

REPORT OF THE POLICE COMPLAINTS AUTHORITY FOLLOWING THE SHOOTING OF TRUDY JANE SPIERS BY A POLICE OFFICER ON 29 AUGUST 1996 AT AUCKLAND

Introduction

On 29 August 1996 shortly before 5.19pm Trudy Jane Spiers (sometimes in the Report referred to as the offender) aged 24 years took a large kitchen knife from her kitchen in a flat and walked down to the Leen Jackson Superette situated at 1964 Great North Road, Avondale, Auckland and entered the store. In the store at the time was the owner, Mr Suresh Patel (aged 43 years at the date), alone behind the counter. Mr Patel is described as a man of small stature. Ms Spiers waited a very short time and then went behind the counter to the till, which the owner was attending, and grabbed him from behind around the neck with her left arm and at the same time held the point of the knife to his upper body with her right arm and demanded from him money. Throughout the incident until it ended there was uninterrupted physical contact between Ms Spiers and Mr Patel. The knife was held with sufficient force to penetrate his clothing. The first notification of the incident was a call to Control Room, Auckland Central Police, by Mr Patel at 5.19pm, which was made at the instigation of Ms Spiers.

For the next 62 minutes, approximately, she held him as a hostage before she herself was shot by a Police Officer who had attended the incident in circumstances that will be fully outlined hereafter. The officer discharged 2 rounds from a .38 Smith and Wesson revolver, both of which hit Ms Spiers in the left upper arm/shoulder area. Ms Spiers was immediately taken into custody and urgent arrangements made for her transportation to the nearest emergency hospital by ambulance. Fortunately Ms Spiers was not too seriously injured by the shots, but that will be dealt with later in this report.

The victim, Mr Patel who was held as hostage, underwent a traumatic psychological experience, but fortunately he survived virtually unharmed physically. Several times the offender voiced threats to take his life. The knife point was held to various parts of his body at different times and he did receive a superficial wound and scratches to his upper chest area and neck. Throughout the incident he said he was fearful for his life, and as the facts reveal, he was justified. I understand the victim suffers from a heart condition and was unable himself to offer resistance.

Arising out of this incident Ms Spiers faced several criminal charges, to which she pleaded guilty, and was sentenced to 4 1/2 years imprisonment in the High Court at Auckland. Again further details are supplied hereafter on this aspect.

Before the shooting took place there was in place a camera crew from TV3 across the road outside the store, and, in fact the actual shooting by the Police officer but not the target was filmed by the crew and broadcast later that evening. Obviously the news of the confrontation that was taking place inside the store had very quickly become known, hence the attendance of the camera crew.

Report to the Police Complaints Authority and Subsequent Action

At 7.45pm on 29 August 1996 the incident was reported to the Deputy Police Complaints Authority at his home and even at that early stage considerable detail was supplied. At about the same time Detective Inspector Maurice Whitham was appointed by Detective Superintendent Peter Marshall to carry out the investigation into the shooting in conjunction with myself as the PCA.

The notification was given to the Authority pursuant to s.13 of the Police Complaints Authority Act which requires that the Commissioner immediately advise me of any incident in which serious bodily harm occurs involving a Police officer acting in the course of duty. In these circumstances a joint investigation is carried out into the incident by the Authority with a Police officer, in this case Mr Whitham referred to above.

A separate investigation was conducted into possible criminal liability arising out of the shooting, and that part of the investigation was performed by Detective Inspector Steve Shortland. Both reports completed by the two Inspectors have been made available to me for the purposes of reviewing the entire incident, and in this case publishing a Report for the public.

No complaint against the Police conduct in this incident has been made.

Hostage/Barricaded Incident

Before proceeding further to review the shooting of Ms Spiers I think it is essential to identify at the beginning the exact nature of this incident. There is an understandable impulse to cross to the way the incident ended by the shooting of the offender with the consequence of the hostage being released unharmed. However reducing the significance of the initiation of the incident by a hostage taking and concentrating instead on the violent ending may have a tendency to blur the situation the Police faced.

This incident began as a hostage/barricaded one and is materially different from a Police shooting such as those that occurred recently in public streets like Lewis (Wainuiomata), Gellatly (Invercargill) and Radcliffe (Whangarei). In these circumstances a hostage is one taken by another against his will, and by express force, with the intention of holding him as a form of security. Ms Spiers was armed with a knife which does not have the potential to cause multiple death and injury to the same extent as a loaded firearm, but is nevertheless capable of inflicting serious injury or death to a single person. The barricaded aspect is less conspicuous. A barricaded subject is one who is believed to be a threat by an ability to do serious bodily harm or death to the hostage and that existed here. Usually the barricaded subject is in a stronghold position which could not be said to be clearly present in these circumstances. However the offender for most of the incident held the hostage with a knife to his body in a close, but separated space from others. For a short time she left with the hostage to a stronghold position when she took him with her to a rear lavatory in a courtyard outside of the building to relieve herself, but returned with him to the store itself. This particular incident is described hereafter. For most of the time she kept a counter between herself and others which acted as an obstacle. I have visited the store in Avondale and the floor of the store used by the public is cramped by displays. The space behind the counter is small and narrow barely providing room for two persons to occupy together. On the counter are displays of goods. Above the counter and suspended from the ceiling is another unit restricting height above counter level. I return to this as a reason she could not be rushed and overpowered.

In my view the analysis should not overlook that Police personnel managing the incident had to accept responsibility for the life of the hostage. If the armed offender takes a hostage, and it has not been satisfactorily established why, but it seems at least as a form of security, or bargaining chip, or as part of the robbery, the law enforcers have a strong obligation to rescue the hostage. All negotiations and tactics must be fashioned towards that desirable end.

The taking of a hostage is a startlingly dramatic gesture raising the emotional pitch, and adds inevitably a complicating factor to the management, tactics and decision-making.

Detailed Narrative of the Facts

Enough has been said already to indicate the incident itself was entirely unexpected for the victim and lasted for approximately 62 minutes from its inception to its rather violent end. The sequence of events as they unfolded is relatively straightforward, and not in dispute on any matters of significance. There is one matter to which I draw attention and it is that despite the presence of a television camera crew outside the store nearly all relevant evidence of the events comes from Police officers inside the store and the victim himself. The camera crew never entered the store while the siege was in progress and the filming of the shooting was from across the road at an angle which only showed the entrance to the store. Ms Spiers was later interviewed, but chose not to give any detail of the facts as they are about to be outlined, but no criticism for her adopting that stance is offered. Her attitude was within her entitlement.

The following account is taken from the report of D/I Shortland in which he adequately summarised the essential facts from just before Ms Spiers entered the store to her removal by ambulance:

“Shortly before 5.20pm Spiers took a large kitchen knife and walked down to the Leen Jackson Superette. She walked into the shop and directly to the rear. At that time the proprietor, Suresh Patel, was standing at the till. The trays had been removed from the till as he was looking for a document kept under the bottom tray.

Spiers turned left at the rear of the shop and walked behind the counter area, approaching Patel from behind. She surprised him by putting her left arm around his chest and her right arm, the hand of which was holding the knife, around his right side, pressing the knife into his chest. Spiers said “give me all your money”. This demand was reinforced by the knife being pressed against his collar bone. Patel states “I didn’t know what to do. I thought that she could kill me. I thought I may die.”

Patel gave Spiers all the notes from the till as well as the \$1 and \$2 coins. She was given \$198.00. Spiers then said “get the pigs, get the bastards”. Patel rang 111 and advised the Police of the situation. Spiers is recorded on tape as saying to Control “if you don’t fuckin come here I’m gonna kill you (sic) mate”. She maintained her original hold on Patel throughout.

Spiers became agitated while awaiting the arrival of the Police. After Patel had telephoned the Police, Spiers told him to reach into her handbag which was on top of the ice cream counter near the telephone and get a can of beer, which he did. She also had him obtain a cigarette from the bag, put it in her mouth and light it. It

was about this time that Spiers commented "everybody is doing this, why shouldn't I?" and "I'm not doing this for the money".

Patel suggested that maybe the Police were at the front of the shop and Spiers marched him in that direction pulling over the bread and chips stands as she was doing so. Three independent witnesses (Breen, Stewart and Sherman) walked past the dairy and saw Spiers holding the knife against the chest or throat of Patel. A taxi-driver friend of Patel's (Malik), who was parked across the road, locked up his taxi and walked towards the dairy. Spiers said "If he is getting a gun, I will kill you". Patel signalled Malik to leave.

It was about this time that the AVI (Avondale Incident car) patrol, crewed by Police officers A and B, arrived at the scene. Spiers had marched Patel back around behind the counter. As the officers stood at the doorway they were confronted with the sight of Spiers holding Patel at knife-point behind the counter. Spiers declined a request to put down the knife. She abused Constable A and told her to leave which she did. Constable B then asked Spiers to put down the knife. Spiers replied "You better not have a gun on you or I will kill this guy". This threat was repeated twice.

Sergeant C then arrived and entered the dairy. He was not carrying a firearm. His initial observations were of Spiers standing behind the counter holding Patel in front of her with her left arm around his shoulders and throat. Her right hand held a large knife in a downward stabbing grip against Patel's left breast. In her left hand she held a can of DB beer from which she was sipping.

Sergeant C entered the shop and stood near the counter. A short conversation took place with Spiers. Sergeant C describes her behaviour as rambling but coherent, she had been drinking but was not drunk.

Sergeant C then briefly left the premises and, upon his return, Spiers said "I've got to have a piss". She took Patel at knife-point to the rear of the shop and into a small toilet cubicle. She then sat down and urinated while continuing to hold Patel at knife-point.

Sergeant C took the opportunity presented by Spiers' absence to go to the front of the shop and converse with Inspector G to whom he gave a short situation report. They agreed that Sergeant C would return to the premises on the basis that at least he was able to have some form of communication with Spiers. He re-entered the premises at about the same time as Spiers emerged from the toilet. She and Patel moved behind the counter, about midway, and Sergeant C moved into the shop until he was about opposite the pair.

Spiers asked Sergeant C to telephone her sister, Donna Ngawaka. She placed the shop telephone on top of the ice cream counter and then moved towards the till area behind the counter. Sergeant C then telephoned Ngawaka who advised him that Spiers was an alcoholic and that the pair did not exactly see eye-to-eye. Sergeant C requested Ngawaka to telephone Control and he relayed his conversation with her to Spiers.

It was at about this time that Officers D and E arrived at the shop doorway. Officer D entered the premises and Spiers commented that she did not particularly like the look of him. Officer D then sat down near the front end of the counter and Officer E entered. Her presence was apparently accepted by Spiers.

Spiers then told Sergeant C to telephone a friend of hers, Bianca Norris. That number was engaged and he was then instructed to ring Norris' mother. Spiers

reached into her handbag, still maintaining the hold on Patel, to obtain the new telephone number. As she was reaching for her handbag, Sergeant C glanced at Officer D and saw that he was still in the seated position but with his hand-gun drawn and held by his side, out of sight of Spiers. Sergeant C continued trying to contact one of the Norris's. Spiers then said that a Police car should be sent to Bianca Norris' address to uplift her. Sergeant C relayed the message to Control.

Spiers then instructed Sergeant C to telephone Ivan King, her former boss at the Executive Suite Parlour, and have him attend at the scene. King was contacted and arrangements were made for a Police vehicle to uplift him and transport him to Avondale. Shortly after, Sergeant C made contact with Bianca Norris and arrangements were made to transport her to the scene.

Officer C describes Spiers' mood as swinging from rational to totally irrational. He believed that she was becoming more tense. Spiers then said that she wanted a cigarette. Patel reached forward and uplifted a packet from the counter. Either the packet or some of the contents fell to the floor and Spiers moved left and bent over. The knife was still held with the point to Patel's body. The left side of Spiers' body was then exposed in the direction of Officer D who by this time had stood up. He then fired two shots, one hitting Spiers in the left shoulder, the other in the left arm. Spiers dropped the knife and eventually fell to the floor where she was handcuffed and later removed from the scene by ambulance."

Police Involvement and Management of the Incident

The following canvasses much the same ground as above but includes further details. The first Police patrol to arrive at the store after the 111 call placed by Mr Patel to the Police was the Avondale Incident Car containing Officers A and B both of whom were unarmed. They went to the front door and made a request to Ms Spiers to put down the knife she was observably holding to detain Mr Patel. The two Officers were rebuffed with an obscenity from Ms Spiers and neither took any further part in the operation other than cordon duties. Officer C in a patrol car was next to arrive at the scene. He had firearms in his vehicle, but decided not to take one into the store because it could not be concealed in terms of the Police Instructions. He conversed with Ms Spiers and took her directions to ring persons nominated by her to get them to attend at the scene. He remained at the scene throughout maintaining a conciliatory role. He was able to observe Ms Spiers and was of the opinion that she became increasingly tense as the situation progressed. The next vehicle to arrive was the City Crime Car operated by two CIB Crime Squad members Officers D and E. Both Officers were armed, as is the usual practice. See *Firearms Used by the Police* detailed hereafter.

Officer D was armed with a Police-issue Smith and Wesson .38 revolver, carried in a shoulder holster. Officer D was the senior officer of the two. Officer E had only recently commenced work on the crime squad, was armed with the same weapon as Officer D, but did not draw or display her firearm. This was the third group of Police personnel to enter the scene proper. Officer D entered the premises ahead of Officer E and immediate communication between them and Ms Spiers was established. Ms Spiers appeared not to

want to deal with Officer D but was happy to talk Officer E. Officer D then took up a position just inside the doorway and adopted the role of an observer. This was a careful strategy and it was Officer D who used his firearm to disable Ms Spiers. Officer E was able to converse with Ms Spiers up until the time she was shot. The dog unit with Officer F arrived at the scene whilst the stand-off was in progress but his evaluation of the situation, and the scene, was that it was not suitable for deployment of his dog and with that I agree for reasons set out hereafter. Police Shift Inspector Officer G arrived and took charge of the scene and arranged for cordons about the vicinity and provided reports to Control. Officer G was armed but did not draw his weapon. He conversed with Officer D prior to the shooting and briefed incoming investigators after the shooting. Finally, of the various Police groups to arrive was the Crime Coordinator who was Officer H and with him was Officer I. Neither of these officers entered the store but surveyed the premises from the outside and checked the rear. They looked into the store from time to time and it was Officer H who accompanied Ms Spiers to hospital.

Scope of the Investigation and Review by the Police Complaints Authority

The Commissioner of Police is required pursuant to s.13 of the Police Complaints Authority Act to notify me as soon as practicable where a member of the Police acting in the execution of the member's duty causes death or serious bodily harm to any person. This clearly was done. Pursuant to s12(1)(b) I can investigate where I am satisfied that there are reasonable grounds to carry out an investigation in the public interest. I had very little difficulty in making that decision. The facts already canvassed show that the incident was in a very public place in a store in Avondale in the late afternoon when people were in the streets after the end of the day's ordinary business and one assumes most were heading to their homes. The event itself was such that it would be expected to attract the maximum attention from those in the vicinity, and it did. Because it took some little time to unfold and be brought to its conclusion, as already described, time was available for a rapid response from the media. Within minutes a TV camera crew from TV3 were there and they stayed to the end. Although the crew were not able to enter the premises whilst the crisis situation was in progress they nevertheless were able to get significant footage, including the actual shooting as it took place and able to be observed from across the street. The result was that night the station broadcast some footage obtained of the incident. All the footage has been made available to me and carefully examined in the preparation of this Report. It is not my function to make any comment on this development and its possible effects, such as identification of Police Officers in the course of highly intensive incidents, but it is a reaction the Police might be expected to encounter more frequently in the future. The steps that I took in the investigation

have been outlined earlier in this Report. I say more on media attendance at a scene like this later in the Report.

Condition and Treatment of Trudy Jane Spiers

(a) Medical Condition

I have examined the hospital notes on Ms Spiers' admission to hospital on 29 August 1996 with gunshot wounds to her left upper arm and shoulder. Her physical condition was stabilised and she was taken to theatre for debridement and exploration of both gunshot wounds. A brief neurological examination of her left arm showed all movement to be intact and no sensory loss. Several surgical procedures were followed. She was discharged from hospital on 6 September 1996. The wounds subsequently healed well and she was also examined by a neurologist.

(b) Psychiatric Report

When Ms Spiers appeared in the Auckland District Court on 6 September 1996 a psychiatric report was requested pursuant to the relevant statutory provisions. A report dated 19 September 1996 was supplied by Waitemata Health to the Court and used by the sentencing Court. Ms Spiers was considered fit to plead to the charges which she faced, and to which she ultimately pleaded guilty.

The very full Report has been read by me, but to retain as much privacy as possible for Ms Spiers no extensive reference is made in this Report to the findings as most are strictly not relevant in view of the finding of fitness to plead. Of relevance was the finding that Ms Spiers has had a serious alcoholic problem for some time which has affected her personality traits and behaviour.

Forensic Report

The scene of the shooting was examined on 30 August 1996 by Forensic Scientists from the Institute of Environmental Science and Research Limited. A report dated 12 November 1996 was prepared and forwarded to the Police at Auckland. I have examined that Report and whilst it records a detailed physical examination of the scene and passage of the fired bullets and other details it contains nothing that needs elaboration in this Report as there is no dispute.

Photographs have been supplied with the Forensic Report of the kitchen knife used by Ms Spiers and it has the traditional appearance of a commonly found kitchen carving knife with

an overall length of 320mm and a blade length of 200mm. No blood was detected on the knife.

Blood samples were taken of Ms Spiers' blood and passed to Dr A. Stowell for alcohol analysis. The analysis of the blood taken approximately 6 1/2 hours after Ms Spiers was involved in the incident required an expert's assessment estimating the range of alcohol in the blood at about the time of the incident. The best way of conveying that is to reproduce the relevant part of Dr Stowell's report dated 20 September 1996 which is as follows:

"Upon analysis of the blood from one of the bottles, I found it to contain 57 milligrams of alcohol per 100 millilitres (57mg%).

I found no such congealing or deterioration of the blood as would prevent a proper analysis.

It is my understanding that the blood taken from SPIERS was taken approximately six and a half hours after SPIERS was allegedly involved in the taking of a hostage.

I have been asked to estimate SPIERS' blood alcohol concentration at the time she detained the hostage.

My estimate is based on the following information and assumptions.

Information

- 1. SPIERS detained the hostage for about 50 to 60 minutes during which time she consumed one 355ml can of DB Bitter beer containing 4% alcohol by volume.*
- 2. At the time of the incident SPIERS was 24 years of age, weighed between 65 and 70 kilograms and was 168cm in height.*
- 3. SPIERS did not drink any alcohol between the time the hostage was released and the time her blood was sampled for alcohol analysis.*
- 4. SPIERS was a non-abstinent alcoholic.*

Assumptions

- 1. SPIERS was no longer absorbing alcohol into her bloodstream at the time she took the hostage (Under most circumstances this would be true if SPIERS had stopped drinking alcohol between half an hour and an hour and a half before the alleged incident).*
- 2. SPIERS clears alcohol from her blood at a rate within the approximate range of 10 to 30mg% per hour (Most people clear alcohol from their blood at rates within a range of 10 to 20mg% per hour but alcoholics tend to clear alcohol from their blood at higher than average rates)*

Opinion.

If the listed information is correct, the beer consumed by SPIERS during the alleged incident would have contributed approximately 27mg% to her measured blood alcohol concentration of 57mg%.

If the listed information and assumptions are correct SPIERS' blood alcohol concentration at the beginning of the alleged incident would have been within the approximate range of 105 to 255 mg%. If she was a non-abstinent alcoholic I would expect her blood alcohol concentration to have been much closer to 255mg% than 105mg%. Consumption of the can of beer would have further raised her blood alcohol concentration by up to 27mg% during the course of the alleged incident. For comparison purposes, the legal limit for driving in New Zealand is 80mg%..”

There is no question but that at the time of Ms Spiers taking Mr Patel hostage her behaviour was seriously affected by her consumption of alcohol. The only comment on the above I make is that the investigation revealed that Ms Spiers seemed to forecast her need for alcohol during the incident and brought her own supply. Apparently she had brought only one can of beer. A person manifestly consuming and affected by alcohol added a complicating factor to the management of the incident.

Decision of the Court on Spiers' Offending

Ms Spiers was charged with kidnapping, aggravated robbery and threatening to kill to which charges she pleaded guilty and was sent to the High Court at Auckland for sentencing. She was sentenced by Her Honour Justice Elias on 12 November 1996. On that occasion Justice Elias made a careful appraisal of the facts and noted that the offender accepted the statement of facts in the Police summary to the Court. Justice Elias made no criticism of the Police action. As stated earlier she was sentenced to a total of 4 1/2 years imprisonment.

Firearms Used by the Police

In the particular circumstances of this incident I will examine this aspect under the following separate headings:

- (i) Firearms Used by Police (General)
- (ii) Issue of Firearms and Carrying of Firearms by Police
- (iii) Use of Firearms by Police

- (iv) Maintenance Training in Firearms
- (v) Firearm Examination

(i) Firearms Used by Police (General)

The policy, practice and procedures of the NZ Police relating to the carriage of a firearm by an officer are governed by Police General Instructions. It is well known that the NZ Police are not armed as a matter of course, but have availability to arms under a fairly strict regime

when the use of firearms is deemed a necessity. General Instruction F60 deals with "Carrying of Firearms by Police". In the circumstances revealed by this case the relevant part is:

- "(2) A member may carry firearms in the following circumstances:*
- (a) When it is expected on reasonable grounds that any of the circumstances referred to in General Instruction F61 may be encountered. If an authorising officer is not readily available members may exercise their own discretion, but shall advise their supervising member at the first reasonable opportunity that they have done so.*
- (b) When a member of the CIB on a CIB patrol rostered on a permanent basis."*

Later in this Report I refer again to this when dealing with Police General Instructions F60(2)(a) and (b).

The actual use of firearms by Police is then covered by Police General Instructions F61. The General Instruction commences by warning members of the responsibility for the use of any excess force and the fact that a firearm should not be used unless it can be done so without endangering other persons. Then more specifically F61(2) states:

- "Police members shall not use a firearm except in the following circumstances:*
- (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."*

There are other General Instructions related to arrest (Section 39, Crimes Act 1961) and prevention of escape (Section 40, Crimes Act 1961) which need not be detailed here.

There is one General Instruction, F61(3), which imposes further requirements on a Police officer and are relevant here:

“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 impracticable 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.”*

Another relevant General Instruction is F62 which states:

“(1) Every sworn member of Police who is issued with a firearm in the course of duty shall ensure that he or she is thoroughly conversant with the provisions of General Instruction F61.”

General Instruction F62 is often called ‘Fire Orders’.

(ii) Issue of Firearms and Carrying of Firearms

The issue of firearms is covered under General Instruction F59(6) but need not be detailed here. Each Police Station must keep a Firearms Register where it is necessary to record certain details such as the serial number of the firearm drawn, the date it is done, the time, and the number of rounds issued etc.

As stated above, the General Instruction F60(2) covers the circumstances when an officer may carry firearms. In the circumstances of this case the City Crime Car operated by two CIB Crime Squad members, Officers D and E, bring them within the permission to carry arms contained in F60(2)(b). General Instruction F60(2)(a) is not directly relevant to these circumstances. As set out in the narrative it was Officer D who carried his weapon, out of sight, into the store and observed events as they unfolded. The carrying of a firearm by Officer D was properly authorised.

(iii) Use of Firearms by Police

General Instruction F61(1) states:

“Members must always be aware of their personal responsibilities in the use of firearms. Under Section 62 of the Crimes Act 1961 a member is criminally liable for excess force. An overriding requirement in law is that minimum force must be applied to effect the purpose. Police should not use a firearm unless it can be done without endangering other persons.”

The authority for the use of the firearm by Officer D in these particular circumstances is contained in F61(2)(a) in the following terms:

“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.”

The General Instructions covering the actual firing of the revolver by Officer D are covered by F61(3) as follows:

“(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 impracticable 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.”

It is to be noted that this central General Instruction F61(3) begins with a prohibition against shooting unless the three conditions are present. I am satisfied the investigation revealed that Ms Spiers on several occasions was called to surrender. It was the view of Officer D that she could not be disarmed or arrested without first being shot and that he further believed in the circumstances further delay in apprehending her would have been dangerous or impracticable.

(iv) Maintenance Training in Firearms

In August 1993 a new policy was introduced to the NZ Police in respect to firearms maintenance training. That policy recognised the need for specialised maintenance training and eligible staff are currently receiving that training throughout New Zealand. The Firearms Maintenance Training Guidelines are covered by General Instructions F181 to 187.

Officer D was the senior member in the patrol, with 12 years' service in the NZ Police, and four years in the CIB. He is aged 37 years. Officer D last received firearms training on 6 June 1996 being 12 weeks before the event. This training included instruction on F61 as required by F62 - Fire Orders. Officer D is conversant with F61 and F62.

(v) Firearm Examination

On 4 September 1996 Police Armourer, R. Ngamoki, examined the revolver Police issue Smith & Wesson model 10-7 serial no. 9D52415. The revolver was the one used by Officer D in the shooting. The revolver contained after firing residue. The trigger mechanism met all the required safety specifications. Mr Ngamoki test fired the revolver and found it to function normally and to be accurate. The two cartridge cases are from Federal manufactured .38 Special calibre standard issue rounds. Mr Ngamoki found the revolver mechanically safe and serviceable.

Other Matters Arising out of Investigation into Incident

For the sake of completeness and for the purpose of learning from this incident I now comment on several issues that emerged from the investigation.

I preface these matters by a general observation. Any hostage/barricaded incident is unique, and for the duration of the acute or critical phase of the incident with the offender uncontrolled by apprehension the most difficult and delicate decisions must be made. It is more dangerous if the offender holds a loaded firearm but a large knife held in close proximity to the hostage has the potential for a fatal outcome. As mentioned this incident contained the complicating feature of a hostage in a dangerous predicament. Even if the matters I am about to mention had been handled in a different, and better way it is still unlikely the outcome would have been different. I say this principally because the incident was of relatively short duration, but if it had continued longer it might not have been easy to make that statement

Armed Offenders Squad

It seems after a good deal of uncertainty the AOS was about to turn out at around the time the offender was shot. The team leader had left his home, but a call by him to the scene established the incident had ended. The AOS personnel did not arrive at the scene prior to the shooting. The investigations have revealed that there was an unacceptable delay in making the final decision to call out the Squad. Furthermore in my view in circumstances as revealed by this case the AOS should have been called out immediately and the decision exactly how they should be used or deployed at the site left until they arrived. Officer G was in charge of the scene and his communications with Control on the AOS were not certain and decisive. He seemed to favour a limited call out, or even the attendance of only a sniper. In my view one possible cause of the indecision was that attempts (admittedly as I have said in a highly volatile situation) were made to make an almost impossible calculation of how to use the AOS on the ground instead of calling them to the locality on standby where proper consultations could take place with the head of the AOS on their use. In other words the

decision to call the AOS was confused by seemingly being mixed with how they could be deployed, or used at the site of the crisis. Also, I am bound to say that Control should have assisted Officer G on this vital decision of call out of the AOS.

It is a fact that the offender did demonstrate mobility in the incident by removing the hostage with her to the rear, out of the store into a small courtyard where the lavatory was situated. Undoubtedly it was a delicate situation and overt deployment would have been unwise because of its potential to further destabilise Ms Spiers, but the AOS nevertheless should have been called immediately to the scene once it was established that a hostage/barricaded situation existed. The AOS under its commander would have known to be discreet with the presence of his team almost certainly by positioning them outside the building at a safe assembly point (a technique well used and understood by AOS squads) to await deployment. Usually the very first task of an AOS team is to establish containment done by inner and outer cordons. In this case the containment established by Officer G was sufficient. An inner cordon, for reasons given above, was essential and the outer cordon was necessary to deal adequately with the public and media who had a very visible presence. Without elaborating further I think I have made my point on the AOS to be further studied by Police administration

Negotiation

The Police in conjunction with the AOS have available a Police Negotiation Team which is a specialist group formed and trained to help other operational staff to resolve situations by using negotiation techniques. In many ways this is a more complex problem than call out of the AOS dealt with above. Negotiation directly involves the suspect, and her behaviour, as will be observed, had to be taken into account. As far as negotiation is concerned there are two separate issues, namely, use of the PNT; and use of informal negotiators such as relatives or friends who Ms Spiers demanded to be called. I refer to them as third parties. I will deal with both of these issues separately hereafter. However before proceeding further I state that I am airing these issues to enable further study to be given it rather than to say dogmatically this course or that course should have been followed. This comment has particular applicability to third party negotiators.

Police Negotiation Team

I deal first with the role of the PNT. At about 6.15pm Control made arrangements with a Police Negotiator to go to the scene. That negotiator rang another, who was closer, before leaving her home, but by the time the second negotiator contacted Control the crisis was over. The shooting took place at 6.21pm. It is necessary for this whole issue of calling out negotiators to be most carefully examined by Police administration. Ms Spiers had made it quite clear at the first phone call she wanted Police at the scene. When they arrived she also made it clear which officers she was prepared to talk to (negotiate in effect) and which not. Officers C and E did a good job in negotiating on a cordial level with Ms Spiers. The official PNT did not operate but the form of negotiation by Police officers named was, in my view, satisfactory.

However, the point cannot be overlooked that like the AOS there was equivocation about the call out of the PNT. The PNT is trained in negotiation and selected in the first place for aptitude. The PNT is used to working in conjunction with the AOS head and it is well recognised their tasks are complementary. I do not overlook there could have been difficulties insinuating an official negotiator into discussions with the offender in these circumstances, but they are operational ones to be dealt with on the ground. A hostage/barricaded situation is almost the classic situation for the PNT. Finally I readily acknowledge negotiation is a skill Police officers in their day to day work develop but that is materially different from negotiation in highly charged atmospheres with lives at stake. The PNT should have been there to "*advise and assist*" as stated in the Manual of Best Practice (Volume 1).

Third Party Negotiation

The other limb of negotiation is more complex and that is allowing third parties (ie, relatives friends etc) to take part in negotiation simply because their presence was demanded by the offender. I find this issue fraught with difficulties which in the end I think must be left to the commanding officer at the site to make the final judgment on the use of third party negotiators (presumably untrained in negotiation skills and there only because of prior association with the suspect) and how much they should be allowed to participate. I have made my own position sufficiently clear about the extreme delicacy of this type of situation, but so as to assist in the development of a policy I think I should say more.

The known facts of the demands are instructive. Ms Spiers first of all asked for the presence of her sister who when contacted as described earlier advised Officer C that Spiers was an

alcoholic and that the pair did not exactly see eye to eye. It does not require the PCA to stress that initial response is not promising for all sorts of underlying reasons concerned with relationships in families, which are better not put to the test in the highly volatile circumstances of a hostage crisis. Her sister did not come to the scene. There is evidence from Officer D that he thought, listening to the offender, that there existed anger between the offender and those she wanted called. Again very unpromising. See below for other general observations. A friend, Bianca Norris, was contacted as was a former boss of the offender. Two of the three were brought to the scene, but it was ended before the decision how to use them was broached.

As time and circumstances allow the maximum information should be made available to the scene commander. That information very often can most conveniently come from relatives and close friends. They should be encouraged to come, or remain in the vicinity of the scene, for possible questioning by AOS or PNT members. Having said that I do not believe that third parties should be allowed to enter the location because of the high degree of emotional reaction that might be generated. Allowing third parties to come in over the top of Police negotiators (whether informal or PNT) could cause a severe reaction. If the hostage taker were armed with a firearm then the possibility exists of third parties being taken as hostages, which is an additional hazard. The issue of third party negotiators is not dealt with in the Manual of Best Practice (it may need to be) but is included in a PNT Lesson Plan used in training courses which I have examined. The Lesson Plan is opposed to their use.

Deployment of Dogs

An alternative procedure not used by Police was deployment of dogs. A dog handler, Officer F, attended the scene with his dog and decided it could not be deployed with likelihood of success because of the layout of the shop which meant the dog's horizon was well below the level of the counter and its inability to distinguish which person to attack. My own scene visit confirmed this.

Rushing and Overpowering

Likewise I think the decision not to attempt a rushing and overpowering of the suspect was correct. Again the configuration within the shop (described earlier) effectively prevented this manoeuvre with the knife pressed against the hostage's chest. It would have been precipitate and too risky.

Armed Police Warning

As the circumstances allow it is a familiar tactic to address a warning to a suspect that armed Police are present, clearly implying that the Police may shoot. This tactic was not used because from the beginning of the hostage taking the offender had threatened to kill Mr Patel if anybody present was armed, or guns brought to the store. References to that are contained in the body of this Report.

Media Involvement at Scene

The media by way of TV3 were given information of the crisis (the source is not known to me and I have not enquired) and a camera crew were filming at the scene within a few minutes of commencement of the incident. The investigation revealed that there was nothing untoward in the behaviour, or conduct, of the media representatives, and TV3 passed to me the footage, which I acknowledge.

However this occasion may be used to formulate a more exact policy on how media are to be dealt with if the situation, or something like it, is replicated. In my view officers need to have training in the proper way to deal with the media. The media are present to obtain public information and if not properly dealt with it can have an adverse effect on a tactical situation. I say no more than the matter should be addressed and perhaps a specific officer in an AOS should be trained in this area.

Criminal Liability of Officer D

As stated earlier in this Report the possible criminal liability of Officer D was conducted as a separate investigation but, of course, it overlapped with the investigation for the PCA.

Detective Inspector Shortland's investigation resulted in a finding that in the circumstances there was no criminal liability attached to the officer who shot the suspect. That finding by the first line investigator was reviewed by the Officer's Regional Commander, Assistant Commissioner Brion Duncan, and he reached the same conclusion. At the time of Mr Duncan's review the Senior Legal Adviser for the Region, Inspector Kevin Glubb, had provided an opinion absolving the officer of liability. Finally the Commissioner's review set out hereafter reached the same conclusion.

Following the course I have adopted over Police actions causing very serious bodily harm or death I have requested the opinion of a senior, experienced criminal lawyer who is independent of the Police to examine the file and provide an opinion on criminal liability. That course was followed in this case and the opinion of Mr Simon Moore, Crown Solicitor of Auckland, was furnished in writing. I have read Mr Moore's opinion which concluded:

“I have no hesitation whatsoever in concluding that the defence in s.48 (Crimes Act 1961) is made out and that there is no evidence whatsoever of any culpable conduct on the part of Officer D.”

Very briefly s.48 provides a defence of justification for the use of reasonable force in the defence of oneself or another. In those circumstances Officer D used force in defence of the hostage victim Mr Patel. Mr Moore analysed the legal ingredients of s.48 against the factual situation and reached his view as set out above. That was the same analysis of Inspector Glubb. I accept the views as expressed by those legal opinions.

Commissioner’s Review of Investigation Files

All material collected in the investigations was forwarded to Police National Headquarters and reviewed there by Assistant Commissioner I N Holyoake (Crime and Operations) on behalf of the Commissioner and forwarded to the PCA. It was the Commissioner’s recommendation that the Police had conducted an operation within the law and that *“... Officer D acted properly and justifiably in taking the action he did.”*

In Mr Holyoake’s report to me he drew attention to two issues highlighted in the investigations as areas which should have been handled differently, namely the call out of the AOS and PNT groups within the Police. I have dealt with those matters and others as separate issues in this Report.

Conclusions

In the body of the Report I have tried to analyse the precise nature of this armed confrontation, complicated as it was by a hostage taking. A feature of the actual shooting was that Officer D was able effectively to immobilise the offender with two shots without causing grievous bodily harm to her, or death. The significance of that should not be overlooked, and as far as it could be said in such circumstances this was fortunate. Because the offender used the hostage as a shield by effectively keeping continuous contact of bodies and knife to the hostage throughout, the suddenly presented opportunity of enough separation to enable shots to be fired was taken by Officer D. All four members of Police in the store said throughout they feared for the life of the hostage. Furthermore threats made by an offender to kill cannot be disbelieved, and several such threats were made in this case.

I am satisfied on review that Police followed their General Instructions on use of firearms. I have drawn attention to two areas where the better course could have been followed, and I make recommendations to this effect.

I have made no attempt to speculate on the motives, or reasons, why Ms Spiers acted as she did. The investigations reveal she had almost certainly consumed a considerable amount of alcohol before she went to the store at around 5.18pm, but it is not possible to go further with confidence. The view of the expert on a back calculation of the level of alcohol in her blood at around the time of the crisis phase has been made and included in the body of the Report. That Ms Spiers had a history of alcohol problems is beyond question. The criminal element in this incident has been dealt with in the Report. No attempt was made by Ms Spiers to avoid criminal liability for her behaviour and she has been sentenced accordingly.

As this is a Report for the public I have covered the more obvious alternatives to shooting that were considered, and not used, and full reasons have been given.

I come to the actual shooting by Officer D. Opinions as to possible criminal liability have been given, and I reaffirm that I accept those opinions that his actions did not attract any criminal liability. The officer acted under s.48 of the Crimes Act not in defence of himself, but in defence of another.

I repeat here what I have said on previous occasions that it is not my task to pass judgment on the decision to shoot. The general law on this subject has been followed and also the procedure of the Police has been proper, if not faultless for the reasons I have stated.

Of all shooting incidents I have had to review none has illustrated the issue of timing more dramatically than this one. Decision making during a hostage incident is probably the most difficult for Police personnel. The most crucial tactical decision is whether to take action against the hostage taker which might cost him or her life. I have on previous occasions stated that it cannot be assumed that it would be better to wait because it is thought to be the safer way out. It cannot be assumed that time is on the side of law enforcers. In this case in a split second the offender lost her shield and the officer shot her. There the review must rest. The opportunity to neutralise the hostage taker was adopted as a tactical decision clearly to save the life of the hostage.

Recommendations

This is not such a Report that calls for extensive recommendations, but to mobilise my views I say as follows:

1. All the indicators revealed by the investigations lead to the conclusion that the AOS should have been called out at the first opportunity and it was not. How they are to be used on the ground should be decided there by the commanding officer.
2. Likewise the fact that the PNT was effectively not called out at all was a significant failure. Above all in hostage situations skilled negotiation is one of the most critical tactical options. To avoid any misunderstanding I make it clear that the negotiation conducted by Police officers was beyond reproach, and particularly that of Officer E who maintained a very good relationship with the offender throughout. My recommendation concerns the principle of proper tactical response.
3. Third parties called to the scene at the request of the hostage taker is a complex question. I have no problem with using them at the scene as a resource for information about the hostage taker. It is my view, which should be critically examined by Police administration, that as a general rule third parties should not take an active role in negotiation and should preferably be kept out of sight but close. My reasons are contained in the Report.

Sir John Jeffries
Police Complaints Authority
21 January 1997