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& BENDER**

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October 14, 2011

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Tim Burgess
Seattle City Council
P.O. Box 34025
Seattle, WA 98124-4025

Re: Firearms Review Board – Citizen Observer Report

Dear Mayor McGinn and Councilman Burgess:

Attached please find my Citizen Observer Report for 2010.

Very truly yours,


REBECCA J. ROE

Of Counsel
Croil Anderson
Mark A. Burke
William Rutzick

Since 1969

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CITIZEN OBSERVER 2010 REPORT

Rebecca J. Roe

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 three FRB's in 2010. Three others were attended by the alternate CO, Suzanne Adams.

FRB 10-01. On May 20, 2010, police were called to 3010 NW 73rd. A suspect had a weapon in his house, was suicidal and had threatened MHPs. The SPD hostage negotiator tried to talk him out of the residence. The suspect yelled at officers he was going to start "playing war" with them. He pointed what appeared to be a military assault rifle. When he then placed the gun on his shoulder and turned toward officers, one SPD officer fired 3 shots through the kitchen window at the suspect. None of the shots hit the suspect, who then surrendered. At the conclusion of the event, it was determined the "rifle" was not a real firearm.

FRB 10-02. On August 16, 2010, officers entered a QFC meat department to arrest a suspect who had seriously assaulted his mother the night before. The suspect had a record of criminal activity and mental instability. A lengthy physical struggle, almost five minutes, occurred in a small confined space. Well into the struggle, officers saw that the suspect had a gun in his waistband. Officers shot and killed the suspect when his hand was on the gun and his finger on the trigger.

FRB 10-3. On August 30, 2010, an apparently intoxicated man crossed the street in front of a patrol car with a knife and board in his hand. The officer got out of his vehicle and yelled for the man, who was continuing away from the officer down the sidewalk, to drop the knife. After a matter of seconds, and as the suspect was apparently turning toward the officer, the officer shot him 4-5 times and killed him.

FRB 10-04. On September 3, 2010, the suspect's daughter called 911 reporting she had talked to her father on the phone and he was drunk and suicidal. She reported hearing a

gunshot, then silence. She reported her father had several guns in his residence. The first officer on the scene heard a pop. Other officers started to approach the back of the house. Officers identified themselves. The suspect started out of the house with an AK-47 in his hand. The subject started to aim toward one officer and others fired and wounded the suspect. The suspect had an elaborate surveillance system and a marijuana grow operation.

FRB 10-05. November 22, 2010 paramedics responded to a call about a man slumped over in a car in the Beacon Hill area. They saw the suspect had a gun and ran for cover and called police. The call for police was received by SWAT team members who immediately responded. Officers arrived and ordered the suspect to throw the gun out of the car. He started trying to drive away instead. He intermittently held a gun to his head and appeared mentally impaired. Officers fired because they feared a suicidal man with a gun would get out on a public street and cause a clear danger to others from his driving, the gun, or both. The suspect was shot and killed.

FRB 10-06. Officers responded to a "man with a gun" call at 3rd and Yesler. A suspect matching the description was present. Officers ordered the suspect to stop. The suspect reached under his shirt and an officer saw what appeared to be the handle of a gun. The officer shot the suspect. The suspect was armed and it appeared the gun had been caught in his pants. The suspect was wounded by police gunfire.

3. Procedural Changes in the Past Year.

In some FRBs, the CO was permitted to attend deliberations, but not vote. In others, the CO was excluded from discussions.

Last year, I requested that I receive a draft FRB report prior to its being presented to the Chief for review. The request was designed to give me an opportunity for more timely input, particularly if my observations were at variance with those of the Board. I have not received the reports prior to being presented to the Chief, and in fact, only received one report out of six FRBs from SPD.

4. Issues, Problems and Trends.

Trends.

- a. Controversy surrounded the FRB in 2010. In my 2009 report, I recommended two significant changes in procedures. First was that the CO could participate in deliberations though not the actual vote. Second, I recommended two citizen observers. The City Council agreed with the changes. The Guild opposed the changes. During some of the FRBs, the CO was permitted to participate in deliberations, other times not.

I continue to believe the ability to participate in the discussion of the incident is critical and invaluable. I hope this procedure becomes the norm.

- b. Substantively, an issue that continues to be a source of conflict is the so-called “social contact” or “stop and talk.” While “stop and talk” may be good policing, if the person doesn’t want to stop or talk, the officer has to accept that unless they have a legal reason to demand compliance. Probable cause is not created by an individual disregarding an officer’s request, or even “order” if the officer has no right to issue the order. For instance, if an officer stops me on the street and demands my identification, I can say no and keep walking. My refusal to abide by his order gives him no right to escalate the situation into one which requires the use of force, particularly lethal force. The lack of understanding of the limits of their authority can and has led to tragic consequences.
- c. Another “trend” during the 2010 FRBs is the misinterpretation of the “21 foot” rule. Some officers offered “the rule” as justification for shooting a suspect armed with an edged weapon within 21 feet of the officer. This is not a proper interpretation of the 21 foot rule.
- d. “Man with a gun calls” appear to be the most frequent situation in which lethal force is used. Given court rulings that permit individuals to openly carry guns in situations that may cause alarm to many other people, these situations will certainly continue.

5. Additional training, policy changes, or procedural changes recommended.

a. Stop and Talk.

Officers need to be trained how to disengage peacefully from situations when their authority has been legitimately challenged. I don’t have access to DP&P 6.220 Social Contacts, Terry Stops, Arrest. However, I think the limits of probable cause, reasonable suspicion, Terry Stops and “social contacts” needs thorough review and training via role play. The continual refrain of “this wouldn’t have happened if he’d done what he was told” illustrates a lack of appreciation of the fact their authority is limited to enforcing lawful orders.

- b. Training regarding the 21 foot rule needs to be re-examined to ensure it is not being misinterpreted or misused.
- c. Review training of responses to open display of weapons situations. It is foreseeable that an individual with a gun at a large public gathering will respond negatively to being confronted by an officer asking that they put the gun down. There is significant tension between the gun owners Constitutional right to openly carry a gun, and the officers safety in responding to a complaint from a citizen who is “alarmed” by the manner of the display. RCW 9.41.270. As many confrontation reduction scenarios as can be contemplated should become part of training if they aren’t already.

- d. Reports: I renew the request to be sent a copy of voting members' report to the Chief prior to it being sent. Failing that, I request someone in the Department be tasked with ensuring I receive the reports.

Number & Chair	Subject	Date of Incident	Date of FRB	Date of FRB Final Report	FRB Finding
10-01 AC Pugel CO Adams	Suicidal male shot at his residence in Ballard after making threats to "play war."	5/20/10	6/15/10	6/15/10	Justified
10-02 AC Metz CO Adams	Officers tried to arrest a DV suspect in a Wedgwood QFC. Suspect was shot and killed after officers saw he had a gun.	8/16/10	9/13/10	9/15/10	Justified
10-03 AC Kimmerer CO Roe	Intoxicated male shot on street in Belltown after refusing to drop a knife.	8/30/10	10/4/10	2/15/11	Unjustified
10-04 AC McDonagh CO Roe	Intoxicated, suicidal male shot in his West Seattle residence after he aimed an AK 47 at officers.	9/3/10	9/30/10	10/1/10	Justified
10-05 AC Metz CO Roe	Officers called by paramedics to man in a car with a gun. Male, incoherent, fatally shot when he started to drive away.	11/22/10	12/16/10	None received	Justified
10-06 AC Reed CO Adams	Officers responded to a "man with a gun" call at 3 rd and Yesler. The suspect was shot when the gun was displayed.	12/7/10	1/5/11	2/11/11	Justified