

Report of the Police Complaints Authority following the shooting of Ronald James Lewis by Police Officers at Wainuiomata on 19 July 1995

Introduction

At about 5.20pm on Wednesday 19 July 1995 Ronald James Lewis was shot by members of a New Zealand Police Armed Offenders Squad in Wainuiomata Road, Wainuiomata, outside 43 Wainuiomata Road from where he had immediately before emerged. The full circumstances of the events that led up to this shooting are described in detail hereafter.

The Police enquiry which followed revealed that Mr Lewis had sustained extensive injuries from a number of shots that were fired at him almost simultaneously. It was immediately obvious he was critically injured and following some urgent medical precautions he was flown by Westpac helicopter to Wellington Hospital where emergency surgery was performed after which Mr Lewis spent some time in the intensive care unit. The full details of his injuries are set out hereafter.

Mr Lewis has since been discharged into the care of his wife but is resident in a home.

Report to Police Complaints Authority and Preliminary Action

The first report of the incident was received by my Deputy, Mr E B Robertson, about mid evening on 19 July. He communicated with me with brief details of the incident. I informed the Region Commander, Assistant Commissioner Trendle, to whom I spoke, that I would attend the scene at Wainuiomata next morning. I was given at that conversation a preliminary report of the known circumstances of the shooting.

The notification had been given to me in compliance with Section 13 of the Police Complaints Authority Act 1988 which requires the Commissioner to advise me of any death or serious bodily harm caused by a member of the Police acting in the course of the member's duty.

I attended at the scene in Wainuiomata Road on the morning of 20 July. Present were several senior Police officers from the Hutt District and from National Headquarters. I was fully briefed at the scene and carried out a visual inspection of the immediate surroundings. I was able myself to observe the bullet holes in a caravan outside 43 Wainuiomata Road which was the house of Mr Lewis's brother where he had been staying in the previous few days. There were also bullet holes in the lawn on which the caravan stood at the front of the house. These holes had been made earlier in the afternoon of 19 July by Mr Lewis. I inspected the surrounding houses on the same side as number 43 and across the road, which also bore the marks of bullet, or shot, holes which had been caused by shots from AOS members. At that preliminary stage I made requests to the officers of avenues of enquiry that I wished to be followed in the investigation that had already begun. I refer to those in more detail hereafter.

I was informed that the customary division of areas of responsibility in the overall Police investigation had been made. Inspector S S Wildon of the Hutt Police District had already been placed in charge of the Police investigation into the shooting to act in conjunction with me throughout the investigation. At the same time, but as a separate investigation, Acting Detective Senior Sergeant G M Watson was designated to investigate and submit a report on the criminal liability, if any, of all persons involved in the incident with Ronald James Lewis. The possible criminal liability of those involved comprised the four members of the AOS who had discharged firearms, Mr Ron Lewis himself in regard to his conduct, and that of his brother related only to the firearms licence which he held for the firearm that had been used by his brother Ron that day. All these matters are dealt with hereafter. During the course of the investigation I conferred frequently with Inspector Wildon. It is also worth noting that Inspector Wildon has only recently been transferred from South Auckland to the Hutt District and personally knew none of the four members of AOS whose conduct had to be investigated.

There has been no complaint about Police conduct over this incident.

The investigation, considering the various issues that had to be faced, was carried out with expedition and thoroughness.

Personal Background of Mr Ronald Lewis and Family

An incident whereby a person is shot by the AOS in circumstances that arose in this instance requires, in my judgment, the publication of a public report. The narrative of facts will reveal previously disturbed behaviour by Mr Lewis which led to the armed confrontation in the roadway at Wainuiomata. That behaviour was the culmination of personal difficulties that Mr Lewis had been experiencing over many years. It is not possible to give a complete and balanced account of Police conduct in carrying out the shooting of a man in a residential area without some account of how the incident arose. The policy of this report is to retain for Mr Lewis and his family the maximum privacy and to refer only to matters of a personal nature that are strictly relevant to an examination of the issues. I state specifically it is no part of my task to pass any comments or judgments of a psychological or psychiatric nature about Mr Lewis other than to say it is revealed by the investigation he was mentally disturbed on the day of the event judged by his behaviour and had been apparently for at least an appreciable time prior to that event. As far as the investigation is concerned there is no record available of psychiatric diagnosis and I have not before me any reports or evidence to that effect.

Before commencing the narrative of events that led to the confrontation of 19 July it should be stated that Mr Lewis was given the opportunity of being interviewed by the Police when his physical condition recovered to the extent one could take place. Mr Lewis has declined to be interviewed, which is his right, and this has been accepted by the Police. It is necessary that the readers of this report know that there has been no direct information for this report from that source. It follows, of course, that no consents have been made available to examine official records. The foregoing is modified to the extent Mr Lewis by a handwritten note dated 30 October 1995 and received by Police on 3 November authorised "Police to obtain necessary information from Dr Shannon". Dr Shannon was Mr Lewis' general practitioner who he had consulted the day before the shooting and who had prescribed medication for him. This is referred to hereafter.

Narrative of Events Before Shooting

Mr Lewis is aged 57 years and married with two adult children living away from home. His wife is Zoia Obetkoff, which is the name she uses as well as Zoia Lewis. Mr Lewis had no prior criminal record with the Police. The current records show Police involvement with Mr Lewis began in November 1994 when they were called to the residence as a result of a domestic dispute. Their domestic situation had deteriorated and the Family Court had been involved with the issuing of prohibitive orders against each other. The couple had in 1995 decided to place their home on the market and separate permanently. An event occurred on 30 June 1995 causing a domestic dispute that required the presence of the Police. Of relevance is that in the days leading up to the incident on 19 July both Mr and Mrs Lewis had been applicants to the Family Court and as a result both were referred for counselling to two counsellors practising in Lower Hutt. An appointment was arranged for the counsellors to visit Mr Lewis at Wainuiomata on the afternoon of 19 July. More will be said about this hereafter. I will say little else about the personal background of Mr Lewis but take up the narrative of events that took Mr Lewis from his matrimonial residence in Lower Hutt to his brother's house at 43 Wainuiomata Road on 14 July 1995.

On the evening of Friday 14 July 1995 as a result of calls made to the Police by both Mr & Mrs Lewis, Police attended at their address on two occasions. Mrs Lewis had left the house when three Police officers attended. Discussion took place with Mr Lewis about Family Court Orders that had been made which apparently caused some confusion. As had occurred on other occasions, the best solution arrived at between Police and Mr Lewis was that he go and stay for a few days with his older brother, Henry Lewis, at Wainuiomata and the Police transported him there that night. He remained there until the event of 19 July.

The days that followed 14 July were relatively uneventful. Mr Lewis complained to his brother that he was suffering from headaches and on Tuesday 18 July he went to consult Dr Shannon who prescribed diazepam tablets. More will be said about this later in the report.

Another matter which should be stated is that in the weeks before 19 July Mr Lewis had had three fairly forceful confrontations with commercial organisations in Lower Hutt. It can be inferred each would have caused stress and disturbance to Mr Lewis and later in the course of negotiations during the armed confrontation he made demands related to these issues.

Day of Shooting - 19 July 1995 - Up to Crisis Point

The following facts come from the statement to the Police by Henry Lewis, his older brother with whom he was staying in Wainuiomata on this day. Harry, as he is known, said the family had emigrated to New Zealand in the 1950s by stages. Harry was first here arriving in 1950. Two brothers and a sister followed with their mother. Apparently there had been a rather serious disruption in family relationships and Harry had had nothing to do with Ron for about 15 years until six weeks before this day when they had resumed contact.

Harry confirmed that Ron had been at his home for some days before the 19th. He also said Ron had seen the doctor on 18 July and had come home with prescription pills. He did not think Ron had any other prescription medicines in the house.

On the day Harry said he encountered Ron sitting in the kitchen in the morning to be told he had been up all night. Harry said he was at the time writing letters. He apparently was annoyed with his lawyer, his wife and the Police. Some short time after 9.00am Harry said Ron's attitude started to change. Harry owns two firearms, a .303, and a pump action .22 which holds 13 bullets at one time. He holds a firearms licence and both firearms are registered. Harry had not used the firearms for at least 12 years. The firearms were kept in his wardrobe in his bedroom on a top shelf hidden from casual view. Neither of the rifles were loaded whilst in the cupboard. The bolt for the .303 was kept in another location in the house. The ammunition for the .22 was kept in a cupboard in the lounge. There was a full box of 50 bullets and a small amount in a second box whose number was not certain. Harry had never been questioned by Ron about the firearms. Ron had apparently told his brother frequently that if he had a gun he would go out and shoot someone, but Harry thought it was talk and did not believe a word of it.

When Harry arrived home from the shops a little later in the morning he observed that Ron seemed to be having mood swings. Harry had not observed him taking pills that day but had seen him take four the previous afternoon. At about 10.30am Mr Lewis rang Mr T J Featherstone, one of the counsellors with whom the 2.30pm appointment that day had been arranged to confirm the meeting and according to Mr Featherstone at that time "*he sounded fine*". Mr Lewis rang again between 1.30pm and 2.00pm to Mr Featherstone to ask if he would come over the hill to no. 43 Wainuiomata Road to his brother's house and Mr Featherstone agreed and that he would return him to Lower Hutt after the meeting so he could visit his lawyers. Mr Featherstone said "*Again he sounded fine, as he did before, he did not*

sound agitated at all". According to Harry after lunch his moodiness continued and he voiced criticisms of his lawyer, his wife and Police. He conveyed the impression everybody was against him and nothing was going right. Harry said he could not reason at all while he was like that.

By using the statement of Harry Lewis and the tapes of 111 calls to the Police Control Room at Wellington the following sequence of events appeared to have occurred. Sometime, probably around 2.30pm, Ron left the room he and Harry were in and went to Harry's bedroom and the latter followed him there. He observed Ron on a chair bringing the .22 rifle down from the top of the wardrobe. A physical tussle followed with Harry trying to gain possession of the rifle from him. He succeeded in wrestling the rifle from Ron. Harry returned the rifle to its previous location in the cupboard in his bedroom.

It would seem after this first rifle incident Ron himself called the Police Control Room asking for a Police car to come to 43 Wainuiomata Road immediately. He said "I have tried to get a gun off my brother, he wrestled the gun off me. I wanted to over (sic) to Wainuiomata, over to my lawyer and make use of it." Later he said about the rifle "... I'm trying to use it on someone". Ron then passed the phone to Harry who supplied further information and said "And now he's just about, he's on pills, he's a bit dopey all the time and of course he sneaks my bloody rifle and he's threatening to go down and use it on these people". The conversation ended with Police promising to get someone around.

Apparently at about the time the call finished the Lewis brothers both noticed two men coming up the driveway and their presence will now be explained.

The narrative of this day as the crucial time approached is best described by Mr Featherstone, previously mentioned and one of the two men coming up the driveway. Mr Featherstone and Mr Denis Smith are in practice together as counsellors. It is to be recalled within the last hour or more Mr Lewis was considered fine and not agitated according to Mr Featherstone.

I now reproduce part of Mr Featherstone's statement taken by a Police officer on 20 July 1995.

"Denis and I went to Wainuiomata together. This is common practice when dealing with blokes for the first couple of sessions. The men seem to appreciate it more.

We arrived at Ronald's address at about 3.02pm, I remember this because the news on the radio had just finished.

I knocked at the front door of the address, Denis stood beside me.

Henry answered the door and invited us in, he said "he's in here".

Ronald was standing a couple of paces behind Henry in the Hallway.

They both then moved from the Hallway into the lounge which is just to your right as you enter the front door, and we followed behind them.

Henry, Denis and myself walked through into the lounge while Ronald stayed just within the lounge doorway, and he remained standing.

We all formally introduced ourselves and remained standing.

I looked at Ronald and I had two thoughts, this man is in a state of despair, and there is no point in even attempting to counsel him. I know Denis thought the same, as a result of our later conversation.

Ronald's head was hung down, he was moving foot to foot which is familiar with patients on medications. He was wearing a long black raincoat that was the full length of his body, to the ankles. He was wearing a pink American baseball cap on his head. In his hands was a white plastic shopping type bag, he was holding it with both hands in front of his groin area. It looked like it contained papers.

I spoke first. I asked Ronald if he wanted us to take him to the lawyer now. Ronald said yes and he said he wanted to go home, to Rodney Street. Henry then said, "I phoned the Police half an hour ago, he had the gun at me", indicating towards Ronald.

I asked Henry if he had heard from the Police and he said no. I then said that we should check with the Police before we leave. Ronald agreed and told Henry to ring them.

Henry then reached for the telephone which was in the kitchen doorway, accessible by the lounge. Henry asked Ronald if the phone number was 111, Ronald said yes. Henry then rang and began speaking to the operator.

At the same time Ronald walked out of the lounge into the hallway via the door we had come through.

Denis and I spoke between ourselves while Henry was on the phone and Ronald was out of the lounge. We were discussing what to do next.

Seconds later I heard what sounded like the rustling of a plastic bag coming from the hallway or bedroom. You could hear it clearly.

Denis said, "what do you think he's doing".

At this stage Denis and I were standing in the centre of the lounge talking. I turned to my left to look through the lounge door that we had entered through, and there I saw Ronald standing in the bathroom doorway, which is directly opposite the lounge doorway.

He would have been about 2 meters from me.

He was standing upright with his feet together. He was holding a rifle. He was holding the rifle in a vertical position with the butt of the rifle out in front of his chest and the barrel facing the floor. His right hand was at the trigger end and his left hand was holding the barrel end. I can't remember if his finger was on the trigger. I could not see the white plastic bag.

He was looking directly at me and saying nothing, he just stood there.

I said, "look Henry he's got the gun again".

At that point Ronald raised the rifle to shoulder level with the barrel pointed straight at me. I am sure that at this stage his right finger was on the trigger.

He said, "get out".

Denis and I both said, "O.K, we'll leave". I looked at Henry and said, "we're going". Henry was still on the phone at this time and he told the operator that Ronald had the gun again.

Denis and I then walked towards Ronald through the lounge doorway into the Hall, then out the front door which I had to open. As we passed Ronald he remained in the bathroom doorway and kept the rifle pointed at us in the same manner as before. He was only a couple of feet from us once we entered the hallway.

From the hallway to the back door our backs were turned on him so I don't know what his movements were after that.

We walked down the pathway to our car which was parked out on the street, directly outside their house. Our car was facing towards the Wainui hill.

When I reached our vehicle I turned and looked at the lounge windows of the address. I could see Ronald standing in the lounge window aiming the rifle at us as before, with the rifle at shoulder height.

The lounge window is a large fixed window. I think it has two side windows as well. Ronald was standing in the large centre window within clear view. There was no curtains obscuring my view of him.

I then turned to get into the car. I then heard a "pop" noise. I wasn't sure what it was. I was not sure if it was the rifle or something else.

Denis and I looked at each other, Denis asked me what it was. Seconds later Henry appeared beside us, I didn't see him come out of the house.

Henry said, "he told me to get out. I told him not to be so silly and to put the rifle down, he fired it and told me to get out". Henry then went on to say that the gun is a pump action and that it can hold thirteen bullets and that he's got the ammunition from a drawer in the lounge, and that he must have been nosing around for it in the morning.

As Henry was talking Ronald appeared, standing on the footpath by the front passenger side wheel of our car. Henry, Denis and myself were standing on the road at the rear of the car, I was just about to go around to the driver's door and open it.

The distance between us and Ronald was only the length of my car.

Ronald was holding the rifle at chest height, waving it around in our direction. He was saying, "get away, get away".

I told him we were going. He said, "is this your car", and I said yes.

He then lowered the barrel of the rifle and aimed it at the front passenger side tyre and made out that he was going to fire the rifle, making jerking movements with the rifle towards the tyre.

I told him if he does that we won't be able to leave. He said, "oh yeah", and then he took a pace back, still pointing the rifle in our direction.

I moved around to the drivers door and unlocked it. I reached through to unlock the back door on my side, where Denis was going to get in.

Ronald said "stop smiling". I looked at Ronald and he had the rifle at shoulder height, aimed directly at Denis.

Denis said, "I didn't think I was", I got into the car, Henry and Denis got into the back.

Ronald continued to point the gun at the car.

I drove off slowly towards the Wainuiomata hill. I watched him briefly as we drove off and I watched him through the rear vision mirror. Ronald remained where he was for a short time.

I did a U'turn and drove back past the address and saw Ronald by their garage right at the back of the house, where the back door leads into the kitchen. He was still holding the rifle.

We continued on to the Wainui Police station where we reported the matter to Police."

It would seem from the Control tapes that Harry put another call through to Police Control as mentioned in Mr Featherstone's statement. He gave further information but most importantly that Ron had got the gun again. It would appear Ron then spoke accusing the Police of delaying tactics in getting a car to the house. He said "Do you hear me, I'm going to shoot everybody in sight. I've got plenty of ammunition".

As mentioned by Mr Featherstone, the three went to the Wainuiomata Police Station. Mr Harry Lewis was interviewed by a constable starting at 1520 hours, about two hours before the shooting. Because it was contemporaneous with the events giving information to the Police I reproduce the interview statement:

“Ronald, my brother, has been staying with me for four days. Ron and his wife are having troubles, so he has been staying with me.

He has been moody for the last few days, and has been getting progressively worse. He went to Dr Shannon in Lower Hutt yesterday and got some pills. They were prescribed for depression.

He took some last night and took some at 10.00am this morning. Today he has been dopey, I think it is the pills.

About 2.30pm I was sitting in the lounge by the fire. I saw Ron going into my bedroom, so I decided to follow him. When I got to the bedroom I saw him with the rifle. The rifle is normally stored in my wardrobe. The bullets are stored in the lounge room drawer.

We argued over it. He threatened to kill me and anyone that tried to stop him. I managed to get the rifle off him and put it in the wardrobe.

Ron had gone into the lounge by this stage. I thought he had quietened down.

At 3.00pm two counsellors turned up at the address. Prior to the counsellors turning up Ron rang the Police. He wanted them to come around. He was threatening that he was going to kill someone.

Ron chatted with the counsellors. I rang the Police to see if they were coming around.

Ron then grabbed the rifle again from my bedroom, and had bullets as well. He was standing by the bathroom door with the rifle, yelling at the two counsellors to get out. They did.

DESCRIPTION OF RONALD:

raincoat black - calf length

pants - black cotton

baseball cap - pink pastel colour

green shirt - dark

Hair - totally bald except for a small black patch of hair on back of head

Height - 5 - 5'1

build - slight

facial hair - none

tattoos - none

Wobbly gait due to pills

I went back into the lounge after making the phone call to the Police. Ron came into the lounge. I was standing near the fire. He said “Get out, get out” I said “Don't be silly”. He said “Get out, then fired a shot into the lounge room wall.

I left the house via the front door, and met up with the two counsellors who were standing by their car.

Ron came out of the back door of the house. He came right out onto the street near the front tyre of the car (counsellors). "Get out" he said and pointed the rifle at the car tyre. We said "If you aim at the tyre, we won't be able to leave".

He backed off, and went down the driveway. I left in the car with two counsellors.

In my opinion he is likely to anything. At the moment I don't think he cares whether he lives or dies. He is capable of shooting anyone.

The bullets he had were in the lounge. I don't know when he got those. It was a full box of bullets about 50-60.

The rifle is pump action which can hold up to 13 bullets at one time. It is a Browning."

That statement makes a particular contribution to the build up which took place in the two hours before the shooting. The information conveyed by these three to Police was important to them in making decisions with deployment and tactical decisions.

On the arrival of the three at Wainuiomata Police Station Sergeant Leatham and his staff were preparing to go to the address as a result of Harry's earlier message. The Armed Offenders Squad (AOS) had been called out from Wellington. Over the next 20 minutes Wainuiomata Police cordoned off the area, set up road blocks and awaited the arrival of extra staff and AOS personnel. This was in effect the outer cordon and the only one at that point. During this period Ron was inside the house indiscriminately firing shots out the open front windows of the address. At this point it was a barricade situation with the offender armed and inside the house but he had no hostage. He had driven three from the house at gunpoint as described above.

When I attended the scene next morning, 20 July, I was shown bullet holes in the lawn outside the front of the house and into the metal caravan that was parked on the grass. It is not known for certain how many shots were fired in this manner but at least 18 and probably more.

Crisis Point Reached

On arrival of the AOS at about 4.00pm they followed their standard procedures by setting up a safe assembly point which was on the corner of Wainuiomata Road and The Strand. Wainuiomata Road runs roughly in a west to east direction with Number 43 facing north. The Strand is in a westerly direction from No. 43 which is on the south side of Wainuiomata Road.

The most important task of the O/C AOS is to establish the inner cordon which is to achieve containment. It is the inner cordon which is under the direct control of the O/C AOS and is his responsibility in tactical decision making. Before leaving Wellington the members of the AOS were briefed on the then information available and reminded of their obligations under General Instruction F61. The inner cordon is the heart of an AOS operation in circumstances similar to this one.

In a situation as presented to the AOS with number 43 the focus, the areas around the house were colour coded and staff deployed within these areas so as to contain the house from all directions. It hardly need be said the object of the exercise once it had reached the crisis stage of an armed man in a suburban house surrounded by other houses is to disarm the person and prevent loss of life.

The Police Negotiation Team (PNT) of three members were at the safe assembly point and attempted to telephone Mr Lewis but the line was engaged. A PNT is a specialist group formed to help other operational staff to resolve situations by using negotiation techniques. It was established that at that time Mr Lewis was on a 111 call to Police Control demanding to see the Police staff who he said had removed him from his Naenae address a few days earlier. He also said *“Every car that goes past, I’m going to shoot unless the Police turn up immediately.”* He then hung up. The basic plan was to get him to surrender by negotiation and have him walk out the front of the house, unarmed, where he would be voice appealed then apprehended.

At about 5.00pm or a little after, the PNT established the one and only communication they had with Mr Lewis. A woman member spoke to him and her approach, as evidenced by the transcript, was appropriately friendly, conciliatory, but most importantly non-confrontational. Obviously her goal was to listen to his demands and attempt to reach some sort of accord with him as a step towards a peaceful solution. It is not unfair to Mr Lewis to say his responses remained obdurate, the demands in so far as they could be understood were confused, at least, and he continued with threats of extreme violence. I think it is important to understand the events 15-20 minutes before the shooting took place.

In the course of the negotiation the demands increased and spread. At the beginning he exhibited aggression against the Police officers who he said had *“thrown [him] out of my house”*. He wanted the exact three officers *“sent over here”*. Mr Lewis said *“Action better*

happen otherwise I'm going to start shooting people right now". The call for the officers referred to the exchange with Police on 14 July when he agreed to go to his brother as mentioned earlier in this report.

He then said he wanted his house back and \$3000 from Trustbank that he said he was entitled to. This was his application for a loan in that amount which had been declined.

He said *"I've made my demands and right now I'm on a roll. I have got my gun loaded and I'm now walking around to the lower Wainuiomata Police Station and I'm going to shoot people as I go along."*

Negotiator: *"Mr Lewis please don't do that."*

Lewis: *"I am going to do it. I have been pressed for two months. Nobody has taken any notice of me and I have got a gun and I've got about 30 rounds of ammunition."*

Negotiator: *"Mr Lewis"*.

Lewis: *"And everybody I come across I'm going to shoot and when I get to the Wainuiomata Police Station I'm going to shoot everybody there too."*

The conversation continued with Mr Lewis and he added he wanted his wife's lawyer *"to come over here too"*. He then wanted *"the pimps that threatened my wife's life are to come over here also."* He would not explain what this meant. He made threats against them also. It was established in this exchange that the time was 5.10pm and the negotiator promised to get back to him. When within a few minutes she called again Mr Lewis had walked out the back door and did not answer the telephone.

A little after 5.10pm the threats and demands were conveyed to the O/C AOS who in turn relayed this information to his staff and repeated their Fire Orders under GI F61 which are mentioned next. His staff were those officers deployed in the inner cordon who were able to receive information from their O/C by radio telephone.

Statutory and Other Authority for Use of Force by Police

It is appropriate to turn to this issue now. The statutory authority entitling the Police to use force is to be found in ss39 and 40 of the Crimes Act 1961. Those sections are the primary authority but, of course, the detailed scope and operation of an armed offender call-out requires detailed instructions able to be applied in a practical way on the ground at an incident. The policy, practice and procedures of the New Zealand Police relating to firearms are contained in General Instructions and that of the Manual of Best Practice Vol. 1.

Contained in the Manual is a chapter on armed offenders. These are the broader planning issues for Armed Offender Squads. These need not be detailed but the public should be aware that background planning and training is provided because it is absolutely vital. The Manual contains procedures for the use of dogs in armed offender operations and dogs were used in this particular incident.

The more detailed instructions are contained in General Instructions which are the guidelines for Police in the practical situation of an armed offender operation. The provisions relating to the deployment of AOS personnel are contained in General Instruction A93.

Armed Offenders Squads are maintained in Districts to deal with persons who are, or who are believed to be, armed and a danger to themselves, the public or Police. The scope and type of action required in an AOS operation will vary according to the circumstances. AOS squads consist of officers who perform normal Police duties on a day to day basis, but who are trained in this specialist role for when there is a requirement for squad deployment.

The Armed Offenders Squad should be mobilised when any of the following circumstances exist:

- (a) A firearm or other weapon has been used to commit an offence or use of a weapon is threatened.
- (b) A person with a firearm or other such weapon has threatened to kill or injure.
- (c) You are informed that firearms or other weapons will be used to commit a particular offence.
- (d) There are reasonable grounds to believe a person is armed to the danger of the public or the Police.

AOS members are trained for the express purpose of carrying out forward operations against armed offenders.

There is a specific GI F60(2) when Police officers may carry arms in situations other than a formal AOS call-out. The circumstances of this incident after Mr Harry Lewis' call to the Police made it clear Police would need an AOS call-out. The specific GI F61 governing the use of firearms by Police is dealt with separately hereafter because of its importance.

Circumstances Leading to the Shooting

After completion of the call with Mr Lewis his demands were considered by the O/C AOS. Probably the most significant statement made by Mr Lewis was his intention to leave the residence with a gun and 30 rounds of ammunition and head towards the Wainuiomata Police Station, and shoot Police who were there. It is to be noted Mr Lewis gave an accurate calculation of the number of rounds he had on him. It would appear he had apparently counted them out. He was clearly demonstrating very considerable potential aggressive violence towards the public and Police, and by firing rounds indiscriminately earlier in the afternoon demonstrated his commitment to using the weapon. In short he verified his violent language by actions. I say more on the way threats of violence are to be treated.

It was apparent that if Mr Lewis carried out his threat to walk to the Wainuiomata Police Station he would probably walk out the front of the house and turn right. This would take him in a north-easterly direction into the white/green cordon area. To this end O/C AOS instructed both dog handlers to team up in the white/red cordon area (basically to the left of 43 as one leaves the house) from where they could mount a two dog attack, if appropriate.

At 5.15pm the PNT telephoned the house but Mr Lewis did not answer as he had walked out the back door of the house and was making his way to the front of the section preparatory to moving onto Wainuiomata Road. This was a very significant act for by leaving the home and moving onto Wainuiomata Road he was clearly preparing to break the containment which had been the object of the inner cordon tactic. This act brought the crisis to a head. Mr Lewis was in possession of the .22 rifle held in his right hand with the barrel pointing downwards. The rifle was obscured for some time by the long heavy coat he was wearing. At this point Wainuiomata Road is wide and divided by a median strip. It is the main thoroughfare through Wainuiomata. He walked across the road towards the median strip and this movement was observed by a number of Police and civilians, some of whom could not initially see he was

armed. As Mr Lewis emerged he was voice challenged by several AOS members using words to convey the message "*Armed Police drop your weapon*". No record is made of the exact words. These sorts of challenges were repeated several times and heard by many. Challenges are required by GI F61 yet to be reached in this report. At about the same time the two Police dogs were released to apprehend Mr Lewis. The timing now is split second but it seems at the time the dogs were released (from a distance of about 30-35 metres to Mr Lewis) Mr Lewis, possibly in response to the voice challenges, raised the rifle to about waist height and turned towards his left which would have been towards the westerly direction. In doing so he pointed his rifle in the direction of the two dogs and their handlers who were then exposed from cover. In the same movement however, he continued to turn left and then stopped. He was then pointing his rifle in the direction of AOS staff positioned at 41 Wainuiomata Road which is to the right of a person emerging from 43. It would seem the initial left-hand movement took him from facing approximately north/west to near south/east. He had apparently crossed the median strip to the northern side of the roadway. He was standing a little to the west of an imaginary line of the boundary of numbers 43 and 41 extended in approximately a northern direction.

At this point in time (about 5.20pm) and place he was shot by four AOS personnel using six shots. Accounts from both Police and civilian witnesses indicate that the shots fired by AOS members were simultaneous or within split seconds of each other. There had not been a formal order to fire by the O/C AOS but four separate decisions by the individual AOS members based on the information they had only recently received and their assessment of the situation.

The evidence of witnesses establishes that Mr Lewis fired one shot from his rifle. This was heard by witnesses and an empty .22 shell was later found in the chamber of his firearm and the trigger was in a rearward position against the trigger guard. What cannot be established with certainty is whether he discharged the rifle before or after he was shot. Several witnesses including Police and civilians describe Mr Lewis as discharging his firearm just before being shot whilst other witnesses say he discharged his firearm after being shot. It would be desirable to fix his shot in relation to AOS shooting, but I have no way of establishing the timing with confidence, and must leave it as uncertain.

As Mr Lewis fell to the ground the two dogs arrived and seized him, one by an arm and one by a leg. The handlers were close behind and pulled the dogs off but not before some injury was sustained to his knee.

Mr Lewis was treated briefly at the scene and then flown by Westpac helicopter to Wellington Hospital in a critical condition. The Police in the course of preparation for the AOS turnout had arranged for an ambulance to be present which was stationed at the safe area and responded immediately.

A search of the .22 revealed the spent shell in the chamber and 11 live rounds of ammunition in the magazine. On his person was found 29 live rounds and two handwritten notes. One note states "*3 Police Nae Nae Manager Russians*". The other states "*3 Cops Nae Nae Manager Hore & Pimps 569-3047*". There were found two other business cards one of which had much the same statements as the second one above. The other had written on it house information.

In total, 24 AOS and related staff responded to the incident at 43 Wainuiomata Road. Of these 24, 3 were members of the Police Negotiation Team and 2 were dog handlers. The incident, as first reported at Wainuiomata, was clearly one which required the mobilisation and deployment of AOS and related specialists.

Scope of Investigation and Review by PCA

I think it is appropriate at this point in the report now that the narrative of events has taken the account to the stage where Mr Lewis was shot by AOS members to set out the scope of the investigation and the role of the Police Complaints Authority. It also could be helpful to deal with issues that arose, but were not exactly at the heart of the investigation of the shooting, but about which the public should be informed. In this instance a shooting took place in a closely settled suburban area with residences, a church and large suburban shopping mall, all within a few hundred metres radius of the house at 43 Wainuiomata Road. The incident began in a public manner with the expulsion at gunpoint by Mr Ron Lewis of his brother and two counsellors from No. 43 at about 3.06pm. It ended over two hours later in the late afternoon.

I retrace my jurisdiction mentioned at the beginning of this report. The Commissioner of Police is required pursuant to Section 13 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. The facts outlined already make it clear all those ingredients were fulfilled and I was so notified. Pursuant to s.12(1)(b) I can investigate where I am satisfied that there are reasonable grounds to carry out an investigation in the public interest. I immediately so decided and the steps I took have been outlined earlier. I specially mention that at the site on 20 July and at a meeting with the investigators at my office on 22 July I particularly asked for attention to be paid in the investigation to the issues of evacuation of civilians and crossfire, both of which are referred to hereafter. Inspector Wildon completed a very thorough investigation and his report together with all files were delivered to my office through Internal Affairs at Police National Headquarters with the Commissioner's recommendation. Also forwarded was the report and recommendations of Acting Detective Senior Sergeant G M Watson on the investigation into possible criminal liability.

Each one of the following sub-headings is capable of extensive discussion but for the sake of brevity and clarity the analysis will be confined to the issues raised by the facts of this case.

The main issues to be covered are as follows:

- A. Use of Firearms by Police
- B. Fire Orders and AOS Training
- C. Evacuation and Containment
- D. Deployment of AOS and Dog Handlers
- E. Cross Fire
- F. Medical Condition of Ronald James Lewis and Blood Analysis
- G. Police Investigations and Commissioner's Report
- H. Criminal Liability of Participants
- I. Conclusions
- J. Recommendations

A. Use of Firearms by Police

Other than statutory provisions and the Police Manual, the controlling document of most importance at the scene of an armed offenders incident, is General Instruction F61 which I now set out:

"F61 Use of Firearms by Police

- (1) *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.*
- (2) *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.*

- (b) *To ARREST an offender (Section 39 Crimes Act 1961) if they believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting his arrest;*
AND
the arrest cannot be reasonably effected in a less violent manner;
AND
the arrest cannot be delayed without danger to other persons.

- (c) *To PREVENT THE ESCAPE of an offender (Section 40 of the Crimes Act 1961) if it is believed on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person (whether an identifiable individual or members of the public at large);*
AND

*he takes to flight to avoid arrest, OR he escapes after his arrest;
AND
such flight or escape cannot reasonably be prevented in a less violent
manner.*

- (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.”*

Para. 1 is a general direction and speaks for itself. Para. 2 forbids use of a firearm except in named circumstances and they are there set out and do not require extensive analysis. Para 2(b) relates most closely to this actual situation on the knowledge possessed by the AOS which has been detailed earlier and it would appear all three prerequisites were present. Para. 3 is of central importance and opens with a prohibition against shooting unless three conditions exist. Paragraphs 1 and 2 are more general in direction but para.3 seems to take instructions to the point that was revealed by the circumstances of this case. The three conditions must be present at about the time a shooting is imminent. It is usually no longer speculative, or simply a possibility for the future, but a present likelihood. In my view the facts revealed by the investigation and outlined earlier in the report establish the three conditions were fulfilled. Para 3(a) required a call to surrender which as a matter of fact I am satisfied took place. Furthermore with prior calls by Mr Lewis to the Police Control Room he would have fully understood the presence of Police and that they would almost certainly be armed. Para 3(b) & (c) are matters of judgment by the deployed AOS on the grounds in the light of the circumstances they faced and the information they had.

I think it is appropriate at this point to say something about timing. As I have said above para 3 is as far as general written instructions can go and thereafter the issues are those of judgment based on the exact circumstances facing a deployed AOS which are always unique. It is at this point the central issue is that of timing. In short should the Police shoot or wait? I think it must be understood that no amount of post event analysis can ever “solve” this problem of timing. Timing of the shooting is judgment based on the known information and circumstances. Nevertheless the issue of timing is capable of some exposition. The hard facts known to the AOS were these. There was no hostage taken whose life was endangered. The suspect had clearly indicated he would take the lives of public and Police officers and that

had been said within minutes of emerging into the street. The suspect was armed, had earlier discharged indiscriminately 18 rounds, at least, verifying his determination and capability. His talk to the negotiator had demonstrated a highly aggressive, agitated state making irrational demands none of which had been met; and as far as his information and belief went no action had been taken. Of course he brought that about himself. Without question the most critical element of tactical decision making is timing. Before lives are lost the opportunity to neutralise the suspect may occur only once. In such a tense potentially violent situation the conclusion “*time is on our side*” is not always available. Time can be an ally, but it depends entirely on the circumstances. If the suspect is barricaded in a house or building time should be used but even then sniping out of the building is a possibility. In this particular situation the suspect had moved on to a public street in late afternoon which was cordoned inner and outer but there were residences very close by with occupants in them. These comments are not made as a defence of the Police decision to shoot but to set out some of the issues they faced.

B. Fire Orders and AOS Training

General Instruction F62 (Fire Orders) states:

“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 GI F61.”

When the AOS personnel assembled at Wellington Central before departing for the scene, they were briefed by their O/C as to the known facts at that time. During this briefing the O/C brought to their attention the provisions of GI F61. The provisions have been set out in full earlier in this Report. Also at the scene, after Mr Lewis had made his threats to shoot people, this information was passed by radio to AOS members with the O/C AOS again reminding staff of GI F61.

AOS members, when later interviewed, were able to clearly demonstrate their knowledge of the provisions of F61. This General Instruction is an integral part of their AOS training.

It is also of note that the decision to shoot Mr Lewis was made individually by the four Police officers at almost exactly the same time. The four members were conversant with the requirements of General Instruction F61 and their ability to exercise their judgment in this regard was demonstrated.

I am satisfied that all of the AOS personnel had a detailed knowledge of the use of firearms by Police, and were thoroughly conversant with the provisions of GI F61.

There were four officers who discharged shots at Mr Lewis and in accordance with practice they are identified by initials.

Training for AOS personnel is conducted one day per month. All training days include some aspects of arms training, whether it be a revolver/pistol shoot or physical activity. The remainder of the training day covers all AOS activity, including setting cordons, patrolling, loud-hailer drills, arrest procedures, house clearing, first aid and vehicle stops. Training is co-ordinated with the Dog Section and on a regular basis with Police hostage negotiators.

- Police Officer "O" has in excess of 3 years AOS service. He is qualified in the use of the following firearms:
 - 9mm Glock Pistol
 - Ruger .223 Rifle
 - Remington 870 Pump Action Shotgun

- Police Officer "Q" has in excess of 5 1/2 years AOS service. He is qualified in the use of the following firearms:
 - 9mm Glock Pistol
 - Ruger .223 Rifle
 - Remington 870 Pump Action Shotgun

- Police Officer "S" has in excess of 1 1/2 years AOS service. He is qualified in the use of the following firearms:
 - 9mm Glock Pistol
 - Ruger .223 Rifle
 - AR15 Semi-automatic Rifle

- Police Officer “T” has in excess of 2 years AOS service. He is qualified in the use of the following firearms:
 - 9mm Glock Pistol
 - Accuracy International AW .762 (Sniper Rifle)
 - AR15 Semi-automatic Rifle
 - Ruger .223 Rifle

Police Officers “O”, “Q”, “S” and “T” have all maintained their training schedule as required on a monthly basis. I find that the firearms used by these members at Wainuiomata were weapons which the members had been trained and qualified to use.

I turn now to detail the weaponry carried by the individual officers. All AOS personnel carry a 9mm Glock pistol as a secondary weapon. In addition, some AOS members also carry a primary weapon which may vary with each member. The primary weapons consist of Remington shotguns, Ruger .223 rifles, AR15 .223 rifles, Accuracy International .762 rifles and Ruger .308 rifles. All weapons are on permanent issue to AOS members. Members who are assigned a particular primary weapon train with that weapon so as to become familiar with it.

At Wainuiomata Police officers “O”, “Q”, “S” and “T” had the following firearms in their possession:

Police Officer “O” Remington 870 pump action shotgun
Glock pistol

Police Officer “Q” Remington 870 pump action shotgun
Glock pistol

Police Officer “S” Colt AR15 semi-automatic rifle
Glock pistol

Police Officer “T” Accuracy International AW sniper rifle
Glock pistol

The four firearms discharged by these officers at Wainuiomata have been examined by the Police Armourer at Upper Hutt. All firearms used were test fired and checked for operational and mechanical safety. The Police Armourer also visited the scene of the shooting before conducting his examination of the firearms. In his conclusion the Armourer has found the firearms to be mechanically safe, however he has expressed concern regarding the ammunition used with the shotguns. The shotguns which were used in the shooting used cartridges with nine shots/or pellets which are discharged. I deal with this issue in the recommendation under the head of “Crossfire”.

C. Evacuation and Containment

The Police Manual of Best Practice on the subject of evacuation states:

“Evacuation is removing people from an area that is thought to be dangerous, or for strategic reasons. This may be necessary when, for example, there is:

- *an armed offender in the area*
- *a civil defence emergency*
- *a bomb scare*
- *a crime scene which may otherwise be contaminated”*

“When deciding whether to evacuate remember that:

- *an unplanned evacuation may cause panic*
- *the public may have to walk past the danger zone*
- *the resulting crowd may create additional hazards.*

If you decide to act, consider whether the evacuation should be partial or total. A total evacuation may remove people who later may be urgently needed for information or access.

If the danger area has been localised, partial evacuation is an option A partial evacuation requires effective control and supervision during the operation and should be considered only if sufficient Police personnel are available.”

The situation at Wainuiomata as first reported required immediate attention to set up road-blocks, cordon the area, and the containment of Mr Lewis. These tasks were performed by the initial staff in attendance under the control of Sergeant Leatham, whilst further staff were enroute to the scene. When the AOS staff arrived at the scene, an outer cordon had been established. The AOS then established an inner cordon closer around No. 43 (Mr Lewis’s address). Containment by an inner cordon (the primary one) and by a outer cordon (the secondary one) is absolutely essential.

Evacuation was considered both prior to the arrival of AOS and again once they had set up their inner cordon. During the initial action phase of the operation there was insufficient staff to arrange a controlled evacuation. To this end, computer checks were made via Telecom to establish phone numbers for neighbouring addresses on Wainuiomata Road, Fraser Street and Reading Street. This was arranged by Detective Sergeant Allan at Lower Hutt who had staff phoning these neighbours. The neighbours were advised to stay inside their houses and away from any windows until they had heard back from the Police. Some actual evacuation did take place as mentioned below.

Evacuation was also considered by the O/C AOS, member "A". Member "A" in a statement for this enquiry stated:

"In determining whether to evacuate, the overriding factor must be that of safety. If the person can be evacuated without danger, either to that person and to the AOS members involved, then evacuation is a realistic option. If an evacuation cannot be carried out in safety, and there is no immediate risk to that person, then it may be preferable to leave that person.

Having said that, there is also the issue of the suspect to be considered. There is a vital need to effectively contain the suspect. To achieve containment, ie. in this case containment within a house, there is a necessity to deploy a large number of AOS members.

In this incident I was of the view that because of the number of shots being fired by the suspect, it was first necessary to contain the suspect and thus reduce the risk to all persons in the immediate vicinity. At Wainuiomata some occupants were evacuated, others were not. AOS members were able to evacuate some to safe areas, in other cases they requested occupants to remain inside their house, in a place of safety."

Two occupants of one house at 41 Wainuiomata Road were evacuated to number 39 Wainuiomata Road at the request of AOS staff. An attempt was also made to evacuate the occupants of number 45 Wainuiomata Road by the AOS. This met with no response, although there were people present inside at the time. Attempts were also made to evacuate the occupants of number 47 but there was no response.

In my view, a controlled evacuation of residents in the immediate vicinity of Mr Lewis' house on this occasion, would have been impractical owing to the number of staff available, and in any event, it seemed more appropriate to make contact with neighbours in the manner outlined. I find that the Police took appropriate action in relation to safeguarding members of the public during this incident but nevertheless I make a recommendation that this issue of

evacuation be studied to see if improvements could be achieved. I am satisfied the emphasis placed on the containment by an inner and outer cordon was satisfactory.

D. Deployment of AOS and Dog Handlers

In the course of the narrative already outlined earlier in the report the general picture up to the shooting has been told. As stated the exact residence, 43 Wainuiomata Road, was contained with personnel of the AOS occupying the coloured sections to ensure a surround. The PNT were conducting what negotiations they could with Mr Lewis. The safe area had been established and it then became a waiting game to see if Mr Lewis could be coaxed to come out unarmed and allow apprehension. What evacuation could be achieved had been done.

I now turn to the exact positions of the AOS members who discharged their weapons. It is best explained by use of a plan that has been prepared for this enquiry. The original is large and colour has been used to delineate the firing lines but that detail cannot be reproduced. The plan is annexed to this Report.

Two dog handlers were located with their dogs to the west of 43 taking cover at 45. Officers S and O were on the south side of Wainuiomata Road and officers Q and T on each side of the tree on the north side. They were armed as previously outlined. In view of Mr Lewis's declaration that he was heading for the Wainuiomata Police Station it was expected he would turn right on emerging and towards the east. When he emerged he actually went slightly right in a northerly direction to the far side of the median strip. It was about this time that the voice challenges were used from several quarters, but were ignored. If he had dropped his rifle he would not have been shot.

Earlier it has been told that the dogs were released when the handlers came out of cover and the four officers all discharged their weapons almost simultaneously. The line of fire of officers O, S and Q has been established by recovery of shots or entry points but it seems the shot of T did not exit the body and in any event the projectile has not been identified. Officers O and S fired two rounds each and Officers Q and T one round each.

In summary it would seem the three shots fired from high velocity firearms (sniper rifle and .223), hit Mr Lewis and two of the shotgun blasts also hit him. One shotgun blast missing him completely.

E. Cross Fire

As stated earlier in this report my immediate reaction on going to the scene on 20 July on hearing the deployment of AOS members explained to me and the firing positions of Police officers (known generally even at that early stage) raised concern at the possible effects of cross fire injury, or worse, to an innocent person or a Police officer. The problem of cross fire embraces the shot gun ammunition which has been referred to earlier and again in the recommendations.

I deliberately do not want to make definitive statements about what should or should not be done in situations similar to this one. It must not be overlooked that the situation on Wainuiomata Road was not a static one even as a barricade one within a building is. As so often occurs the suspect dictates the decision making and tactics of the AOS officers by being armed, having so recently fired the weapon and being peripatetic as he was. Whether there was cross fire and the degrees of it depends on where the offender was standing at any given time. However I feel justified in saying it was a concern to me very early in the investigation, and now it has been completed by the investigators it remains so. Basically I am concerned about the issue of tactical deployment of AOS members on the ground at Wainuiomata which I think requires careful analysis in the debrief. Fortunately any deficiencies did not have any significant bearing on the final outcome. I appreciate the difficulties dealing with a roaming target such as Mr Lewis presented for there could be cross fire at one point yet within seconds depending on the movement of the person it would not be. I also appreciate the complexity of the situation in a suburban street surrounded by residential houses and public gathering points. Again wherever there is a discharge of a firearm in a built-up occupied area there is always real risk whether there is technically cross fire or not.

I make a recommendation on this hereafter and I am content if it is given close examination by those with knowledge and experience as I recommend. I include in the recommendation the use of shotguns.

F. Medical Condition of Ronald James Lewis and Blood Analysis

There can be no question but that Mr Lewis suffered very serious and permanent injuries inflicted on him by the shooting. He suffered severe injuries to his chest, right arm, left wrist and hip and right leg. There were general gunshot puncture wounds to the abdomen area and lacerations to his knee through dog bites.

Immediate attention was focused on his right lung and chest injury. His right arm was then immobilised with external fixation. Other wounds were then tended to. Following completion of this surgery, he was returned to the Intensive Care Unit for ventilation and continued stabilisation. As a result of circulatory problems he required both his left and right legs to be amputated below the knee.

Blood samples were taken from Lewis upon his admission to hospital. The first sample taken from his body (Police exhibit 366) has been analysed and found to contain a high level of Diazepam and its metabolite, Nordiazepam. Forensic scientist John Lewis has quantified these levels as:

- Diazepam 2.0 micrograms per millilitre of serum
- Nordiazepam 2.4 micrograms per millilitre of serum

Police enquiries have revealed that on 18 July Mr Lewis was prescribed 100 5mg Diazepam tablets from his doctor with the instruction “take 2 tablets up to four times a day”. Recovery of the Diazepam container after the shooting revealed 45 tablets remaining.

A report has been prepared by Dr G M Robinson concerning the effects of Diazepam as they relate to the quantities found in Mr Lewis. He describes such doses as being able to result in a number of adverse effects, including memory impairment, disinhibited behaviour (similar to drunkenness) including hostility and aggression; mood swings including increased depression and suicidal ideas, and impaired judgments. Mr Lewis exhibited a number of these effects on the day in question, and it appears his behaviour was consistent with the behavioural effects of Diazepam as described by Dr Robinson.

G. Police Investigations and Commissioner's Report

When a Police investigation is complete in an incident such as this it is usually first reviewed by the District Commander. District Commander R J Robinson of the Hutt District reviewed the file and forwarded it together with his recommendations to Internal Affairs at Police National Headquarters in Wellington. Whilst drawing attention to some shortcomings he did not offer any material criticism of the overall operation which he said it would have been desirable if accomplished with a lesser degree of force but the circumstances did not allow it.

That view was confirmed by Superintendent McCarthy, Officer in Charge of Internal Affairs, on behalf of the Commissioner of Police.

The task of the Authority is to review all available information arising out of the investigation. The first comment to be made is to decide whether the investigation was thorough and to ensure all matters that ought be covered were covered. I find the investigation carried out by Inspector Wildon was of a high standard and all relevant issues were covered in his report. All supporting documents and plans have been forwarded to my office. Several requests were made by me during the investigation which I wished to be covered of which evacuation, cross fire and effects of levels of Diazepam found on analysis of Mr Lewis's blood were the most important. As evidenced by the report they have been done.

H. Criminal Liability of Participants

As stated earlier in this report, criminal liability of participants was the matter of a separate investigation carried out by Acting DSS G M Watson.

It was the task of ADSS Watson to examine as a separate issue the possible criminal liability of the five persons (four AOS officers and suspect) who discharged firearms in the course of the incident. There was also a question concerning firearms for Harry Lewis who was the holder of the firearms licence for the gun that was used that day by his brother Ron Lewis.

It is convenient to dispose of that issue now. Harry Lewis owned the two firearms, .22 pump action rifle and a .303 rifle. It is his obligation to store firearms in a locked cabinet or similar device. It is clear some effort had been made to hide the firearms and the bolt for the .303 rifle was stored in another part of the house along with the ammunition. This issue was dealt with, along with other questions of possible criminal liability by Mr Grant Burston, Crown

Solicitor, in his opinion the substance of which is yet to be reached, and he was of the opinion that whilst the firearms were not stored as required by Regulation 19(1)(c) of the Arms Regulations 1992 breach of the condition does not appear to constitute an offence. There is nothing to cover this situation in the Arms Act 1983. Without examining this issue in depth I am prepared to accept the opinion of Mr Burston.

I return now to the main issue. ADSS Watson prepared a long and detailed report on the shooting, but focussing on the Criminal liability aspects as was his task. To be expected much of his report overlaps with the parallel investigation under the direction of Inspector Wildon. It was the opinion of ADSS Watson that Ron Lewis had committed a wide range of offences but recommended he face three representative charges which because of matters to be soon mentioned and the events themselves need not be detailed.

In regard to the possible criminal offending of the four AOS who discharged firearms he recommended no criminal action be taken against the AOS members.

Adopting the practice I have instituted in recent years where the possibility of criminal charges arising out of Police action is a substantial issue because of the facts revealed I have asked that an independent opinion be obtained either from the Crown Law Office, a Crown Solicitor, or other experienced practising barrister independent of the Police. All three alternatives have been used not infrequently over recent years. The object is obvious that the public is entitled to know an independent, impartial assessment has been made of Police conduct and that the decision in regard to prosecution is not that of the Police themselves.

To this end the opinion of Mr G J Burston, Crown Solicitor, practising in the Wellington region and a partner in the legal firm of Luke Cunningham and Clere was asked for his opinion. He was briefed by Police officers and supplied with all relevant files, documents and information arising out of the enquiry. At this stage it is sufficient to record that it was Mr

Burston's opinion that Mr Ronald Lewis face the five following charges:

1. Careless use of a firearm - s.53(3) Arms Act 1983. This offence essentially covered the reckless discharge of a firearm disregarding the safety of others.
2. Unlawful carriage of firearm - 2.45(1)(a) Arms Act 1983. This covered the offence in the vicinity of a car parked on Wainuiomata Road.
3. Careless use of a firearm - s.53(3) Arms Act 1983. Again discharging a firearm with reckless disregard of others.
4. Threatening to kill - s.306(a) Crimes Act 1961. This refers to matters covered in the body of this report in statements and telephone conversations with PNT.
5. Unlawful carriage of firearm - s.45(1)(a) Arms Act 1983. This charge related to conduct in Wainuiomata Road detailed in this report.

Other possible charges were considered by Mr Burston, but for reasons contained in his opinion rejected.

Continuing with Mr Ron Lewis he was subsequently charged with the five offences referred to above in the District Court at Lower Hutt on 21 December 1995. Mr Lewis was represented by a senior criminal lawyer Mr Chris Harder and pleaded guilty to all five charges. He was remanded for sentence to 23 January 1996 but that was further remanded until 27 February 1996 because the Judge made an order for a psychiatric assessment before sentencing.

Mr Lewis duly appeared on Tuesday 27 February 1996 in the District Court at Lower Hutt. The sentencing Judge by his remarks recognised the unusual nature of the case and imposed the lenient sentence of two years supervision with appropriate conditions attached.

An important part of Mr Burston's opinion was to examine the lawfulness of shooting by the four members of the AOS who discharged shots. For his opinion Mr Burston made a careful analysis of the facts, referring to many of the matters already referred to in this report concerning conduct, including statements made by several witnesses and concluded that the officers had no option, given the extreme danger Mr Lewis posed in those moments other than to shoot him. Mr Burston said "*Their responsibility was to ensure that he was not able to carry out the very real threats that he had made shortly before.*"

I accept the opinion of Mr Burston in regard to the criminal liability of the officers as does the Commissioner who has advised me to that effect.

Conclusions

I am satisfied the procedures set out in the Manual of Best Practice on AOS turnouts, General Instructions governing same and the statutory requirements on the use of force were adhered to. I have nominated areas where I think further attention must be given by senior Police administration, but otherwise I offer no criticism of the overall operation. Armed Offender operations are always sad with strong elements of tragedy as this one had. It is a great pity that surrender could not be achieved without the use of firearms but the situation was fraught and the potential for further tragedy was present and real.

The first conclusion is an inevitable one that any situation which involves the shooting of a man to immobilise him because of his life threatening behaviour is always a tragedy. The pattern that emerges in this case, and is almost identical anywhere in the world in similar events, is that the life threatening behaviour is founded or based very often in mental disturbance often exacerbated by substance abuse. It is nearly always in circumstances whereby there are in addition to the behaviour, possible serious breaches of the criminal law, as there was in this case. That issue has already been dealt with. The fact that a suspect had, in this instance, to be grievously wounded to ensure limitation of damage, gives absolutely no gratification to any party.

It must not be overlooked that when a situation develops as this one did in the late afternoon at Wainuiomata it had to be categorised as a potentially violent situation. Unnecessary risks must be minimised, proper procedures followed and every care taken with the lives of innocent civilians, Police officers and the suspect. Fortunately this was not a hostage situation where the life or lives of hostages had to be taken into consideration. At the point where Mr Lewis seemed to pass into irrational and bizarre behaviour he deliberately drove out of the house the three persons there at the moment his behaviour altered so radically. A very important consideration is that as he drove them out at the point of a gun after authenticating his determination to use it. The only safe course for negotiators and command personnel is to assume the offender means exactly what he says. At the moment of decision making it is unsafe to write down by interpretation plain statements made by a suspect.

Again I return to the phrase “potentially violent situation” to describe the event. Over some hours violence had been demonstrated by the firing of at least 18 rounds in an indiscriminate way. It must be acknowledged there is no evidence Mr Lewis fired at human targets, or

indeed any particular target, but he was discharging the rifle frequently over a lengthy period. He had earlier aimed the loaded rifle inside the house at others there. These might be described as a non verbal violent threats which the AOS command at the scene had to take into account. In short the AOS in the situation they faced had to deal with the potential for violence (ie. violence against another person) which had not moved to actual violence (absenting the random discharging of the rifle) at the moment the suspect emerged from the house onto the public roadway. From there on it then becomes an operational exercise for the trained Armed Offenders Squad.

I think it is a fair observation that from the critical start of the incident (in this case at about the point of expulsion of the three men at gunpoint from No. 43 with one his own brother) perfect tactical decisions were not made. It is truism that perfect tactical decisions are probably never made. It must not be overlooked that for the reasons set out earlier this was a complicated situation. Some decisions I have already commented on and I have made recommendations as set out hereafter. However I do not believe it is the task of this Authority in reviewing the total incident to give an imprimatur as to the tactical decisions made in this case, or, on the other hand, to condemn them because some aspects using hindsight vision could have been improved.

My task is to take an overall view to gauge whether there was any aspect of the AOS operation that clearly stood out as in some way significantly faulty and in the public interest requires disapprobation. If there were it would be my function to say so and in clear terms. I have stepped back and reviewed this incident bearing in mind the foregoing. In my view the operation was conducted in accordance with the general law as outlined earlier. In addition the operation also adhered to the procedure set out in the Manual of Best Practice and the General Instructions which also have been reproduced. Other than what is contained in my recommendations I need not make any other comments. To avoid any misunderstanding I specifically state it is not my task to pass judgment on the decision to shoot. Any such rating or assessment as that has the distinct potential for creating confusion and uncertainty for future Armed Offender operations. This Authority is not a substitute for the general law, the Manual of Best Practice or General Instructions.

Recommendations

I am mindful that Armed Offender Squad operations are complex and require knowledge and experience. These recommendations are made to assist the careful reassessment of this particular operation and to be used if thought appropriate.

1. As stated in this report, I was immediately concerned about the potential for injury and death through cross fire in the way the members were deployed. I think this problem is exacerbated by the use of buckshot ammunition with 9 pellets spraying separate projectiles. I would be satisfied if this issue is taken up and carefully examined to ensure what can be done is done in the Manual of Best Practice (the most appropriate document) to enhance awareness and training. The pattern of other Police shootings that have occurred recently is that they have occurred in public places to which citizens have access.

2. The other issue which concerns me is protection and evacuation of innocent civilians, especially within the inner cordon. It is simply not possible to go further in this case, especially as there was shortage of available staff. Also from start to finish the whole episode lasted just over two hours. Right at the beginning there were shots being fired outside of the home at no. 43 and therefore the danger to the public had begun. There are also problems raised by the safe displacement of persons outside of their house and interruption of freedom of access. Again I would be satisfied if this issue is taken up and carefully examined.

Sir John Jeffries
POLICE COMPLAINTS AUTHORITY
28 February 1996