

Remarks to the Police Practices Review Commission by Dan Heily on May 18, 2015

## **Introduction**

My name is Dan Heily, and the takeaway from this soliloquy is that it is vital that the Internal Affairs Department be a separate career service for officers and that the head of the IA be at the same level as the police chief, like New York City. So let me begin.

I reluctantly began my association with the Fairfax County Police Department in 1993. This occurred when officers Davis and Williams entered onto the family farm and charged three of my children with possession of fireworks, and myself with three counts of contributing to the delinquency of a minor. All the criminal complaints were dismissed for lack of probable cause. However the proceedings were recorded by a court reporter.

During the process, I requested information via FOIA. All of which were ignored. After the criminal proceedings, sued the police department to obtain my FOIA data. The court dismissed my lawsuit because I did not address my FOIAs to the party that had custody and control, namely the board of Supervisors. A mistake I would never make again.

In 1996, I filed a federal civil rights lawsuit against Fairfax County and the involved officers. Robert Ross was the attorney that defended.

## **Officer Curtis Davis**

At the criminal trial, Officer Davis testified that he went onto the farm as a result of a radio call. This resulted in the charges being dismissed since he had no probable cause. At the deposition for the civil trial, he claimed to have heard shots while on the public highway, then entered the property.

Officer Davis also denied hearing my request for an attorney. However, Officer Williams, the second officer on scene, did testify that he did hear my request for an attorney.

Even though I complained about the perjury, no adverse action was taken against Officer Davis. Mr. Ross indicated that the matter had been referred to the Commonwealth Attorney who declined to prosecute.

Officer Davis was eventually promoted from the District Station to Police Headquarters. I guess that being a documented perjurer is a career enhancing skill for a policeman.

## **Search without Warrant**

Section 19.2-59 of the Code of Virginia states: *"No officer of the law or any other person shall search any place, thing or person, except by virtue of and under a warrant issued by a proper officer. Any officer or other person searching any place, thing or person otherwise than by virtue of and under a search warrant, shall be guilty of malfeasance in office. Any officer or person violating the provisions of this section shall be liable to any person aggrieved thereby in both compensatory and punitive damages. Any officer found guilty of a second offense under this section shall, upon conviction thereof, immediately forfeit his office, and such finding shall be deemed to create a vacancy in such office to be filled according to law."*

This code section is so important that in order to become a police officer in Virginia, you

must receive training on 19.2-59. Those training standards are promulgated by the Virginia Department of Criminal Justice Services in their document that delineates mandatory training topics.

No Fairfax County police officer has ever been convicted under 19.2-59. The reason that I know this is through FOIAs to the police department requesting the number of convictions. After losing my FOIA lawsuit I started directing my FOIAs to the Board of Supervisors. The police department was then very responsive to my FOIAs.

Unfortunately, this came to a halt when Virginia code was change to exempt police records from FOIA.

You may remember a time when the Fairfax County Police teamed with the Virginia Alcoholic Beverage Commission officers to search the bars for drunk patrons. This practice was quickly stopped by complaints of the public and the bar owners. I then submitted 19.2-59 complaints to the VABC and the Fairfax County Police. The VABC responded by admitting fault, apologizing and promised to never do that again. Fairfax County Police never investigated, and only sent me a self serving press release.

### **Police Department Response to Police Complaints**

Filing a police complaint usually results in the following. First, the complaint is ignored. I then resend the complaint to each individual supervisor which usually results in one of the following actions: We have thoroughly investigated your complaint and find no wrongdoing; or *"As your complaint does not rise to the level of reasonable suspicion of misconduct by any Fairfax County Police Officers, no further investigation will be conducted into your complaint."* Which was the actual response in the searching of bars. In other words, admitted statutory malfeasance does not rise to the level of reasonable suspicion of misconduct.

### **Filing a criminal complaint against the police**

Now let us turn to how a citizen can file a criminal complaint against the police. I tried by going to a magistrate. However, the magistrate would not proceed without a police report.

There is a provision in the law that a judge can initiate criminal proceedings upon a sworn statement. I sent the sworn Bill of Complaint in the case of John Geer to the chief judge of Fairfax County Circuit Court and requested that criminal action be initiated. This documented the shooters action that could be considered anywhere from capital murder to manslaughter.

The Chief Judge declined because even though the facts that I sent hime were sworn, I was not the one doing the swearing. When the grand jury was formed, I knewl that it would be pointless appealing to the Virginia Supreme Court

### **Robert Ross**

18 Section 4 defines misprision of felony as follows: *"Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both."*

Bob Ross should have reported Officer Davis's felony perjury but did not.

During the federal civil suit, I started using FOIA to discover documents. Apparently, Mr. Ross did not like that because it shortened the delivery time, and was not subject to scope or objection. He indicated his displeasure by requesting that I stop communicating with his clients, namely the Board of Supervisors. I asked him to reduce his request to writing so I could amend my lawsuit for his interference with my constitutional right to communicate with my elected officials. Needless to say, I never received a written request.

Mr Ross became a defendant in my civil suit when he disclosed about a dozen names and social security numbers of Fairfax County residents.

Years ago, I sent the Board statutory notice that their employees, agents and assignees may not trespass on my property. Later, I sent a FOIA request to see how they had implemented my notice. The vital part of the response from Bob Ross was:

*"On behalf of the members of the Fairfax County Board of Supervisors and County Attorney David Bobzien, I am responding to your request to "provide all instructions to your staff and agents to comply with the prohibition to trespass expressed in Ref A" I have attached a copy of Regulation 201.3 of the Fairfax County Police Department's General Orders which is responsive to that request. No other documents are responsive to your request."*

Mr Ross's response was a nice legalistic way of saying that we do not have to obey the law, and we choose not to. This resulted in a visit to my home of what I refer to as the "Goon Squad." First some background.

Due to Robert Ross teaching me the basics of federal court procedure, I initiated federal court action against the National Geospatial-Intelligence Agency, know as NGA. The first step in that process is to serve the complaint on the other parties. My son acting as a process server and myself went to a NGA facility for him to serve the complaint. The guard force refused to accept service and became very hostile and intimidating. Since interfering with a process service is a federal crime, I complained to the Director of the NGA.

Less than a week later, I responded to the doorbell only to be greeted by Detective Charles of the Fairfax County Police and the head of the NGA guard force.

They repeatedly asked to enter and were refused. They did not leave when asked. They repeatedly questioned me even though my only answer was for them to talk to my attorney.

Early in the encounter, I excused myself and dialed 911 in the other room. I requested an officer be dispatched then returned to the front door. The open phone line recorded the remainder of the conversation.

## **Internal Affairs Organization**

For years, there has been a pernicious policy of requiring personnel to do a rotational tour as head of internal affairs before they could take over a district station. This results in a strong incentive to cover up police misconduct because if you don't, you may not advance in your career.

## **Four DUI's Dismissed**

When dismissing one of four DUIs Judge Clingan stated *"A case like this will hopefully send a message to the police department and to the community that we have the ability to record both audio and video*

*interactions with the police, and that's for everyone's safety and everyone's protection, it effectively eliminates misunderstandings, miscommunications and, frankly, misremembering of details over any kind of conduct or confrontation."*

Misremembering is a fabulous euphuism for perjury, and I commend him.

## **Conclusions**

It is vital that the head of internal affairs be a peer to the chief of police and that internal affairs personnel be shielded from influence by the chief of police. This is the way it is in New York City, and I believe in Chicago also.

There needs to be standards for responding to internal affairs complaints.

Given that so many of your members have a vested interest to protect, I suggest the following:

1. Produce a majority report that states that all procedures are fine; then
2. Produce a minority report by those without a vested interest for the improvements.

Thank you for your attention.

Dan Kriss with the FCPD

My career with the FCPD began in October of 1956. At the time I applied with the Department, I

In 1970, I was promoted to the rank of Captain and during the years that followed I served as Staff Assistant to the Chief of Police (Col. Durrer) and was responsible for Community Relations, News Media Relations, Internal Affairs and Inspections. In 1972, I was assigned as Commander of the McLean District Station and served in that assignment until 1974 when I was transferred to the Chantilly District Station, replacing Capt. Ron Watts as Commander.