

**Ad Hoc Police Practices Review Commission  
Independent Oversight and Investigations Subcommittee  
June 16, 2015, 7:30PM  
Room 232, Fairfax County Government Center**

Meeting began at 7:30

Members Present:

Jack Johnson  
Michael Kwon  
Adrian Steel  
George Becerra  
Sean Corcoran  
John Wallace  
Bob Callahan  
David Stover  
Bob Horan  
Jeff Stewart  
Ben Getto  
Robert Sarvis

Members Absent:

Nicholas Beltrante  
James Stewart  
Amy Dillard  
Marc Harrold  
Sal Culosi

Others Present:

Clayton Medford  
Ed Roessler  
Ray Morrogh  
Don Geer  
Justin Palenscar  
Andy Hill

Approval of May 19 minutes

Multiply moved and seconded and approved without objection

Approval of June 1 minutes

Multiply moved and seconded and approved without objection

Mr. Johnson introduced Mr. Roessler and spoke about the charge of the subcommittee

Mr. Roessler introduced Lt. Justin Palenscar

Mr. Roessler said the PERF report will be presented at the June 22 Ad Hoc Commission meeting.

Mr. Palenscar and Mr. Hill gave a presentation on Internal Affairs that included:

- Overview of staffing
- National accreditation organization (CALEA)
- Investigative authority (i.e. what types of cases they investigate)
- Historical case loads
- Source of administrative investigations (internal vs. citizen)
- Most frequently investigated complaints (numbers reflect officers investigated, not number of incidents)
- Investigation outcomes
- Dissatisfaction with service complaints
- Early Warning System
  - Every incident recorded by Internal Affairs is included in a quarterly reports. Those reports include warnings to commanders about officers that have reached a threshold of incidents. Those commanders then review the officer's record and judge whether action needs to be taken to correct the behavior.
- Use of Force documentation
- Use of Force by instrument
- Data collection

Members asked questions regarding further breakdown of data, investigation of off-duty officer-involved incidents, assignment of cases, performance measurement, results of complaints, limits on officers and how that can lead to dissatisfaction with service complaints.

Mr. Steel asked about pointing a firearm and whether that is a use of deadly force. He understood that it was recorded as a use of deadly force from the Use of Force Subcommittee. Mr. Palenscar said it is recorded as a use of force, not deadly force.

Mr. Roessler said his intention is to continue to publicly release the kinds of information being presented and expand upon that based on public feedback. He said FCPD makes this kind of presentation to civic groups when asked but are looking to do more to increase transparency.

Ms. Kimm asked about whether race of citizen is included. Mr. Roessler said his goal is to collectively try to include that in these reports but there are challenges and it is a work in progress.

Mr. Steel asked about separation of criminal investigations and administrative investigations.

Mr. Kwon asked about high crime in Mt. Vernon. Mr. Hill said it is directly reflective of the calls for service. Mr. Roessler added that crime rate is also reflective. Mr. Corcoran said it is a challenging environment but is staffed with high quality officers.

Mr. Johnson asked Mr. Hill what resources does IAB need to improve, if any.

Mr. Hill said recently added position will help and updating the current software would improve capabilities. Mr. Roessler said new officers are needed (included in five-year staffing plan) and that means new IA investigators will be needed.

Mr. Johnson asked Mr. Roessler for his views on independent oversight and investigations and summarized previous discussions of subcommittee.

Mr. Roessler said the detectives investigating police officers are working for Mr. Morrogh during the investigation, not him, and are independent.

Mr. Morrogh said he is 1 of 120 Commonwealth's Attorneys in Virginia. He works with multiple law enforcement agencies including county, towns, Fairfax City, federal. He said he does not work for those police departments nor the jurisdictions. He does not have any investigators on staff although he said that would be helpful. Arlington and Virginia Beach have 1 each, maybe 2 in Virginia Beach. He said prosecutors across Virginia do not seem willing to give up their role in investigating officer involved shootings (OIS).

On task force, Mr. Morrogh asked what is the goal? Fixing perception – perception does matter but what is reality. He has never had a problem with FCPD detectives on OIS. They've never refused to follow his orders. He said he is not close with the FCPD at any level. If he identifies a conflict, he will ask for a special prosecutor. He has done so before but not with an OIS.

Mr. Morrogh said when he hit a roadblock in the Geer case and asked for assistance, he was blamed for punting the case. He feels now he is being asked to punt all OIS cases. He sees no reason to do that. On task force again – he doesn't believe other police departments will agree and other prosecutors don't believe it's the right thing to do.

On Attorney General review – the Virginia Attorney General does not have trial lawyers.

On State Police – in Northern Virginia most State Police are not detectives.

Mr. Morrogh said you need experienced investigators.

Internal Criminal Investigative Bureaus – the process and the system needs to get better about releasing information.

Mr. Morrogh said the Geer case is a very sad aberration but something needs to be done to be better.

Mr. Morrogh discussed the Officers Procedural Guarantee Act and the 48-hour rule.

Mr. Morrogh discussed the Garrity rule and how it grants more rights to officers than are afforded to non-officers.

Mr. Morrogh said oversight is good and having citizen involvement is positive.

Mr. Morrogh discussed the difference between federal prosecutors and his office.

Mr. Johnson discussed the task force idea and the lack of similar resources in other jurisdictions (such as forensics).

Mr. Johnson asked about perception that because Fairfax County has never prosecuted an officer on a use of force case that there is an inappropriate relationship between the prosecutor's office and the FCPD. Mr. Johnson said in fact officers are prosecuted for a variety of incidents.

Mr. Morrogh said it is not unusual around the country for officers to not get prosecuted for use of force. Mr. Morrogh said he did prosecute Ofc. Amanda Perry for reckless driving although she was ultimately acquitted.

Mr. Steel said trend nationally, pointing to the White House report and Howard/Montgomery counties, is independent investigations and prosecutions.

Mr. Steel asked about the 48 hour rule and said it is not in the Procedural Guarantee Act. Mr. Roessler clarified that 48 hours is a best practice. Mr. Roessler said a citizen shooting presents a greater flight risk than officer-involved shooting. Mr. Steel said there is an SOP on confidentiality.

Mr. Callahan said IACP best practices and other science that advocates for time for officer to recover. It is not the same as a homicide investigation and it shouldn't be seen as equal. He said the officer has a different psychological reaction (he cared he shot versus a criminal that does not). On collusion during 48 hours, Mr. Callahan rejected the notion.

Mr. Stewart said he was interviewed by Det. Flanagan after the Geer shooting. He said had he had 48 hours to think about what he was going to say, he wouldn't have said what he thinks had an impact on that case. Mr. Morrogh said he's never seen evidence of cops colluding to get around case. Mr. Stewart said this is all about perceptions. **He said there should be a citizens complaint review board, an extra line between FCPD and Commonwealth's Attorney's Office. It would look at citizen complaints and use of force.**

Mr. Morrogh said he agrees it's about perceptions but doesn't know the answer.

Ms. Kimm said the lack of transparency causes a perception problem.

Mr. Steel asked about reviewing a real use of force case.

Mr. Roessler pledged to improve transparency and mentioned recent prosecution of officers (theft of fuel, child pornography).

Mr. Roessler said the PERF Report will be presented on Monday and having this report done has been his intention since he became chief.

Mr. Stewart said the recommendation should be something FCPD feels would help with the perception problem.

Mr. Steel discussed the merits and drawbacks of some options.

Mr. Johnson said he liked the idea of an independent auditor reviewing IAB case. The report of the auditor would be public.

Mr. Stewart said the IAB investigation doesn't begin until end of criminal investigation. He said 90 days after incident is a reasonable time to conclude criminal investigation – could that be handed to a review board at that time?

Mr. Morrogh said it takes a while to get investigative reports to prosecutor and for prosecutor to read file.

Mr. Stewart asked about the incident report.

Mr. Morrogh said defense lawyers will be extremely thorough.

Discussion was held on whether criminal charges would be recommended by civilian board.

Mr. Roessler said FCPD is reviewing old cases to see where FCPD can improve. Better media releases help.

Mr. Stewart said civilian board would review incident report and determine integrity, not facts of case. Mr. Roessler said he is trying to address this issue in what he's proposing.

Mr. Steel asked if there is a concern about a finished IAB report not being reviewed by a citizens review board. He said the public wants to know that internal affairs was done properly.

Mr. Roessler said making public some records will have a chilling effect on FCPD and the willingness of officers to be forthcoming in investigations.

Mr. Stewart said review of criminal case, officer is protected. In administrative, statements are compelled.

Mr. Becerra said public trust is what is charged with restoring. He said Mr. Morrogh should be going out in the community and helping them understand his role. He asked about 48 hour rule and whether they can change that.

Mr. Johnson said officers are faced with split second decisions civilians never see. He feels the 48 hour rule also allows detectives to begin collecting evidence, possibly against the officer.

Mr. Roessler said 48 hours is not set in stone but thoroughness of criminal investigation leads to a better IA investigation.

Mr. Corcoran said in overwhelming majority of use of force, they are met with some sort of stimulus that is a violation of the law. Officers are often victims.

Mr. Wallace said when investigating OIS, during the 48 hours the officer is the only one not being interviewed. At the Sully station shooting, he interviewed an officer involved who did not divulge details within 3 hours he did days later.

Mr. Callahan said the most important people to consider is the family of the civilian involved in the shooting. Mr. Callahan discussed the effects of a citizen group on potential civil litigation related to an OIS.

**Mr. Johnson said the oversight body needs to have credibility.**

**Mr. Stewart said citizens panel doesn't need to look at all cases. They could review under some form of confidentiality. They don't need great power but should be able to make recommendations for policy changes if necessary.**

Mr. Johnson asked for Mr. Roessler's recommendation.

Mr. Roessler said the use of force review by PERF encompasses what he feels FCPD needs. He believes involving people in the community in regular closed case reviews is good, need to maintain confidentiality, look at facts of event, issue findings, recommend corrective action. He is not in favor of handing the case over – there are victims, chilling effect on FCPD.

Mr. Steel confirmed that if this review found a need, FCPD could re-open an IA case.

Mr. Johnson asked for Mr. Morrogh's recommendation.

Mr. Morrogh said the work of the commission is important. He would like his own investigators but FCPD is very high quality. Systemically, Fairfax County is in a good place.

Mr. Johnson said by the next 2 meetings, he wants to develop majority and minority recommendations. The subcommittee will vote on those recommendations but present both as choices to the full commission.

Mr. Becerra said the NACOLE letter that was distributed is not helpful.

Mr. Stover's working group will meet at 5pm on June 30.

The subcommittee requested a presentation on the role of the County Attorney in the investigation of use of force incidents, the limitations on what an investigative body can do. Ms. Kimm asked if the county should suppress information in order to protect itself against civil liability.

Meeting concluded at 10:15.

Minutes prepared by Clayton Medford, Office of Chairman Sharon Bulova  
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