

## Summary Public Safety Subcommittee Committee Meeting

July 19, 2016

### ***Committee Members Present:***

Sharon Bulova, Chairman  
Penelope Gross, Mason District (Vice Chairman)  
John Cook, Braddock District (Committee Chair)  
John Foust, Dranesville District  
Pat Herrity, Springfield District  
Catherine Hudgins, Hunter Mill District  
Jeff McKay, Lee District  
Kathy Smith, Sully District  
Linda Smyth, Providence District  
Dan Storck, Mount Vernon District

### Agenda:

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/july19-agenda-public-safety.pdf>

### Meeting Materials:

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/july19-materials-nacole-presentation.pdf>

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/july19-materials-oversight-board-implementation-plan.pdf>

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/july19-materials-oversight-flow-chart.pdf>

Meeting was called to order at 1:06 P.M. A moment of silence and contemplation was shared on behalf of the officers recently killed in Dallas and Baton Rouge.

Supervisor Cook noted an additional Public Safety Committee meeting timeslot is available on 9-13-16 at 3:00 PM, in addition to the previously scheduled meeting on 10-25-16 at 1:00 PM.

Supervisor Cook made some opening remarks about the process and the need for clarity and understanding as we move forward. Supervisor Cook read an excerpt from the Ad Hoc Commission report on the benefits civilian and independent oversight can bring, including legitimacy, additional community engagement, and checks and balances.

After the brief introduction and overview, a presentation, "Overview of Independent Review/Civilian Oversight of Law Enforcement" was made by Nicholas Mitchell, Independent Auditor for the City and County of Denver, CO.

- Mr. Mitchell's presentation focused on what civilian oversight looks like and entails. He referenced the Christian Klossner PowerPoint prepared for the National Association for Civilian Oversight of Law Enforcement presentation for the Ad Hoc Police Practices Review Commission. He noted civilian oversight can be created proactively, in response to critical incidents or as part of US DOJ settlement agreements. He cited the President's Task Force on 21<sup>st</sup> Century Policing, Recommendation 2.8: "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community." Most major cities have some form of civilian oversight, the use of which has expanded considerably in recent years to over 200.
- Mr. Mitchell noted that civilian oversight strengthens trust within the community and increases accountability. It can also help to manage organizational risk, increases lines of communication, and ensures civil rights.
- Mr. Mitchell discussed several different types of citizen oversight models. The takeaway message is that there is no one standard model or best practice. It depends on the needs of a particular community. Oversight is moving away from the reactive mode of investigation of individual complaints and moving more towards systemic data review and proactive exploration of policies, training requirements, hiring and organizational change.

## Discussion

- Supervisor Storck asked how to incorporate the police perspective in an oversight committee. Mr. Mitchell noted that it is important and should be incorporated. At least one person with uniformed experience, etc. Cautioned that participation of an active, current officer from the same jurisdiction could impair public perception of a committee's independence.
- Supervisor Cook asked about police officer rights in general. Mr. Mitchell's response was that officer rights must be protected and heard as part of any process. Sworn Officer representative 2Lt. Tim Burgess, raised the implications of both LEOBR and the Dillon Rule as applied to a review committee functioning in the Commonwealth of Virginia.
- Chairman Bulova asked if the employee representatives addressed the officers' rights issues during discussions of the sub-committee. Det. Sean Corcoran, Sworn Officer representative, added some perspective on this issue.
- Supervisor Gross asked about the makeup of Denver's oversight committee. Mr. Mitchell responded that it is made up of seven members appointed by the mayor and confirmed by the council. Supervisor Gross asked about how to get appropriate diversity on the committee. Mr. Mitchell responded that it should be broadly reflective of the community it serves. Some jurisdictions have established a legal requirement for diversity on their committee.
- Supervisor Herrity asked about more specifics of the Denver committee, i.e., its staff size (staff of 14 support committee of 7 was the response), the support they provide and reporting requirements. Also asked about the budget size (\$1.4M was the response)
- Supervisor Herrity asked about what changes have come as a result of oversight in Denver. Mr. Mitchell talked about a few significant findings including the use of body cameras and some of the risks of that. In addition, he noted the committee had completed a systemic analysis of policies and training on dealing with situations involving officers and moving vehicle incidents. They also revised certain policies for those working in jails.
- Supervisor Hudgins asked Mr. Mitchell if he was aware of any oversight entities that have started up but then did not continue going forward. Mr. Mitchell responded that entities of this

nature usually do not go away on account of no longer being needed; however, sometimes they end up being restructured or redirected in some manner due to new events, etc.

- Supervisor Foust asked Mr. Mitchell if he is a lawyer and if he feels that is a necessary pre-requisite to serve in this role. Mr. Mitchell responded that he is a lawyer and it is a natural fit due to the nature of the work (especially initially); however, he feels it is not a requirement, but a preferred qualification.

Following that discussion, a presentation on agenda item “Ad Hoc Independent Oversight and Investigations Subcommittee Recommendations” was made by Jack Johnson, Chair of the Independent Oversight and Investigations Subcommittee. Mr. Johnson read specific excerpts from the Ad Hoc Report. He also stated that the citizen review function is not meant to be another investigation, but an independent review of the Police Department’s investigation.

Following that discussion, Chief Edwin Roessler Jr. provided his perspective on the Subcommittee/Commission recommendations. He fully supports the independent auditor and civilian review recommendations and stated there is no conflict in moving forward. Transparency is what the community needs and he fully supports. Chief Roessler stated the need to work with the entire community to fully restore the public’s trust in the Police force, and the need to have an engaged community (a blessing for Fairfax County). He also He also stated that the County should not create a system that ignores the rights of employees, the protection of 5<sup>th</sup> amendment rights is critically important.

Following that discussion, sworn officer discussion and perspective on the Subcommittee/Commission recommendations was provided by Det. Sean Corcoran. He stated that it is important to get these investigations right. Transparency and accountability is critical. An independent auditor function and a citizen review panel can help towards that; however, he is concerned about the cost of these initiatives when money is tight. Internal Affairs is already very strapped. He stated that the Office of the Commonwealth’s Attorney needs investigators on staff, and that a lot of things need to be taken into account.

### **General Discussion**

- Chairman Bulova asked about whether the budget implications were discussed in the Ad Hoc committee. Mr. Johnson responded not at the “nuts and bolts” level but they felt this was important and should be funded, and not as an offset to the Police Department (i.e., fund this but not by cutting something else).
- Supervisor McKay asked more about the specifics discussed by the Ad Hoc group. Mr. Johnson noted that a specific implementation plan still needs to be discussed.
- Supervisor Herrity stated that we are all for oversight; however, the “devil is in the details.” Asks specifically what will this cost both in terms of dollars and in distraction to the Police Department. This involves creating two separate new bureaucracies: one for audit and another for civilian review. What is the problem we are solving? Is there some other way to get at transparency without creating two bureaucracies? Chief Roessler noted that he cannot put a specific cost on the impact to the Department but that the value from increased transparency and trust in the community is significant.
- Supervisor Gross asked some clarifying questions on how things will work if an oversight committee exists. She is concerned about how long it may take to get a response. Mr. Johnson also responded that current business practices will continue but that this provides an additional

option for citizens to get their case/voice heard. Supervisor Bulova also provided some clarifying remarks that this is intended to be an alternate option for community members in getting something reviewed.

- Supervisor Cook asked Mr. Johnson to read the specific recommendation of the Ad Hoc committee as to what types of cases would be heard and how the processes would work. Mr. Johnson read the relevant recommendations for both the Office of Internal Auditor and Citizen Review Panel verbatim.
- Supervisor L. Smyth noted that having an objective process is very important and has value. It's important to have an option besides going through the Police Department. Supervisor Hudgins also noted that the faith and confidence of the community is important and having an independent option is an opportunity. She emphasized the clarity of the facts to be communicated to the community.
- Supervisor K. Smith asked for clarification on the current process. Chief Roessler responded that every case is different and will require differing amounts of time. He noted that there needs to be better communication to the complainant - face to face, not a boilerplate letter. He used the example of a questioned traffic stop. There is a methodical, multi-layered process. Supervisor K. Smith asked about the number of reviewing levels for a complaint or investigation. Chief Roessler and Deputy County Executive Dave Rohrer discussed the differing roles at each level from Squad Supervisor through local commanders to a Deputy Chief and then to the Chief of Police. Chief Roessler explained rationale for the current levels of review and adjudication in the disciplinary process.
- Chairman Bulova does not think this new process will add an additional layer, but actually serve as another portal by which complaints can get reviewed.

### **Specific Discussion on the Police Auditor Position**

- Supervisor Foust is concerned that the draft position description states that the chosen individual must be a member in good standing with the bar association of Virginia. Supervisor Foust believes that while a lawyer is beneficial, we may be limiting our options. He asked if the language can be amended to say a legal background is a preference or preferred qualification. Supervisor Cook took that as a friendly recommendation.
- Discussion also ensued on the driver license requirement.
- Some clarity of the scope is provided by Mr. Johnson. Supervisor Cook agreed.
- Discussion of the specific role of the auditor (reviewer versus hands-on participant) ensued. Members of the Ad Hoc Commission try to clarify their intentions in this area. Some clarification of language (the auditor as participant in the process but not conducting the investigation) is discussed. It is intended to be a collaborative process with regular briefings. The auditor can make suggestions. It makes for a better investigatory process. Mr. Johnson suggested that the scope of the auditor's investigation be included in the draft position description (Director Catherine Spage, DHR, in attendance).
- Supervisor Herrity is concerned that in some years the amount of cases that would rise to the level to heard/reviewed would be very low (he mentioned that it would have been zero in 2015 for example). Mr. Johnson notes that the review of PD policies and procedures is another role of this position and that would take a great amount of time in years where cases were low.
- Supervisor Herrity also noted that appropriate training would need to be taken by the successful candidate. (Specifically mentioned "Shoot. Don't Shoot" training as an example.)

- Supervisor McKay stated that there should not be a term limit for the auditor term. Should serve at the pleasure of the Board. There needs to be accountability (an annual review by the Board) but people may not apply if there is limited long-term job security. Supervisor Gross said this could be handled as a contract similar to the County Executive and County Attorney. Mr. Johnson wanted to strike a balance between the perception of an “imbedded individual” and the concern raised by Supervisor McKay.
- Supervisor Cook asked if the Board is ready for an Action Item on the auditor position. Supervisor Bulova indicated that she is (and several other Board members also nod in the affirmative) but noted that due to the calendar, they can still discuss again at the 9-13-16 Public Safety Committee meeting before voting at the Board meeting on 9-20-16.
- Supervisor Herrity is concerned that this may be moving too fast. After additional discussion, Supervisor Cook said an action item will be drafted for the 9-20-16 Board meeting on the Police Auditor position. The civilian review board will get further discussion on 9-13-16 Public Safety Committee meeting as today’s meeting has already gone beyond its allotted time and then be an Action Item at a future Board meeting.

The meeting adjourned at 3:15 P.M.