

**REPORT ON 26-YEAR-OLD MALE
SHOT AND INJURED BY A POLICE OFFICER
AT INVERCARGILL ON 16 FEBRUARY 2000**

Introduction

On Wednesday 16 February 2000 a 26-year-old man was shot and injured by a Police officer at Invercargill.

He was named by Police and his name appeared in press reports on 18 February. His name also appeared in a later press report dated 12 April after he had pleaded guilty to assault with a weapon in the Dunedin District Court. On 27 April he was sentenced to nine months imprisonment which was suspended for two years. His name was also published on 27 May when it was reported that the officer who shot and wounded him had been cleared of any wrongdoing following a criminal investigation by Police.

I have been provided with a copy of a psychiatric report prepared shortly after the incident which concluded that while this man was fit to plead he was affected by personality difficulties to such an extent that he remained at significant risk of repeated suicide attempts in the future.

In the light of that report I have decided not to name him in this report so as to avoid the possibility of causing any adverse medical reaction on his part. I also take it into account that my concern is the conduct of the Police and not the conduct of the person who was shot. Furthermore that person was extremely co-operative with Police after the shooting and apologised in writing to the officer involved.

In 1999 he had two admissions to hospital in connection with problems of depression and suicidal ideation.

It is my view that his mental condition dictates that his privacy be respected and this outweighs any public interest requiring that his name be published again. Hence in this report he will be referred to simply as 'B'.

For reasons which I will detail shortly I am left in no doubt, following my review of the matter, that B carefully and deliberately planned that Police would fatally shoot him. It is clear on his own admission that it was his intention to commit suicide in this way.

The Detective Inspector who investigated this incident on behalf of the Authority concluded his report by stating that he had no doubt that B intended Police to shoot him and that he would thereby commit suicide. He states:

"The term 'suicide by cop' is commonly referred to in publications and analyses of similar types of incidents world-wide."

Following my own review of this matter I am satisfied that this is a classic case of such an event.

Outline of the Facts

The shooting occurred in Donovan Park which is a large reserve and rugby ground off Bainfield Road in the northern suburb of Waikiwi, Invercargill.

The shooting followed the Police response to a 111 call commenced at 6.03pm by a former partner of B. This followed a domestic incident. B had been visiting the home where his former partner lived with their three boys aged 9, 6 and 4. During the afternoon they drank a bottle of vodka. B later stated that he had about eight 200ml glasses filled half with vodka and half with pineapple juice.

A blood sample taken in hospital at about 8.30pm disclosed a blood alcohol level of 82 milligrams of alcohol per 100 millilitres of blood. The scientific advice is that at 6pm the level would have been within the approximate range of 107 to 132 milligrams.

The former partner cooked a meal but B did not have anything to eat. For reasons which I will detail shortly, this is of some significance. The partner went to bed around 6pm and asked B to leave. He became agitated and told her to ring the Police. He was subject to a

trespass notice in respect of the house. This was the result of an altercation which had occurred when he visited there on New Year's Day.

B then picked up a long serrated knife and immediately stabbed himself in the back of his left hand. He later said at interview that he did this because he wanted the Police to come and when they saw that he had a weapon *"the guns will come out and I'll get shot in the chest or the head and they'd kill me"*.

He said that he had thought about such a scene *"for ages."* He had got the idea from watching TV.

In a statement which he made in hospital on the following day he said that he had made earlier suicide attempts including attempts during the previous year. He said he had failed in these attempts and *"that's why I thought a bullet would be nice and quick"* and he said that *"I thought a Policeman would do that"*.

In the same statement B said that he was disappointed because *"the cop didn't shoot me in the head or the chest somewhere"*.

I am satisfied on the evidence that this was an event which was deliberately planned by him.

In a letter handed to Police on 22 February B recounted how he had planned to end his life. He was to stop eating (which he did) on the preceding Sunday. This he believed would help him die *"a little quicker"*. The rest of the plan (which he implemented) was to drink alcohol on the Wednesday, then have an argument at the house so that Police would be called and then proceed to the park while it was still daylight (so that he could be seen) and death would follow. He had even contemplated how this might be brought about if Police dogs were involved or if pepper spray were used. He dealt with both of these possible situations in the letter which he handed to Police.

This was, as the psychiatric report remarked, *"an elaborately planned and prepared-for event, intended to result in his own death"*.

On the previous day, 21 February, B wrote a letter of apology to *"the bosses"* of the officer who had shot him. This is a poignant letter in which he referred to *"the really deep problems in my life that I can't control"*. He said in that letter :

"I put that officer in a very serious problem and tried anything like holding a weapon and threatening his own life just so that he would end my own.

I am very sorry for that and I do hope u's [sic] don't be too hard on him. He was only protecting himself as well as the public. He wasn't to know I was only trying to end my own life and no one elses. He should be a hero because he saved his own, the publics and my life and that's what u's should be thinking about."

So the scene was set for tragedy. B's mindset was not of course known to the officer who attended the incident.

It is worth recording that this was what may be termed a 'rapid' incident because, from the time the 111 call was commenced until B was disarmed after the shooting, just under 11 minutes elapsed.

After B had deliberately cut himself his former partner informed Police that he had left the house and this was timed by Police at 6.05pm (times were recorded in the usual way involving seconds as well as minutes but for the sake of ease in following the sequence of events I omit the seconds in this report).

The Communications Centre in Christchurch ('Comms Centre') contacted an Invercargill Police unit at 6.07pm and despatched it to the address. This unit was crewed by one officer who was informed that a male had left the address with a knife and that he was bleeding.

The officer confirmed the despatch order and indicated that *"I'll be there in about one minute"*.

He went to the address and at 6.09pm advised Comms Centre that the suspect was not in sight.

However at 6.10pm he reported that he had seen the suspect walking across nearby Donovan Park and that he was following him in his patrol car.

The officer drove the Police vehicle across the park and stopped so that B was right beside the driver's door. The officer shouted at him to put down the knife he was carrying. The officer said that he had fears for his safety when B did not respond. He asked three times

that the knife be put down but B did not respond. B then walked away from the car until he was about 20 to 30 metres from it.

The officer then made a decision to arm himself and advised Comms Centre that he was doing so. His vehicle had a gun safe and the officer unlocked it and took out a Glock pistol. He loaded it. He opened the car door and called out to B that he was armed and to drop the knife. He got out of the car and again called out "*Armed Police. Put down the knife*".

Then began a frightening sequence of events. B turned around and walked back towards the Police vehicle with the knife held in front of him and the blade pointing towards the officer. The officer called out again to put the knife down and he moved away from the vehicle to indicate to B that he was indeed armed. B continued walking towards him, ignoring repeated instructions to drop the knife. He got as close as three to five metres. The officer then felt that he had no option but to back off. He began doing so.

He told B that he may have to shoot him and the response was an invitation to do so. The officer, as he backed away, was conscious of a wide and deep ditch somewhere behind him and beyond that there were dwelling houses.

The officer continued to retreat. Civilian witnesses later described this scene. One said the officer would occasionally "*skip backwards*" to keep sufficient distance between himself and B who kept advancing. "*From what I saw*", the witness said, "*the guy was intent on getting the cop*". Another civilian witness said that B's "*right hand was raised above his head and he was holding the knife with the blade pointing upwards*".

The officer himself was frank at interview about how he felt. He described his feelings in down-to-earth language and said that he was scared about the way the incident was unfolding. He said that B had shouted at him "*I'm a psycho and a nutter. Come on, shoot me*".

By this time the officer was very concerned not only for his own safety but also for the safety of members of the public in the park, faced as he was with an unpredictable, aggressive, non-compliant, knife-wielding person. He decided to fire a warning shot.

He shouted to B "*Put the knife down or I will shoot you.*" He said that he took deliberate aim to B's left and fired one shot into the ground. He believed that it was safe to fire into the turf. He said that by firing the shot he hoped to make B appreciate that he was serious about the threat of having to shoot him.

The reaction of B was the exact opposite of what he had hoped for. He said the shot "*appeared to pump him up even more*" and he "*just kept on coming*".

The officer said that he continued to retreat backwards and that he was having to "*hop or skip a bit quicker*" to keep his distance from B. He was continually calling on him to put the knife down. He had to increase his pace because B "*quickered up*" on him. He said that B pointed to his chest and head and told the officer to shoot him. He still however had the knife in front of him in his right hand.

After firing the warning shot the officer went back another 50 to 70 metres and said that by this time he was "*really, really scared*" and feared that he was going to be stabbed. He was worried that, with the change of pace and the continual backing, he could trip. He was also aware that somewhere behind him there was the ditch.

The officer said that when B made the comment about being a 'nutter' and demanded that he be shot the thought did cross his mind that this might be a 'suicide-by-cop' situation. The officer decided however that he had no alternative but to fire a second shot. He said that his fears for his own safety were "*mounting and mounting*".

He said that he had no doubt that if he fired at B's centre mass he would kill him at that range and so he opted to shoot at B's legs. He fired one shot. It missed.

Asked about B's reaction to this he said that "*he just kept on coming*". He added that "*I just kept retreating*".

The stalking continued for a further 30 to 50 metres. The officer was becoming more and more concerned because he knew the ditch was behind him and was getting closer. He said that it is a big ditch and that his safety would be severely jeopardised if he had to negotiate it. He also realised that the residential area was also getting closer and so a point had been reached at which he could not allow the situation to continue. He felt that "*death or grievous bodily harm could come to me if the matter went on any further*".

He recalled thinking "*I do not want to kill this joker*" but he felt that he had been pushed into a corner where he had no choice but to shoot again. His intention this time was to shoot at the centre mass of the body. He said that this is how he has been trained.

He gave one final warning, saying "*This is your last warning. If you do not put down the knife I will shoot you*". B kept advancing with the knife held in his right hand and pointed at the officer who then took deliberate aim at the chest and fired. He knew that he had hit B as he "*stopped dead in his tracks*".

The officer again demanded that the knife be put down. B did not comply with the request although he did not advance any further towards the officer.

It was at this point that the officer realised that other officers had arrived. He heard them calling out "*Put the knife down, put the knife down*".

B then lowered the knife to his side although he was still holding it. He then threw it away.

At that point he turned his back to the officer who immediately ran to him and pushed him forcefully to the ground, using the sole of his boot in the small of his back.

The shot had passed through the upper part of B's left arm. An ambulance was called but immediate first aid was given by one of the other Police officers who it seems may thus have saved B's life.

The facts as outlined above are verified by B himself and three civilian witnesses.

In the course of conversation with the officers who were attending to him prior to the arrival of the ambulance, B said that "*I wanted that cop to shoot me in the head or in the heart and kill me*".

Result of the Gunshot

B was shot in the upper left arm. The result of that shooting is outlined in a report from a consultant surgeon at the hospital. The surgeon reports that when admitted B presented with an acutely ischaemic left hand with signs of brachial artery acute injury. There was however no active bleeding due to the first aid measures which had been taken at the scene by a Police officer and then by ambulance staff. B was also found to have left median nerve injury. The surgeon had him taken to theatre. He was there for some 20 minutes. It was found that the nerve was intact. The surgeon repaired the damaged segment of the left brachial artery with a good return of circulation to the left hand. The surgeon kept him under his care for 48 hours after surgery and then on 18 February he was transferred to the psychiatric ward.

The First Aid Measures

As noted, B was attended at the scene by a Police officer who has a good knowledge of first aid. He took immediate and appropriate action and the medical opinion is that, given the nature of the injury, that action may well have been life saving.

It is clear that the Police and ambulance staff gave proper and effective care to the injured person.

Subsequent Police Investigations

The matter was the subject of two separate investigations. One was to establish whether any criminal liability had been identified in relation to this incident. This investigation was conducted by Detective Senior Sergeant B W Hewett. I have read his final report together with the substantial number of accompanying papers generated by the investigation. I have considered all of these and I am satisfied that this investigation was thorough, completely impartial, and of a high standard.

His report notes that B was on prescribed medication but he had stopped taking it. So this sadly is yet another example of the serious consequences which may follow when this happens. His report also details B's psychiatric history including two unsuccessful suicide attempts in 1999. He was discharged from the psychiatric ward at Invercargill Hospital in July of that year and follow-up visits were made but B moved to the North Island and the Mental Health Unit lost contact with him.

Following his investigation the Detective Senior Sergeant reached the conclusion that "*It is my opinion that [the officer] was justified in shooting [B] and that in the circumstances the force used was not excessive.*"

The file was then forwarded by the Police to the Crown Solicitor for an independent legal opinion as to the criminal liability, if any, of the officer.

In that opinion the Crown Solicitor exhaustively examined the facts in relation to the general law and Police General Instructions. He reached conclusions with which I agree.

I endorse and adopt the following conclusions recorded by the Crown Solicitor:

"3.3 The evidence completely satisfies me that:

3.3.1 [The officer] fired all three shots to defend himself.

3.3.2 *The circumstances, as [the officer] believed them to be, were:*

- (a) *That he was faced with an offender who was unpredictable, non-compliant and aggressive.*
- (b) *That he anticipated an immediate and serious attack by the offender who was armed with a knife.*
- (c) *That if he did not take appropriate steps to defend himself, the offender would cause him grievous bodily harm or death.*

3.3.3 *The force used by [the officer] in the circumstances was reasonable.*

- (a) *The attack was imminent and serious;*
- (b) *The defensive reaction was proportionate to the perceived danger; and*
- (c) *There were no other alternative courses of action which were reasonably available to [the officer]; a controlled withdrawal had failed; negotiation had failed; [the officer] did not have a short baton with him; the use of empty-hand tactics would have been inappropriate; and the use of O/C spray would have been inappropriate. The only reasonable response left available to [the officer] was to use the firearm. [The officer] was obviously reluctant to shoot the offender and in my opinion showed commendable restraint before finally taking that option.*

4. *In my opinion, [the officer] was justified in shooting the offender, and hence is not guilty of any offence."*

I am satisfied that the conclusions reached by the Crown Solicitor were inescapable after applying the law to the facts of this event.

Independent investigation for Authority

In a case such as this, where a Police officer acting in the execution of his duty causes serious bodily harm to a person, a senior Police officer carries out an independent investigation on behalf of the Authority.

Detective Inspector A C Kelley carried out such an investigation in this case. He was to report in particular on whether the policies and procedures of the Police relating to the use of firearms had been complied with.

His investigation was thorough and was independent of the criminal investigation. On the completion of his enquiries he produced a comprehensive report for the Authority.

He reached several conclusions. Following my own independent review I agree with those conclusions.

He concluded that upon receipt of the 111 call the Comms Centre response was adequate and the response of Invercargill Police was appropriate given the resources and staff immediately available. He pointed out that this was, as I have said, a 'rapid' incident which from the time the 111 call was made until B was disarmed took just under 11 minutes and thus, due to the time-frame of the incident and its resolution, the armed offenders squad were not required to be called out. I agree.

The investigator's further conclusion was that he was left in no doubt that B intended Police to shoot him and so commit suicide. However he stressed that the incident had been investigated and reviewed on the evidence available and comparisons had not been drawn with reported similar cases overseas where death has been the end sought by those provoking lethal response from Police.

The Detective Inspector expressed concern at the possibility of a repetition by B of such an incident. This reinforces my decision not to publish B's name.

He noted that B was very co-operative and was open about the background and circumstances leading up to the incident.

He stated that he was satisfied that the Police had properly investigated and dealt with the circumstances surrounding the discharge of the firearm and he concluded that the officer's actions at the scene did not breach any Police General Instructions, policy or procedure.

The file was reviewed by the Internal Affairs Section at the Office of the Commissioner of Police before being forwarded to me for my own independent review.

That Section requested comment from Superintendent N B Matthews, the National Manager: Operations, on three issues. Those issues were the discharge of a warning shot, the discharge of a shot to wound, and the non-use of O/C spray. Superintendent Matthews responded with a detailed report.

I will deal with these issues shortly.

The Internal Affairs Section commented on a matter raised by Detective Inspector Kelley, namely that Police knowledge of earlier suicide attempts by B had not been flagged on the Wanganui computer. It was noted that on at least two of those occasions Police were aware of B's attempts at suicide yet these had not been recorded in accordance with usual procedure. It was pointed out that the failure to do this was of concern because, if B had been subsequently placed in custody in a Police cell and Police were unaware of his suicidal tendency, there was the potential for tragedy.

It is reported that steps were subsequently taken to rectify this omission.

My Conclusions Following My Independent Review

I have already set out some of these. This is a case with distressing circumstances in which there is no dispute about the facts. The officer's account is confirmed by B himself and by independent civilian witnesses who saw and heard much of what took place. One of those witnesses says that he heard the officer say *"put the knife down"* and that he continuously called out to B to do this. He said that the officer's instructions were loud and clear. He said *"the guy was walking very quickly in the direction of the Policeman in an aggressive manner and it appeared to me he was being confrontational towards the Policeman"*. He said that while this was happening the officer was continuing to tell him to stop and to drop the knife. He said that B got to within four to six metres of the officer. He said *"I have no qualms in saying that had the guy with the knife got close enough to the Police officer he would have slashed the officer with the knife"*. Another civilian witness said B was *"looking determined"* and that *"every now and then the cop would take a couple of quick steps to maintain the distance."* He said the two were three or four metres apart from each other for all the time that he was watching. He said he could hear the officer shouting *"Put down your weapon, drop your weapon or I'll shoot"*. He said he could hear that quite clearly. He said that B kept walking towards the officer with the knife in front of him. After the first shot he said that the officer was still walking backwards shouting at B *"Put down your weapon, put it down or I'll shoot"*. It was this witness who said, as quoted above, that *"From what I saw the guy was intent on getting the cop"*. A third civilian witness said *"I am sure the Policeman had no other choice but to shoot the guy. If he had turned around to get away from him he could have been stabbed"*.

There is then in this incident no suggestion of any suppression or cover-up of the facts on the part of the Police or of anyone else. The facts are agreed and it is to B's credit that he was

so co-operative with the investigation. It is an unfortunate matter in which there must be understanding extended to B but also commendation extended to the officer who did everything possible to avoid firing the final shot and who did all he could to thwart the subsequently admitted intentions of B which could not of course have been known to the officer at the time. The picture painted by the witnesses of the officer retreating across the park being stalked by B discloses a frightening scenario. I agree with the comment made by the Internal Affairs Section that the officer displayed courage and performed with professional distinction. I also agree with the further comment made that the officer who took care of B after the shooting, and thereby possibly saved his life, deserves commendation.

Issues Arising

There are several issues however which arise and which do require comment. They are these:

1. Was the officer justified in deciding that the use of a firearm was the best tactical option in this case?

In considering this question certain matters must be borne in mind. At the time the officer was despatched to this job he had been informed that B had a knife and a self-inflicted wound. When the officer found B a very short time later in Donovan Park, which is a public place, it was clear to him that B was in a disturbed and highly agitated state. He absolutely refused to put down the knife. There were members of the public in the immediate vicinity, some close enough to hear the dialogue between the parties as well as see the incident unfold. Their safety was a paramount consideration. This park is a common place for public recreation activities, particularly at that time of the day in summer, and is adjacent to nearby housing.

The officer assessed the situation once B made it clear that he was not going to drop the knife. He then made the decision to arm himself.

He believed this to be the best option although he had access to a long baton and OC spray. He did not have a short baton. A long baton carries with it an element of risk in any close quarter confrontation.

The officer at interview was asked why he chose to arm himself with a firearm. He replied:

“He had not complied with my requests to throw down his weapon. I had tried to prevent him from getting to the public area by blocking him with

my car and now he was moving off, still armed, and heading to an area where I perceived danger to other members of the public. I had made up

my mind that I had to follow him to prevent harm coming to any other members of the public who may be present. I was still the only Police officer on the scene but I was aware that other staff had been called and were en route but I had no knowledge of their estimated time of arrival."

He was then asked whether he had any concern about waiting for back-up. He replied:

"Yes I did. I was concerned about his state of mind and what he may do should he come across another innocent member of the public."

He then said that he had experience with firearms and that he had no short baton and did not regard the long baton as an option. He had OC spray on his belt but he said that based on his experience his instinct told him that a firearm was what was required.

He was asked about his decision not to use pepper spray. He said that the effective range of pepper spray is 1-3 metres and that at the time the decision was made B was approximately 20 metres away. He said that at that distance the spray would have been totally ineffective. He pointed out that from that distance he could not protect any member of the public and should B have moved through a gap in the trees he had no way of knowing who might be there at risk of confrontation with B.

The officer also said in the course of his interview that he was fully aware that he should not shoot anybody unless that person posed a threat of death or grievous bodily harm to himself or to another person.

The decision by the officer not to use OC spray has been considered by the National Manager: Operations and also by the District Arms Instructor for the Southern Police District. Both agree that the officer made the right decision. A number of reasons have been advanced to support this conclusion. It was noted that the prevailing weather conditions with gusty breezes moving through the park were against its use and that the officer would have to be too close to B, as he advanced on him with a knife, to use it effectively. Police officers are instructed in training that extreme caution is to be exercised in using spray when dealing with an offender armed with a knife, as the distance required to deploy the spray effectively can expose them to unnecessary risk. Further, Police are aware that OC spray is not 100 percent effective on every occasion. Its effectiveness is reduced when used on persons

suffering from a mental disability or who are drugged or intoxicated or who have a fixed determination to accomplish a goal. In this case there is no question that B had a very fixed determination to accomplish his goal of self-destruction and at the time that the officer made his decision B had shown, and was continuing to show, a fixed determination not to drop the knife. There was also in this case an element of intoxication.

I am satisfied on the evidence before me that, given B's state of mind in a public park where other persons were present, the decision by the officer to arm himself with a pistol cannot be criticised. His initial decision was primarily for the protection of the public. If he had elected to wait for back-up, and a member of the public had been confronted by this very disturbed man and been stabbed, it is not hard to imagine the criticism of the officer which would have followed.

2. The warning shot

General Instruction F64 stipulates that "*as a general rule, warning shots should never be fired*". The reason for this is that such a shot is likely to be counter-productive. The shot may provoke an offender into taking the very action which it is intended to prevent. For example, if a shot is fired at an armed offender he is likely to shoot back, or in the present case it could well have motivated B to lunge forward with the knife. The risks to others of a misdirected shot or of a ricochet have also to be considered. Nevertheless it is recognised that there may be circumstances where a warning shot may be appropriate. General Instruction F64 directs that the following principles must always be borne in mind:

- (a) *Extreme caution is taken to safeguard the lives of others; and*
- (b) *The offender has, where practicable, been called upon to surrender and has failed to do so; and*
- (c) *The shot can be clearly aimed as a warning shot, i.e. vertically in the air, in the open, or at an equally safe target elsewhere so as to safeguard the public and plainly demonstrate to the offender that he is in fact receiving a warning and not being shot at. Any misconception in this regard may precipitate the offending action that a warning shot is trying to prevent.*

I have already set out what happened in this case and how the officer described the situation before the warning shot was fired.

The officer recalled telling B to “*Put the knife down or I will shoot you*”. He said that as he said this he took deliberate aim to the left of B and fired one shot into the ground. The officer hoped to make B realise that he was serious about the threat to shoot. As I have mentioned, the effect of the shot was to “*pump*” B up further, and he continued to advance towards the officer.

In the situation which confronted the officer I agree with the conclusion reached by the Internal Affairs Section and the National Manager: Operations that this was a case where the firing of such a shot was justified. It was fired into a grassed area and the chance of a ricochet was minimal. The officer was justified in thinking that his action would have a chance of success. In this he proved to be mistaken and this gives support to the general prohibition of firing warning shots.

3. Shooting to wound

The policy of the New Zealand Police in line with that of the Police in many other jurisdictions is that once a decision has been made to shoot an offender the officer is to shoot to incapacitate. In law enforcement terms ‘incapacitate’ means that the offender is “*immediately rendered incapable of carrying out an unlawful act which threatens the life or wellbeing of another person*”.

A decision to shoot requires that certain conditions be met.

Police members are forbidden to use a firearm except in the circumstances set out in General Instruction F061(2). These circumstances are:

- (a) *To defend themselves or others (Section 48 Crimes Act 1961) if they fear death or grievous bodily harm to themselves or others, and they cannot reasonably protect themselves, or others, in a less violent manner.*
- (b) *(Deals with arrest situation which is not relevant in this case.)*
- (c) *(To prevent escape which again is not relevant in this case.)*

General Instruction FO61(3) also further restricts the use of firearms. This stipulates:

- (3) *In any case an offender is not to be shot:*
 - (a) *Until he has first been called upon to surrender, unless in the circumstances it is impractical and unsafe to do so*
AND

- (b) *It is clear that he cannot be disarmed or arrested without first being shot*
- AND
- (c) *In the circumstances further delay in apprehending him would be dangerous or impracticable.*

Once these very strict thresholds have been passed and a decision is made to shoot then, as I have noted, the policy of the New Zealand Police is that the officer must shoot to incapacitate and this is to be achieved by aiming a shot or shots to the centre mass of the body.

Shooting to wound is not a practice taught by the New Zealand Police on the basis that once a decision has been made to use lethal force that force is to be used to incapacitate.

The reasons for this policy are persuasive. They are set out at some length in a paper by Dr P A J Waddington, the Director of Criminal Justice Studies at the University of Reading. It is not necessary for present purposes to set these out in this report but I quote this comment, with which I agree:

“Because firearms are inherently lethal weapons, they can only be justifiably used in the most extreme conditions of an immediate threat to life. Hence, police officers are instructed that they may only open fire in conditions which would justify killing the person at whom they aim, even if the shots fired did not kill.”

Dr Waddington pointed out that, if a policy of shooting to wound were to be implemented, far from reducing death and serious injury it would be likely to increase the frequency of those outcomes, both in respect of Police officers and of third persons in the vicinity. He commented that shots intended to wound are likely to miss (as happened in this case), thus leading to the danger that the person at whom the shot was aimed will carry out his threat.

In this case the officer did not follow the Police policy which forbids shooting to wound. His shot missed, which may serve to justify the prohibition.

I do however appreciate that the officer did not wish to kill B. If he could do anything to avoid such an outcome then it is clear that he was prepared to do so. I agree with the view expressed by the Internal Affairs Section that in all the circumstances the officer's actions were those of *“a brave and dedicated Police officer who, having been confronted by an*

armed and dangerous man intent on death by a phenomenon known as 'suicide by cop', was intent on an outcome without taking a life."

The Internal Affairs Section concluded:

"He cannot be criticised for this, however he should be reminded of the Police policy on shooting to maim and, more importantly, the reasons for it."

I agree.

4. The final shot

I am satisfied that, having done all he could to avoid taking a life, the officer was put in a position where he had no option but to act as he did. In my opinion he is to be commended for showing the restraint he did in circumstances in which he must have believed that he was in imminent danger of serious injury or even death.

It is appropriate to recall that this was in essence the view of B himself.

Other Issues

Some other issues have been identified in the course of the investigation but these are matters of a procedural nature and will be referred to the Commissioner of Police for attention. They are not matters of moment in the context of this incident.

Conclusion

The aftermath was that B pleaded guilty to assault with a weapon and received a suspended sentence of imprisonment. That sentence may no doubt be seen as reflecting an appreciation of his fragile mental state while at the same time recognising the significant trauma which the Police officer endured.

The New Zealand Police are generally an unarmed service. It follows that on any occasion on which shots are fired by Police resulting in injury or death there must be a very critical examination of the facts, not only by the Authority but by the Police themselves. Despite the background to this incident which must evoke sympathy, both for the officer and for B, this case has been no exception to that rule.

I have read extensive material dealing with B's psychiatric problems and I can understand the pressures which caused him to act as he did on this day.

The officer became an unwilling player in the drama initiated by B. I am aware also of the impact which the events of the day had on him.

The Internal Affairs Section in reporting to the Authority said that the officer:

"... displayed courage and performed with professional distinction when confronted by a man armed with a knife intent on dying. His actions are commendable."

I do not think that this overstates the position.

This is a sad case which fortunately did not end in tragedy. My consideration of the substantial volume of material resulting from the two investigations, one a criminal investigation and the other an investigation on behalf of the Authority, satisfies me that no evidence has been disclosed of misconduct or neglect of duty on the part of the Police.

Judge I A Borrin
ACTING POLICE COMPLAINTS AUTHORITY

14 August 2001