

**Ad Hoc Police Practices Review Commission  
Use of Force Subcommittee  
July 15, 2015, 7:00PM  
Room 232, Fairfax County Government Center**

**Subcommittee members present:**

Brad Carruthers  
Sal Culosi  
Mary Kimm  
William Moncure  
Phil Niedzielski-Eichner  
Randy Sayles  
Jodi Shlesinger  
Michael Shumaker  
Joseph Smith  
Adrian Steel  
Bernard Thompson

**Not present:**

Hassan Aden  
George Becerra  
Joe Cammarata  
Ralph Cooper

**Others present:**

Clayton Medford  
Katie Boyle  
Anita Culosi  
Gordon Dean  
Gervais Reed  
Mary Tracy

Mr. Niedzielski-Eichner opened the meeting at 7:01pm by welcoming members and the public.

Mr. Sayles moved approval of July 1 minutes, multiply seconded. Mr. Smith asked his absence at July 1 be noted. Minutes approved unanimously with change.

Mr. Niedzielski-Eichner reviewed the remaining schedule of the subcommittee. Representatives from the County Attorney's Office and the Commonwealth's Attorney's Office will be present at the July 29 meeting. Mr. Niedzielski-Eichner repeated the possibility of a minority report. Mr. Culosi asked about the ranking of priorities and how a minority report will be presented. Mr. Niedzielski-Eichner recommended the subcommittee wait until that process occurs and how individual members feel about recommendations at that time.

The subcommittee heard members' reports on Department of Justice (DOJ) and White House reports and Electronic Control Weapons policies. Each of these member reports are attached to these minutes and are considered part of the meeting record.

Mr. Culosi provided his summary of **DOJ's report on the Cleveland Police Department**. He found the issue of pointing weapons to be the most relevant to the subcommittee. Mr. Culosi recommends changes to FCPD General Order 540.1 related to pointing the weapon, reporting that act, the definition of "ready gun," the officer announcing his/her presence.

- Mr. Steel asked what were the recommendations in the report related to pointing the gun? Mr. Culosi said he either missed it or it wasn't answered.

- Mr. Thompson asked about reporting requirement.
- Mr. Moncure said the report does not seem to fully answer how to correct the deficiency in Cleveland on pointing a gun.
- Ms. Kimm said it does mention reporting the drawing of a gun. She added the reporting requirement should not be onerous to FCPD.
- Mr. Carruthers said he sees no problem with reporting drawing weapon if it is pointed. The daily documentation of drawing no matter whether it is pointed would be very time consuming. He said FCPD searches two dozen businesses and residents a day due to open doors or alarms, for example. PERF found that FCPD is one of the few that reports drawing and pointing. In regards to drawing in the presence of a citizen, it would likely be reported anyway due to the seriousness of the situation.
- Mr. Niedzielski-Eichner said this will not be the time to debate recommendations – that will come later in the process. Mr. Thompson asked about that process and when would someone be able to challenge some assumptions. Mr. Niedzielski-Eichner said there will be time to debate.
- Mr. Moncure asked Mr. Culosi to clarify the two situations in his comments – when a weapon is drawn in the presence of a person and when another person is not.

Mr. Sayles provided his summary of the **DOJ report on the Ferguson, MO Police Department**, including the reading of the Addendum.

- Mr. Smith pointed out the starting salary of a police officer would make living in Fairfax County difficult. On independent oversight, what function will the Board Mr. Sayles recommends perform? Oversight of policies, use of force itself, or something like a civilian review board? Mr. Smith said the latter potentially conflicts with state statutes. Mr. Sayles said that would be determined by the subcommittee, but it would need authority and clout to influence FCPD to correct problems the oversight board finds. Mr. Smith said since the Public Safety Committee is a subdivision of the Board of Supervisors, the criticism of it not meeting should be directed to the Board of Supervisors and not FCPD. Mr. Sayles said that committee (the Public Safety Committee) should be doing this oversight and its membership should be in line with what he recommends.
- Mr. Steel said the importance of the Use of Force Subcommittee recommending oversight as a concept is helpful to the Oversight Subcommittee but allow the Oversight Subcommittee to delve into the specific recommendation. Mr. Smith highlighted the systemic nature of the problems in Ferguson related to the courts system and the police department colluding.

Ms. Kimm provided her summary of the **DOJ report on the Philadelphia, PA Police Department**.

- Mr. Smith asked what would be the logistical difficulty in tracking the racial data? Mr. Reed said race is on the report so it would be a data mining undertaking – it's likely a matter of manually pulling data since some are paper reports. Ms. Shlesinger asked if there is a reason why we don't pull the data to determine if there is profiling. Ms. Kimm said in the annual summary of use of force incidents, that piece of data was missing and it seems reasonable. Mr. Reed said that request would be seen as reasonable – there is nothing that would prohibit it.
- Ms. Kimm said information systems are not stellar across the county government. Mr. Thompson said there appears to be racial diversity in officer involved shootings and that most cities do not track race.

Mr. Shumaker provided his and Mr. Sayles' summary of the **Final Report of the President's Task Force on 21<sup>st</sup> Century Policing**.

Mr. Smith provided his summary of the **Police Executive Research Forum/DOJ-COPS report on "Electronic Control Weapons (ECW) Guidelines."** Mr. Smith gave a brief history of his law enforcement and legal experience, representing police, serving in internal affairs at the FBI. He said he is concerned with militarization of police, the use of SWAT in the Culosi case, the over-dependence on ECW.

- Mr. Smith said he does not get a sense based on his work on the commission that his perception of an over-dependence on ECWs by rank-and-file is accurate – he does not see that in FCPD. He said there is a need to stress the lethal potential of an ECW to officers. Mr. Smith said that lethality means it may not be a good idea to issue one to every officer.
- Mr. Shumaker asked about decline in use reported by PERF and whether PERF also noted a decline in carrying. Mr. Smith did not see that in the PERF report. Mr. Smith posited the costs of mandatory medical treatment for someone in custody where an ECW is used. He said a doctor should teach officers about the effects of ECW.
- Mr. Steel said DOJ Philadelphia recommend requiring carrying of ECWs to avoid using gun.
- Mr. Culosi said an ECW is less lethal than a gun. He added he is not sensitive to the cost of treatment given the lethality of the firearm as an alternative. While on a ride along, an officer told him he didn't like to carry it because it leads some officers to avoid de-escalation.
- Mr. Carruthers said there seems to be a presumption that an officer would escalate from ECW to firearm but that is inaccurate. Officers have tools, including spray and batons. The ECW is another tool of less lethal category. Using lethal force is at the end of a big process. ECWs are not a silver bullet. Mr. Carruthers noted the 21 foot limit of firing an ECW. He said if an officer has created distance to await additional officers, the level of force may be lower.
- Mr. Sayles said Chief Roessler has emphasized enhanced training to overcome the kinds of things Mr. Culosi heard on his ride along.

Mr. Thompson provided his report on policies on the use of **body cameras and dashboard cameras**, including when they are required to be used, the retention of the video, the public release of and public access to the video, how best to respect individual privacy interests, and the administrative burdens associated with the use of such cameras. He offered language to tighten the draft command staff memo to get closer to the goal of improving community policing. He said it is far more likely for the officer to prevail in a dispute when there is video, and there is a reduction in litigation stemming from citizen complaints against police. This means money could actually be saved when compared against cost of storage and implementation of body worn camera program.

- Mr. Culosi asked if there were any options that would prevent police from releasing video. Mr. Thompson said that is something that FCPD would need to consult with county attorney and legislature on those issues, particularly the Virginia Freedom of Information Act. Mr. Culosi said he was skeptical that if the video shows police doing wrong, they won't release the video. Mr. Thompson said it would almost require a conspiracy to prevent release – don't allow officer to control video, built-in safeguards to prevent tampering/deletion/editing.

- Mr. Smith said consequences of deliberately shutting off video are serious and there is legal precedent. On FOIA, there is an exemption for law enforcement records and he expects that to be invoked in video matters.
- Mr. Steel asked whether all patrol cars have dash cams. Mr. Carruthers said yes.

Mr. Niedzielski-Eichner thanked the Subcommittee members for their benchmark summaries and reports. He also brought Subcommittee attention to Ms. Shlesinger's recommendations as provided at the meeting and via e-mail.

In light of the late hour, Mr. Niedzielski-Eichner recommended foregoing the brainstorming, as called for by the agenda. He indicated that, alternatively and since each presentation had associated recommendations, he and Mr. Medford can capture and compile them.

Mr. Niedzielski-Eichner reviewed the plan for the remainder of the Subcommittee's work, including the upcoming meeting on the 29<sup>th</sup> at which recommendations will be clarified. He indicated that the August 12<sup>th</sup> meeting will be focused on establishing the Subcommittee's recommendations for conveyance in a report to the Commission. He asked that Subcommittee members provide any additional recommendations, along with an explanation of it and rationale for it, to him and to Mr. Medford in writing by July 22<sup>nd</sup>.

Mr. Steel noted two outstanding items to raise. He asked about whether the UOF case synopses would be provided by Lt.Col. Ryan and posted on the Chief's website. On pursuit policy, he pointed to General Order 501.1, section 11 on page 16, and said there is nothing to prevent an officer from escalating a traffic stop to a high speed chase.

Ms. Kimm said she still remains troubled by the lack of information on closed use of force cases being provided by FCPD. Reducing the request to synopses is difficult enough. She suggests the committee file a FOIA request for the reports from the Use of Force Subcommittee.

Ms. Shlesinger said the use of force by non-SWAT, such as narcotics officers, should be looked at as well. Mr. Culosi said narcotics is included in warrant risk assessment form. Ms. Shlesinger said the Chief told her that is not the case.

The meeting concluded at 9:21pm.

