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July 20, 2010

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Since 1969

Re: Firearms Review Board – Citizen Observer Report

Dear Mayor McGinn, Chief Diaz, Mr. Holmes, Mr. Conlin and Ms. Simmons:

Attached please find my Citizen Observer Reports for 2008 and 2009.

Very truly yours,

Rebecca Roe

REBECCA J. ROE

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CITIZEN OBSERVER 2008

1. Ordinance Requirements

Ordinance 118482 (the "Ordinance"), adopted by the City Council on February 3, 1997, created the Citizen Observer (the "CO") position on the Firearms Review Board (the 'FRB"). In 2000, Ordinance 120203 created positions for two bargaining representative observers and an alternate CO. The CO is directed to prepare an annual report of her observations about the proceedings of the FRB. The CO report is to generally address the FRB proceedings attended, whether a finding of justified or unjustified discharge of firearm was made by the FRB and a summary of issues, problems and trends noted by the CO. The CO is to make recommendations for any additional staff training or procedural or policy changes she determines appropriate. The Ordinance requires that the CO not report any recommendations concerning any particular police officer or information leading to the identity of a specific incident.

2. Hearings Held

I attended one FRB in 2008. The second was attended by the alternate, Suzanne Adams.

FRB #08-02 involved a multiple unit chase through downtown Seattle, midmorning on a weekday. Two robbers fled a West Seattle bank scene. One bailed out on Yesler and the other jumped in the driver seat and continued flight. The suspect was trapped between 1st and 2nd Avenue on Spring Street when his car stalled. He refused to show his hands and was waving a gun around inside the car. Four officers from two agencies fired 17 shots at the suspect, with 10 to 11 rounds fired by one SPD officer, 4 by another, and a single shot by both an SPD sergeant and a King County Sheriff's officer. The suspect was seriously injured. There was a civilian in a parked vehicle who received minor injuries from broken glass. The investigation was conducted by SPD homicide detectives and was thorough and professional.

3. Procedural Changes in the Past Year. There were no changes in the year 2008.

4. Issues, Problems and Trends.

The single FRB I attended during 2008 exposed the challenge of a daytime, crowded street chase of a dangerous fleeing felon. Because he was armed and was engaging in dangerous driving in crowded downtown streets, officers were justified in making sure he did not drive away. Given that his car was not working, they could have waited it out without risking danger to him and others by firing. However, his refusal to drop the weapon, and the quickness with which he could have shot officers or civilians, justified the decision to fire.

Too many officers joined the chase and were involved in cornering the suspect. The risk of innocent bystanders being hit was high. I believe there should be a mechanism to call off officers when so many converge on the same scene, and so recommended. (I speculated that everyone wanted to get in on the act; at least one person there acknowledged that phenomena.)

CITIZEN OBSERVER 2009

1. Ordinance Requirements

Ordinance 118482 (the "Ordinance"), adopted by the City Council on February 3, 1997, created the Citizen Observer (the "CO") position on the Firearms Review Board (the "FRB"). In 2000, Ordinance 120203 created positions for two bargaining representative observers and an alternate CO. The CO is directed to prepare an annual report of her observations about the proceedings of the FRB. The CO report is to generally address the FRB proceedings attended, whether a finding of justified or unjustified discharge of firearm was made by the FRB and a summary of issues, problems and trends noted by the CO. The CO is to make recommendations for any additional staff training or procedural or policy changes she determines appropriate. The Ordinance requires that the CO not report any recommendations concerning any particular police officer or information leading to the identity of a specific incident.

2. Hearings Attended

I attended six FRB's in 2009. Three others were attended by the alternate CO, Suzanne Adams. I include Ms. Adams reports on the chart of proceedings attached to this document.

There were a high number of cases reviewed this year. Tragically, this year saw the murder of one Seattle and four Lakewood police officers in about a six-week time period. All those murders had ramifications for the FRB.

FRB 09-04 involved the shooting of a suicidal male who barricaded himself in an apartment with his 20-month-old child. Officers believed he was armed based on his own statements to that effect, as well as his threats to "blow away" officers. He was suicidal because of the death of his girlfriend a few weeks prior. Officers tried to talk him into surrendering for several minutes. He was shot when officers became increasingly convinced he was not going to surrender himself or the child, feared a murder-suicide and were in a position to fire a shot that did not risk harm to the child. His injuries were minor.

FRB 09-05 was the shooting of a fleeing serial bank robber who was trapped in his truck by multiple officers at Greenwood and Holman Road. At the time of the shooting, SPD and the FBI were actively looking for the suspect, who had just robbed a Shoreline bank that afternoon. The individual being sought was a suspect in three robberies within the preceding week. He had recently been released from prison where he had been incarcerated for bank robbery.
At the intersection of Holman Road and Greenwood, the suspect rammed a police car to try and escape converging officers. An officer shot four times into the suspect's truck to stop him. The suspect, wounded in both arms, continued through the intersection, hit another car, was stopped and arrested. A father and child in another car received minor injuries.

FRB 09-06 involved officers who observed a vehicle occupied by four black men in a parking lot at 5:15 p.m. at 19th and Jackson Street. After the officers turned into the lot to talk to the occupants, they observed the front and back license plates did not match. They thought the car might be stolen. Officers approached the vehicle occupants who refused to cooperate. One got out of the car and wouldn't follow officers' commands to get back in. Finally, he did, and the car started to leave the lot. First an officer tased the driver; the driver accelerated in response. The officer then positioned himself in front of the car, then shot multiple times into the moving car. The vehicle left the parking lot and was abandoned by all suspects a short distance away. A gun was found in the street on Jackson. The driver sustained a bullet wound to his hand.

FRB 09-07 involved the shooting at Christopher Monfort as he fled from the scene at 29th and Yesler after murdering an SPD officer. The surviving officer fired 10 rounds at a fleeing car. The officer reports having stopped firing when the car appeared too far away. Bullets penetrated a parked car and a nearby house. Fortunately, no one was injured by stray bullets though a citizen was walking her dog in the area.

FRB 09-08 involved the shooting of Christopher Monfort at a Tukwila apartment complex. Police went to a Tukwila apartment complex to take custody of a suspect vehicle in the Officer Brenton shooting. Unbeknownst to officers, Monfort was there. He attempted to shoot an SPD officer but the weapon did not discharge. Monfort was then shot by three officers and seriously injured.

FRB 09-09 was the fatal shooting of the suspect in the murder of four Lakewood police officers. The suspect was shot several times when he approached the officer's car at about 2:15 a.m. The officer immediately recognized him as the suspect in the Lakewood murders because of a mole on his cheek. He told him several times to show his hands, and shot several times as the suspect fled, initially undeterred by the fact he was wounded. The suspect died at the scene.

All firearm discharges were found justified.

3. Procedural Changes in the Past Year.

There were no changes to the procedures of the FRB.

4. Issues, Problems and Trends

Trends:

When I started with the FRB in 2005, I understood officers were trained to avoid firing into cars at all, let alone moving cars. Despite the policy, several firearm discharges each year involve moving vehicles.

Use of Force Section 6.240 VIII "Discharge of Firearms From or At a Moving Vehicle" remains unchanged from the 2000 version in the 2010 update.

The policy acknowledges the increased risk to officers and citizens from firing at a moving vehicle because "**accuracy is severely impacted**"; and ". . . **firing will have very little impact on stopping the vehicle . . .**" **Disabling the driver will "most likely only result in an uncontrolled vehicle . . .**" and "**the likelihood of injury to occupants who may not be involved in a crime is increased.**"

Compliance with the policy permits firing into a moving vehicle only under limited enumerated circumstance **and** when all other reasonable alternatives have been exhausted or deemed unacceptable. The limited occasions for firing into a vehicle are when **deadly physical force is being used against the officer** or another by means other than the moving vehicle, **or the moving vehicle poses an imminent and ongoing threat of substantial physical harm** and there is no reasonable means to escape.

Further, VIII A.3 states: "Officers shall not intentionally place themselves in a vehicle's path, and they shall attempt to move out of the way rather than discharge their firearm.

In my view the weapons discharge in 09-06 violated this policy. These were four men sitting in a car on a July afternoon. Only after officers decided to approach the vehicle did they discover non-matched plates that may have meant the car was stolen. (It wasn't.) The officer had no reason to believe he was in imminent threat of harm until he moved to block the car from leaving – a violation of policy. The dangers posited by the policy were realized as the firing into the car was ineffective and harmed someone the officers did not know to be involved in any criminal activity, much less dangerous felony conduct.

The contrast between the circumstances of the firing into the vehicle in 09-05 – to stop and apprehend an armed bank robber racing through city streets and ramming police cars with a Dodge pickup –and the 09-06 firing which was unwarranted and ineffective, illustrate the spectrum of conduct to which the policy is applied. The policy is sound. Officers need to be thoroughly trained to follow it, and the FRB must enforce it.

Recommendations:

(i) I have observed a trend away from closely scrutinizing the actions of the shooting officers. FRB's have been less probing as to the officers' reasons for firing and consideration of alternatives to firing. Panel members are not asking officers for their knowledge of the Discharge policy and how they see their shooting as complying with the policy. The camaraderie surrounding an officer involved in a shooting is understandable. However, it may erode the oversight function of the FRB. A panel member apologized to one officer for the "Monday morning quarterbacking" by the FRB-- when reviewing the facts to determine whether the weapon should have been fired is the purpose of the FRB.

One possible solution is to have more than one citizen observer present. The CO is there to instill public confidence that the process does not rubber stamp the officers action." Perhaps having additional non-SPD employed observers can help balance the dynamic .

(ii) The CO should be present during deliberations, in addition to the case presentations. The inability to participate in the discussion of specific policies and how well they were followed limits the CO's effectiveness. This is especially a problem when coupled with the trend away from probing witness testimony during the presentations.

(iii) The CO should be provided the FRB's report, and an opportunity to comment, prior to the report being presented to the Chief of Police. This opportunity to comment provides the Chief with a different perspective, if there is one, in a timely manner, and before he or she approves the recommendation. This is particularly important if the CO remains excluded from deliberations.

(iv) Several officers complained about the lack of communication on timing and expectations regarding their return to duty. The Department needs to be clear about what needs to happen before the officer can return to duty and the timetable for those matters being accomplished. The officers should be updated when changes to the timetable occur.

(v) There is a serious problem with radio transmissions that endangered officers in two of these situations. I am sure the Department appreciates the problem, but it really needs a remedy.

C.O. ROE:

Number & Chair	Subject	Date of Incident	Date of FRB	Date of FRB Final Report	FRB Finding
09-04 Asst. Ch. Reed	Suicidal Caucasian male – in his apartment	05/22/09	06/17/09	07/20/09	Justified
09-05 Asst. Ch. Pugel	White male armed robber driving a Dodge Ram off-road vehicle.	07/01/09	08/05/09	08/31/09	Justified
09-06 Dep. Ch. Metz	4 black men in a mini-mart parking lot at 5:15 p.m. at 19th & Jackson.	07/06/09	08/06/09	09/02/09	Justified
09-07 Asst. Chief Reed	Officer fired at a car leaving scene of 29th & Yesler where the suspect had murdered an SPD officer.	10/31/09	12/17/09	12/18/09	Justified
09-08 Asst Ch. Sanford	Officers discharged weapons at a suspect in the 09-07 murder who was armed & shooting at them.	11/06/09	12/10/09	No report as person shot awaiting aggravated murder trial	
09-09 Dep. Ch. Kimerer	Officer shot man approaching his parked patrol car who he recognized as the murderer of Lakewood officers.	12/01/09	12/22/09	.	Justified

C.O. Adams:

Number & Chair	Subject	Date of Incident	Date of FRB	Date of FRB Final Report	FRB Finding
09-01	Officers shot at man who pointed a rifle at them.	01/15/09			
09-02	Officers shot man advancing toward them with a knife after tasking did not deter.	01/30/09			Justified
09-03	Officer off-duty, in an out-of-state bar, shot at a man in a multi-person melee.	03/31/09			Justified