

POLICE COMPLAINTS AUTHORITY

**Report by the Police Complaints Authority
on the Fatal Shooting of Paul Melvin Stowers
in Auckland on 28 October 1990**



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REPORT OF POLICE COMPLAINTS AUTHORITY UPON DEATH OF PAUL MELVIN STOWERS

INTRODUCTION

Just after midnight on the morning of 28 October 1990 a number of shots were fired by a Police Officer at Paul Melvin Stowers. As a result Mr Stowers died in hospital not long after. In compliance with the obligation of the Commissioner under Section 13 of the Police Complaints Authority Act 1988 (to which I refer as "the Act") the Deputy Commissioner of Police notified me by telephone of the incident at about 8.00am on 28 October 1990. I informed the Deputy Commissioner that I elected to investigate the circumstances of the shooting (pursuant to the power conferred by s.12(1)(b) of the Act), and, in the meantime, to have an Investigating Officer oversee the Police investigation.

I accordingly arranged for one of my Investigating Officers, Mr J N Roberts, to go at once to Auckland where he was present at much of the Police enquiry, attended the post mortem examination of Mr Stowers and arranged for copies of all statements, reports and other documents obtained by the Police to be supplied to my office. Later he went again to Auckland and was present at the formal interview by the Police of the member who had fired the shots (referred to in this Report as "Police Officer 1").

The Police investigation was thorough and meticulous and I am satisfied that all proper lines of enquiry were pursued. There

were, in fact, two separate Police investigations, namely a homicide enquiry and an internal enquiry related to the Police practices and procedures involved. My investigation has embraced both aspects, although with the reservation as to practices and procedures resulting from the limitations in the Act as to my jurisdiction.

I have received no formal complaint about Police conduct in respect of this incident. This is understandable because the members of Mr Stowers' family, who might have been the ones tempted to complain, had no knowledge of the circumstances and were therefore in no position to know whether there might be anything to complain about. I should accordingly stress that the absence of a complaint has made no difference to the nature and extent of my investigation which, in terms of s.12(1)(b) of the Act, has been carried out in the public interest, which includes the interests of the family.

PROCEDURE

The investigation of a matter of this nature required a formal hearing at which interested parties could be represented. This was the procedure followed in the first such investigation conducted by the Authority, namely that into the death of Emmanuel Papadopoulos, and I could see no reason to differ from that procedure.

The interested parties in this investigation were the family of Mr Stowers (represented by Mr Kevin Ryan), the Police (represented by Mr Simon Moore), and Police Officer 1 (represented by Mr John Haigh and Mrs Coral Shaw). In addition I received a request from the President of the Police Association for his Association to be represented because of the special situation involving the use of a firearm. Permission was accordingly given for the Association to take part in matters relating to the second issue set out below, and in this context the Association was represented by Mr Haigh.

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All counsel were supplied in advance of the hearing with copies of all relevant statements and job sheets obtained by the Police. They were also supplied with a photographic supplement, copies of DSIR analysts' reports of the examination of relevant exhibits and an independent medical opinion obtained by the Authority. These formed the basis of the evidence and were treated as the evidence in chief of those witnesses. Only a few of them were required to attend for oral examination either by counsel or by me. The hearing was therefore kept within reasonable bounds and this has enabled the present Report to be presented without undue delay. As required by the Act the hearing was in private.

Throughout this Report the two members of Police involved in the incident are referred to as Police Officer 1 and Police Officer 2. Although each appeared in person as witnesses at the hearing I can see no benefit in disclosing their identities.

ISSUES FOR INQUIRY

The particular matters for consideration in the investigation, as settled with counsel prior to the hearing, were:

1. The circumstances surrounding the shooting and whether fault attaches to any member of Police.
2. The practice, policy or procedure of the Police as to the use of a firearm insofar as that relates to a member of a Crime Squad performing the duties that Police Officer 1 was performing on this occasion.

More specifically:

- (a) What did the Police Training Manual and Police practice require Police Officer 1 to do?
- (b) Did he comply with those requirements?
- (c) Does any aspect of the training and practice as it applied to Police Officer 1 require comment?

ISSUE 1

Although matters expressly related to the use of a firearm will be discussed under Issue 2 it is necessary to preface Issue 1 by setting out the basic requirement of Police practice for the

use of a firearm. It is found in General Instruction F61(1)(a), namely:

"F.61(1) A member shall not use a firearm except in the following circumstances:

(a) If he fears death or grievous bodily injury to himself or another person and he cannot protect himself or that person in a less violent manner."

It is therefore necessary to consider whether, in terms of Police practice, the situation which occurred justified the use of a firearm.

For about a month prior to 27 October 1990 Mr Stowers had been living with Miss Tina Nobbs. They had known each other for about six years. On the afternoon of 27 October they went together to see Mr Ferguson Repia at his home in Manukau Road, Auckland. It is probable that they remained there for a short time only, then returned to their home and later, at about 8.00pm, went back to Mr Repia's. They spent the evening with him until what must have been about 11.45pm. They then left in the Mini car, which Miss Nobbs had bought two days previously. That car was in a poor condition with one headlight missing and many other defects. When they left Mr Repia's Miss Nobbs was driving.

At about the same time, namely just after midnight, a Crime Squad car operating from Auckland Central Police Station was on patrol in the Newmarket area. That car was in the charge of Police Officer 1, and the driver was a uniform Constable (referred to in this Report as "Police Officer 2"). Both officers wore civilian clothes.

The Mini driven by Miss Nobbs attracted the attention of Police Officers 1 and 2 by reason of its speed, its defective condition and the erratic nature of the driving. They therefore pursued it and when they caught up with it they observed that the passenger, who was Mr Stowers, kept glancing back at them. The Mini turned left from Broadway into Khyber Pass Road. The Police saw the passenger's door was opened a little and thought the passenger was getting ready to jump out. They decided to stop the Mini and turned on the flashing blue lights and siren. This was an unmarked Police car, but

the lights and siren undoubtedly made it clear that the Mini was required to stop.

The Mini continued on, driving through the red lights at the intersection of Broadway and Crowhurst Street. Finally it slowed to a stop at the intersection of Khyber Pass Road and Melrose Street. At that time both doors of the Mini were open and the Police Officers believed that the occupants were about to run off. Police Officer 2 stopped the Police car about ten feet behind the Mini and both officers left the car and ran to the Mini, one to each side. Police Officer 2 went to the driver's door, pulled it open and told Miss Nobbs to get out. She was reluctant to move but he took hold of her and helped her out.

Police Officer 1 had gone to the passenger's door which was still partly open. As Police Officer 1 is the only person in a position to describe what then happened it is necessary to set out his verbatim account which was made in a written statement taken from him starting at 3.05 that morning, 28 October. What he said was:

"I put my right hand on the Mini roof and with my left hand I grabbed the top of the window frame on the passenger's door and pulled the door open. I asked the passenger to get out. I was convinced that he knew I was a Police officer because of the preceding events and the fact the blue lights and the siren was still going on our car 10 feet away. Almost immediately I recognised the passenger. I said, 'Paul ... Paul Melvin STOWERS'. I have known STOWERS since about 1987. I met him in the course of my work on Drug Squad. He has been present at enquiries I have made and warrants I have executed. I have never arrested him and on all the occasions I have spoken to him it has always been amicable He has no axe to grind with me and I have none with him

I would have expected some response from him but he just sat there. He looked at me when I spoke his name, he didn't say anything, in fact he looked eerie calm. He just turned his head away towards the windscreen after he had looked at me. I then asked him to get out of the car again. He made no response to my request for him to get out of the car, he just sat staring ahead. Then his right hand started moving towards the space between the front seat in the Mini. There is often a handbrake in this space between front seats of cars. His hand went close to side of his seat and his hand was moving smoothly and deliberately. Although I can see this action clearly in my recollection it probably took place quite quickly as so much was crammed into those few seconds.

When I saw this movement I anticipated that he may have had a baton or a wheelbrace beside the seat because that is often where people carry them. I would not have expected a firearm because I have never had any reason to associate STOWERS with firearms, but it wouldn't have surprised me if he carried some sort of baton. You would have to deal with STOWERS with the same wariness as any other criminal and you are alert for weapons. Because of STOWERS' unusually expressionless face and because he seemed so determined in this movement I shouted at him 'Police - Freeze'. My head was only a foot from his and I shouted this at him because I wanted him to stop. He had no reason to think that I was armed. My revolver was well out of sight. I wear a shoulder holster which is tight up under my armpit and I had a loose fitting jacket, casual style made of a sort of cotton material. In addition to this I still had my hands on top of his car and on the top of the door. My jacket would not have hung open far enough to expose the revolver because it is really a bit big for me and folds around me.

Then STOWERS starts lifting his hand out from between the seats and in his hand I saw a shotgun. At the time it didn't register whether it was sawn-off or not. I believe I saw two barrels and I saw the trigger fittings. His finger wasn't through the trigger at that stage. The general impression of what I saw was of a real firearm, not a replica. I have seen a number of sawn-off shotguns in my Police service and I have fired shotguns myself, and I knew it was a real shotgun.

I shouted 'Freeze' in a desperate way, and I shouted some short warning to my driver like 'shotgun' or ... He's got a gun', I can't remember those exact words. I started running backwards from the Mini still keeping looking at STOWERS. I drew my revolver at this point. The door was still wide open on the Mini and as I ran backwards I realised I had no cover because I was in the middle of Melrose St. While I was running backwards STOWERS drew the shotgun across his lap. He stayed seated in the front seat and presented the shotgun at me and was looking at me. He had his hand on the trigger position, i.e. R hand and his left hand cradled the barrels. I thought he was going to shoot me before I could get a chance to aim in self defence. I was very fearful at that point that I would be shot by STOWERS, I didn't think I was going to be quick enough to get out of the way. I staggered back as quickly as I could trying to draw my pistol as I went. I would have only got back about 10 or 12 feet when I tried to fire my revolver at the vehicle. I had a clear field of fire because my driver had dragged the woman who was driving back towards the Police car.

I was fair crapping myself and I thought I was going to die right then. I was in the middle of a street and I had no cover and nowhere to go for cover because there was two big buildings either side. I fired three shots. I'm not sure where they hit, I think they hit the car. I aimed as best I could while moving backwards.

When these shots hit the car they seemed to distract STOWERS for an instant. At some stage while I was moving backwards I went down heavily on my left knee and it is bruised. STOWERS immediately recovered from the distraction my shots had caused, and at this point I believed I had not hit him. I was hoping like hell that the shots might have made him put down the firearm but he didn't. He still held the shotgun in the firing position, that is with his hand and fingers in the trigger position and his left hand cradling the barrels. Instead of dropping the shotgun STOWERS repositioned his upper body square onto me bringing the gun to bear directly on me. I know about the spread of shot with a shotgun and I know that you only have to fire in the general direction with a shotgun to be sure of hitting a target. When STOWERS swung his body towards me this time I thought that he was taking deliberate aim. I had nowhere to go and he could have killed me easily. I knew that I had to shoot again to save myself. I was still only about 15 feet away. I do not believe I was moving when I fired the second lot of shots. I fired three bullets in quick succession and one of them must have hit STOWERS because his shotgun sagged away from being aimed at me, although he still had his hand around the trigger grip position. I felt an enormous weight come off me then because I really thought I was going to bite it, that is, I thought I was going to die."

If that was an accurate account of what took place then there would seem to be little doubt that the situation contemplated by General Instruction F61(1)(a) existed and that Police Officer 1 was justified in firing. I have accordingly concentrated my attention in the course of this investigation on a consideration of whether there is any independent evidence against which Police Officer 1's account could be tested. I set out now the evidence and inferences which are relevant for this purpose:

1. Police Officer 2 was preoccupied with attending to Miss Nobbs and could say little of the actions of Mr Stowers or Police Officer 1. He was trying to get Miss Nobbs to go with him to the Police car, but she was reluctant to move away from the Mini. He had heard Police Officer 1 address Mr Stowers by name and then heard him shout "Gun - Freeze - Police". Police Officer 2 immediately seized Miss Nobbs and took her to the Police car where he pushed her across the bonnet and started to handcuff her. At about the time he reached the Police car he heard a shot. He looked at the Mini, and saw Mr Stowers in the car with a gun pointed towards Police Officer 1. He leaned inside the Police car to get the radio to call for assistance, and at about that time he heard two more shots.

Police Officer 2 had had to let Miss Nobbs go in order to get the radio and he was then involved in trying to restrain her again. Shortly after that he received assistance from a passerby who had arrived at the scene at about the time of the shooting and was able to take over restraining Miss Nobbs while Police Officer 2 went to the Mini where he found Mr Stowers slumped in his seat and Police Officer 1 standing a short distance away in what was evidently a somewhat dazed and shocked condition.

2. The passerby and his wife arrived at the scene in their car immediately before the shooting. They saw Police Officer 2 trying to take Miss Nobbs away from the Mini. They both saw Police Officer 1 standing in Melrose Street about three metres from the Mini, and the wife saw that he was holding a gun at arms length out in front of him. Both of them thought that Police Officer 1 was sitting or crouching down. They drove on past the Mini and then slowed right down or perhaps stopped and at about that time each of them heard one bang. After a short pause of perhaps two or three seconds, and while the driver was doing a u-turn, they heard two more bangs. They drove back and stopped their car behind the Police car and facing in the opposite direction. It was then that the driver got out and went to help Police Officer 2.
3. Although there were people in a video parlour next to the intersection who heard the shots, no-one else witnessed any part of the shooting or the events immediately surrounding it, with the possible exception of Miss Nobbs.
4. Miss Nobbs was interviewed by Detective Constable Joanna Munro within about an hour of the shooting. The account which she then gave contained an acknowledgement that Mr Stowers had picked up a gun. Later Miss Nobbs sought to recede from that account and to be at best vague as to whether she had seen a gun at all. Altogether Miss Nobbs gave the Police at least three different accounts of what had happened. I was informed in the course of the hearing that she had recently been to her solicitor and made a further statement which was substantially different from

any of her previous accounts. It had not been possible to serve her with a subpoena as she had apparently left Auckland and her address was unknown. She was, however, aware that it was desired to have her attend the hearing. As it seems clear she has not been prepared to make herself available, and as she had in any event shown her unreliability as a witness I have not been prepared to delay this Report in the chance that she may be located.

5. Two passages from the statement of Police Officer 1 set out above require special comment. They are:

- (a) *"I would have expected some response from him but he just sat there. He looked at me when I spoke his name, he didn't say anything, in fact he looked eerie calm. He just turned his head away towards the windscreen after he had looked at me. I then asked him to get out of the car again. He made no response to my request for him to get out of the car, he just sat staring ahead."*
- (b) *"I was hoping like hell that the shots might have made him put down the firearm but he didn't. He still held the shotgun in the firing position, that is with his hand and fingers in the trigger position and his left hand cradling the barrels. Instead of dropping the shotgun STOWERS repositioned his upper body square onto me bringing the gun to bear directly on me."*

The actions and reactions (or lack of them) on the part of Mr Stowers described by Police Officer 1 are not those of a normal person acting rationally and so it is necessary to see whether there is any independent evidence which might confirm that he did act as described.

There is first the evidence of the consumption of alcohol by Mr Stowers. This is thoroughly unreliable so far as the accounts of the people he was with are concerned. Miss Nobbs said that, before going to Mr Repia's place, she and Mr Stowers had between them consumed a dozen cans of beer. She said that during the evening Mr Stowers had been drinking beer and had only had one drink of whisky because "he can't handle whisky".

Mr Repia, however, said that, between the three of them they had finished one half-full bottle of whisky and one

three-quarter full bottle. In answer to a question Mr Repia estimated that Mr Stowers had had about 15 nips of whisky.

None of this evidence can be regarded as reliable, although it no doubt confirms what is apparent from the blood analyses that Mr Stowers had consumed a significant quantity of alcohol.

There were two samples of blood taken from Mr Stowers while in hospital. The first was taken before he had received a blood transfusion and so may be regarded as more accurate than that taken later after the transfusion. The first sample was tested twice and showed a level of between 208 and 216 milligrams percent of alcohol (expressed in terms of testing procedures for blood alcohol analysis under the Transport Act). This analysis only became available to me after the formal hearing.

The second analysis, which was of a sample taken after the transfusion, and which is expressed in different terms, disclosed a serum ethinol count of 25 millimols of ethinol per litre. This analysis was submitted to Dr Galletly, Senior Lecturer in Anaesthesia at the Wellington School of Medicine for his expert opinion. He reported that the quantity of alcohol disclosed would suggest that Mr Stowers "would have been mildly to moderately intoxicated". The DSIR analyst observed, however, that the effect of the transfusion would have been to dilute the blood and lower the alcohol content. This no doubt accounts for the apparent difference in level between the two analyses. The probability, therefore, is that Mr Stowers was, at the time he was shot, appreciably intoxicated from alcohol alone.

There were present in his bloodstream, however, two other drugs, namely diazepam and nordiazepam. The quantities detected on analysis were 0.05 micrograms per millilitre of diazepam and 0.24 micrograms per millilitre of nordiazepam. Dr Galletly describes these levels, although low, as being sufficient to exaggerate intoxication caused

by alcohol. The significance of Dr Galletly's evidence is found in the opinion which he expressed in this way:

"The following effects might be expected in a normal healthy subject having these plasma levels: reduction in anxiety and reduced fearfulness, vision might be blurred, reasoning, judgement and mental performance would be impaired. Co-ordination would be impaired and they would be unfit to drive a motor vehicle. Paradoxical effects might also be present."

It is important to note that Dr Galletly, in giving this opinion, was unaware of the account given by Police Officer 1, and based his opinion on the lower of the two analyses. The significance of his opinion is at once apparent when it is seen that he has described almost precisely the demeanour observed by Police Officer 1.

6. The presence in the Mini of the sawn-off double-barrelled shotgun remains unexplained. Miss Nobbs had acquired the car only two days previously and it seems most unlikely that the gun was in the car at that time. Miss Nobbs disclaimed any knowledge of it, and seemed anxious in her differing statements to the Police to distance herself from it. The point is of only academic interest. Probably Mr Stowers had acquired the gun the same evening. The certainty is that he had it in the car and, when he realised he was being spoken to by a Policeman, reached for the gun and presented it at Police Officer 1. The gun was unloaded, but Police Officer 1 could have had no means of knowing that.
7. A former girlfriend of Mr Stowers (to whom I refer as Miss M.) upon hearing of the shooting and the circumstances of it, went to the Police and volunteered an account of her association with him and of the comments he had made to her. These were of such significance that Miss M. was required to attend the hearing where she was questioned at some length by counsel and by me. The essence of Miss M's evidence is contained in this extract from the written statement which she volunteered to the Police:

"He'd talk about all sorts of things. One night we were lying in bed and he said "that there was no way

that the police were going to take him in again". He started talking about that Chase guy that got shot. The fact that he had an unloaded gun, and that cop had blown him away. He thought what a bummer for the cop who had blown him away. He thought it would be a great way to be remembered, getting blown away like that. The second time it came up it was the next time he did a job. Chemist I presume it would be. He was always coming home with money, he would never tell me where it was coming from. He kept it right away from me. He said the next time he did a job he was going to pull an unloaded gun on a cop and see what happened. He was serious too. Would have been in August. He never brought any guns home, I wouldn't have any guns in the house. He always talked about guns, he wanted me to have a gun licence but I wouldn't do that. The last time I saw him was about 6 weeks ago He said 'This was it', I think he basically came to say goodbye. He said to me I wasn't to cry, he made me promise not to cry. The Paul I got was very timid, he wasn't aggressive, he spent a lot of quality time with my boy. He said 'memories have many hollows, I have to hide in one', and that was basically the last time I ever saw him. He seemed to have this real fascination for death. He said he didn't think he'd make thirty."

This passage so closely describes what eventually occurred that there was an immediate suspicion that Miss M may have adopted news media accounts of what had happened and sought to achieve some notoriety by attributing to herself prior knowledge of Mr Stowers' attitude. It was for this reason that it was necessary to question her closely and to observe with care her demeanour as a witness. Having done so I am satisfied that her statement and her oral evidence were truthful and provide a most unusual and startling explanation for what happened.

CONCLUSION

With regard to Issue 1, the circumstances of the shooting were, in my opinion, those described by Police Officer 1 and set out above. I can find no reason to doubt the account he has given.

Police Officer 1 was confronted by a person he knew to have a substantial list of convictions for violent offending, although not one previously associated with firearms. He knew Mr Stowers well enough to realise at once that he was not acting normally and that he had not shown recognition of Police Officer 1 when he might be expected to have done so. The fixed

and expressionless manner, the deliberate reaching for the shotgun and the apparently determined way in which he proceeded to aim would have suggested to anyone the grave likelihood that the gun was about to be fired. To a trained member of the Crime Squad, whose very survival depended upon the alert recognition of danger, the situation could only have been dramatic and life threatening. I can find no fault with the fact that he decided he must fire. He was a short distance only from the Mini, standing in the middle of the intersection and with no cover and nowhere to go for shelter.

Police Officer 1 first fired 3 shots. He realised he had not hit his target, but he paused in order to see whether his shots had had the effect of deterring Mr Stowers. When he saw that Mr Stowers again levelled the shotgun at him he fired a further 3 shots and one of these caused Mr Stowers death. I will discuss under Issue 2 the firing of 6 shots and the technical matters relating to the use of the pistol, but for the purposes of Issue 1 conclude that Police Officer 1 in fact believed he was about to be shot and that he was justified in that belief. I am satisfied that any normal, rational person in the same situation would have interpreted the scene in the same way.

No fault attaches therefore to Police Officer 1, the only member of Police directly involved in the shooting incident.

ISSUE 2

I discuss Issue 2 under the three separate sub-headings which I have set out earlier:

(A) Training & Practice

It is necessary to refer first to the statutory provisions and General Instructions capable of applying to the situation which arose in this case.

(a) Section 48 of the Crimes Act 1961 provides:

"Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use."

(b) Police General Instructions F60 provide:

"F60(1): Firearms are not to be carried as a matter of general practice in the normal course of duty. Where there are reasonable grounds to believe that Firearms may be required for use within the law and policy, their availability may be authorised by a District Commander or by Commissioned Officers or NCO's authorised by him. Selected NCO's should be given the discretion to carry firearms where and when circumstances dictate the necessity for this action."

"F60(2) A member may carry firearms in the following circumstances:

(b) When he is a member of the CIB on a CIB Patrol rostered on a permanent basis between the hours of 1500 and 0700."

General Instruction F60 then contains a prohibition on the consumption of alcohol within a reasonable time before commencing duty, and provides for the carrying of a firearm in such a way as not to be displayed. There is no suggestion of any departure from those provisions.

(c) General Instruction F61 provides:

"F61(1) A member shall not use a firearm except in the following circumstances:

(a) If he fears death or grievous bodily injury to himself or another person and he cannot protect himself or that person in a less violent manner ...

(2)(d) An offender is not to be shot:

(i) Until he has first been called upon to surrender and has refused to do so, unless in the circumstances it is not practical to do so; and

(ii) That it is clear that he cannot be disarmed or arrested without first being shot; and

(iii) That in the circumstances further delay in apprehending him would be dangerous or impracticable.

(3) *Generally speaking, warning shots should never be fired ..."*

(d) General Instruction F182 deals with Firearms Refresher Training and provides that for members of Police performing the duties which were being performed by Police Officer 1 refresher training is to be held annually.

(e) Although apparently not prescribed in any official manual, the policy of the Police includes:

(i) Officers are trained to aim at the torso (or centre mass) of the target because it minimises the possibility of missing the target, and it maximises the possibility of incapacitation, rather than just a flesh wound which would not necessarily persuade the offender to desist.

(ii) There is no policy to shoot to wound. There is no policy to shoot to kill. There is simply a policy of shooting to incapacitate.

(f) The Firearm Training Procedures prepared by the Police Firearms Instructor who was appointed to that position in July 1990 includes instructions as to the correct stance and grip to be adopted and the proper firing procedure. For reasons discussed later these have no special relevance for the purposes of this Report. Because of the number of shots fired by Police Officer 1 it is of relevance to set out two requirements:

(i) "Covering Down the Target"

We now know the Police issue revolver is marginal as an incapacitator therefore the tactical skill referred to as covering down the target is extremely important. When the shot has been released the officer must keep the revolver indexed in centre mass for a further two seconds then slowly lower the revolver down the centre of the offender (spinal column) until he reaches a gun down position (45°). This action will enable the officer to fire a second or subsequent shot if incapacitation has not resulted and the offender still poses an immediate life threatening situation."

(ii) "Double Taps"

Because the Police issue revolver is marginal as an incapacitator it is therefore possible that a second or follow up shot is immediately required. Double tapping is simply firing two quick shots in succession with added emphasis on recoil control. This technique must only be used during the following circumstances:

- (1) That person who poses an immediate life threatening situation inside a close combat distance of 3.5m.
- (2) A violent, attacking psychotic individual.
- (3) A violent, attacking individual under the influence of drugs.
- (4) When immediate incapacitation of offender is paramount to save the life of another."

In the light of these various requirements and provisions it needed to be established that Police Officer 1 was authorised to carry a firearm, and to use it if there was no other way of meeting the danger which he believed he faced. Having decided to fire he was required to aim at the centre mass of his target and to incapacitate Mr Stowers as soon as he could.

(B) Compliance with Requirements

Police Officer 1 was a member of a CIB patrol rostered on a permanent basis between the hours of 1500 and 0700 and was accordingly authorised to carry a firearm (General Instruction F60(2)(b)).

He believed that he was about to be fired at with a shotgun by a man who was not acting in a normal and rational way, that he had no cover or protection from the anticipated shot and that if he did not fire first he was likely to die. In these circumstances I consider that he was acting in self-defence (s.48 of Crimes Act).

Although Police practice and training contemplates the firing of a single shot initially, Police Officer 1 fired three. The probability is that there was a brief pause

between the first shot and the next two. There was then, as confirmed by several witnesses, a pause of what must have been a few seconds, and then a further three shots were fired in quick succession. It is an interesting commentary on the fallibility of eye-witnesses to a sudden and dramatic event that no witness (including Police Officer 2) recalled hearing more than three shots, notwithstanding that there were undoubtedly six fired.

The firing of six shots may not have been in strict accordance with Police Officer 1's training, and may appear to have been excessive. It must, however, be emphasised that this had no bearing on the outcome or on Police Officer 1's compliance with his training or his obligations. In the situation which faced him his duty required him to fire in order to incapacitate Mr Stowers, and to fire again so long as Mr Stowers presented a threat to his life. As will be discussed under the next heading, Police Officer 1's training with firearms was less than it ought to have been, but if he had had the additional training which he had sought the most likely effect of that would have been that he would have hit Mr Stowers with one of the first three shots fired rather than with one of the second three. The result for Mr Stowers would almost certainly have been the same. It must be noted, however, that the inaccuracy of the first three shots most likely meant that, if the shotgun had been loaded and fired, then Police Officer 1 would probably have been killed before he could fire the further three shots. It is also necessary to remember that the first shots were fired while Police Officer 1 was running backwards from the Mini, and in circumstances where some degree of stress was almost inevitable.

General Instructions F61(2)(d)(i) provides that an offender is not to be shot until he has first been called upon to surrender and has refused to do so, unless in the circumstances it is not practical to do so.

Police Officer 1 did not in strict terms comply with that requirement, but there was little if any time for him to do

so, and in any event the initial challenge which he gave was probably a warning, and the firing of the first three shots ought to have been an adequate warning.

The type of stance adopted by Police Officer 1 when firing the shots was again probably not precisely in conformity with his training, but it is unnecessary to discuss this further because the type of stance could have done nothing to counter the spread of shot at close quarters from a sawn-off shotgun.

CONCLUSION

Although there were some departures by Police Officer 1 from the strict requirements of his training these were not such as to have had any bearing on the outcome and have significance only for the purposes of Issue 2(c).

(C) Comments on Training & Practice

The limits of my jurisdiction must be made clear. The Police Complaints Authority Act 1988 does not give me jurisdiction to carry out any broad or general investigation into Police training or practice and this is why Issue 2 was formulated in the way that it was. I have confined my investigation to matters relating to the duties required of Police Officer 1, and the training and practice which related to those duties.

As previously recorded, Police Officer 1 was authorised to carry a firearm in the course of his duties as a member of a CIB Crime Squad rostered on a permanent basis between the hours of 1500 and 0700. I assume for the purposes of this Report that this was a proper and appropriate policy.

He had undergone firearms training initially at the Police College and then by way of refresher courses on:

- 26 September 1985
- 15 October 1986
- 11 August 1987
- 3 November 1987
- 15 February 1989
- 21 November 1989

It will be seen that this did not involve full compliance with the requirement for annual training but he had undergone such a course a little less than a year prior to the shooting.

While the occasions when a member of the Crime Squad is required to use a firearm are fortunately rare it hardly requires saying that, when such an occasion arises, the training must be such as to ensure that the firearm can be used effectively.

Police Officer 1 in his evidence expressed the view that training should be more frequent than annually. It is plain that he was conscious of some deficiencies in his use of a firearm and he had made, since March 1990, four oral requests for additional training, particularly in conditions of poor lighting. None of these requests resulted in additional training, but this was because Police resources and Police Officer 1's own duties did not permit time to be set aside for the training.

The need for training at more than annual intervals was supported by Detective Chief Inspector Ward, the Officer in Charge of the Police internal inquiry, and also by Mr Hauraki, the Police Firearms Instructor. The circumstances in which firearms may be used emphasises the need for thorough efficiency in their use.

The principles of firearms training were fully explained in evidence by Mr Hauraki. One matter which he stressed was the need for a member of Police who was required to use a firearm to have had sufficient training to be able to act in an emergency in conformity with that training rather than in a way governed by his emotions. This related to the problem which was referred to as "mind set". Mr Hauraki explained that emphasis in training is placed on deliberate repetition of fundamental techniques which will result in a learned behaviour that it can be expected will be repeated. He said:

"When this officer senses urgency, stress becomes a factor, logical thinking is disrupted, and the

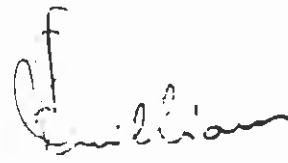
subconscious 'mind set' takes charge. Whatever this officer has reinforced through training will provide the basis for the response. If an adequate reaction is not there ... the officer will feel the urgency and attempt to make up this deficiency with haste. He knows subconsciously that aligning the sights and squeezing the trigger will be too slow and he fears the consequences."

The logic of this observation is compelling. In the present case Police Officer 1's failure to hit his target with the first three shots could well have been accounted for by a form of stress (or mind set) and, if the shotgun were loaded, may well have cost him his life. The need for the additional training which he recognised he needed is accordingly emphasised.

It is necessary to stress again that no deficiency in training could have saved Mr Stowers from being shot. The threat which he presented to Police Officer 1 continued throughout, and in particular his re-aiming the shotgun notwithstanding the first three shots left Police Officer 1 with no alternative than to fire again. Had he lowered the shotgun at that stage I have no doubt Police Officer 1 would have withheld further fire.

I recommend that members of Police carrying out the duties which Police Officer 1 was required to carry out, and armed with a firearm, should receive training at more frequent intervals than annually.

I do not feel it necessary to comment on any other matters of training or practice. The existing requirements are, in my view, adequate and satisfactory.



POLICE COMPLAINTS AUTHORITY :

4 December 1990