Training Section

Captain Steve Paulsen, Southwest Precinct

Lieutenant Matt Allen, Operations North Precinct

*Director Greg Schmidt, Communications

*Renni Bispham, SPD Legal Advisor

(* Non-voting members)

Observers:

Sergeant Rich O'Neill, SPOG President

Suzanne Adams, Citizen Observer

Attending & Presenting Detectives

Sergeant Mark Worstman, Homicide/Assault,

Detective Dana Duffy, Homicide/Assault

Sergeant Michael Hay, CSI

Detective Jennifer Southworth, CSI -Presenting

Detective David Duty, Homicide/Assault -Presenting

Captain Mike Washburn, Homicide/Assault

Lieutenant Steve Wilske, Homicide/Assault

Officers presenting information:

Officer Chris Myers #5452

Officer Chriseley Lang #6668

Overview

The FRB heard testimony from the two primary officers. Three additional SPD Investigations Bureau sworn detectives provided testimony about the investigation. There were no civilian witnesses.

SPD Communications received three 911 calls on this incident. The first was a call from an anonymous citizen at approximately 2159 Hrs. SPD Radio broadcast to the officers that a man was brandishing a gun at the bus stop at 3rd Avenue and Yesler Way. The caller stated *there's a short Mexican guy with a light blue hoodie on at 3rd and Yesler, at the bus stop with a weapon, a silver weapon on him, he showed it to me.* Officer Myers and Lang were assigned as a two person car and were first to arrive on scene approximately one minute after the broadcast. They observed a Hispanic male matching the description on the west side of 3rd Avenue by the southbound bus stop.

The in-car video details the officer efforts as they scanned the area for the suspect. The officers observed a subject fitting the description in the doorway at the location described by the 911 caller. The combination of the in-car video and the DESC surveillance camera clearly shows the subject exiting the alcove as the officers directed their spotlight at him. The officers immediately exited their car with guns drawn and began issuing orders to the suspect.

The uniformed officers moved quickly toward the suspect and continued to direct the suspect to stop. The suspect engaged in behavior that indicated he was preparing to flee by leaning forward and

quicken his pace. The suspect also took efforts to rearrange his sweatshirt to conceal and maintain access to his center waist area. Officer Myers described the suspects' actions as "fluffing" his clothing, which is consistent with individuals that are armed. He related that this is training he received through a training DVD titled Characteristics of the Armed Person. Individuals that carry weapons will carry themselves and make physical movements or "security checks" to conceal, secure, or adjust their clothing while being armed.

As the suspect moved northbound from the doorway Officer Myers transitioned from his service weapon to his taser. He had not observed the suspect with a weapon and thought the suspect was planning to escape. He had a cover officer and felt this was the best tactic to stop the suspect. The suspect changed directions as Officer Lang had flanked the suspect to the North of the bus shelter. As the suspect turned away from Officer Lang and back towards Officer Myers, the suspect moved his hands towards his waist exposing a firearm tucked in his pants. Officer Myers deployed his Taser and immediately discarded it in order to meet the increased threat of the suspect's handgun. Officer Myers then drew his service weapon and fired one round at the suspect. The suspect went to the ground and the officers secured him, searched him and rendered first aid. Officer Myers located a handgun tucked inside the suspect pants. As he tried to retrieve it he had difficulty as the front sight on barrel got hung up on the suspect clothing. Officer Lang is a department trained EMT and she assumed control of the first aid.

The board took note that Officer Myers had a unique level of training. He is one of two on the department recognized by Taser International as a Senior Master Certified Instructor. Taser has recognized a group of less than twenty-five individuals in the world with this level of certification. Officer Myers also sits on the National Institute of Justice Technical Work Group in an advisory capacity. He offers his opinions on emerging technologies being considered for law enforcement application. He also participates as a content expert and moderator for the Department of Justice International Law Enforcement Forum For Minimal Force Options. As an instructor he has conducted over 200 classes/demonstrations for all level of Taser deployment.

The FRB made the following determinations:

- 1) The discharge occurred while the officer was on duty.
- 2) The discharge was intentional.
- 3) The discharge was directed at a person.
- 4) The use of the firearms in this case was necessary to arrest or apprehend a person, who the officer reasonably believed had committed, had attempted to commit, was committing or was attempting to commit a felony. In this case the officers were responding to a felony assault directed at them.
- 5) Considering the circumstances known to the officers at the time it would not have been a reasonable alternative to allow the suspect to escape.
- 6) The immediate actions of the officers did not contribute to the need to fire.
- 7) The officers' actions were found to be justified.

Summary and Recommendations:

The presentation by the Homicide Unit indicated that from the time the officers exited their car, and engaged the suspect, less than eleven seconds elapsed. The suspect spoke fluent English and understood English. Despite the officers' best efforts to use verbal commands to gain compliance, he disregarded their efforts and placed the officers and those around them in fear of their lives. The FRB members were in agreement that the actions of the officers were legally justified and tactically sound to address

the threat as the officers perceived it. Transition drills were critical in this scenario. The officers approached a deadly threat with weapons drawn, Officer Myers ability to transition to the Taser and then transition back to his handgun while moving and while the suspect was moving required high proficiency. I recommend that Taser training should continue to emphasize this skill.

Questions and/or Concerns regarding this report should be brought to the attention of Assistant Chief Dick Reed.

C.S.K.
ACDING COP
2/11/11
Chief John Diaz

✓
Concur

Do Not Concur