

**Ad Hoc Police Practices Review Commission
Use of Force Subcommittee
June 3, 2015, 7:00PM
Room 232, Fairfax County Government Center**

Subcommittee members present:

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

Joe Smith
Ralph Cooper
George Becerra

Members not present:

Joe Cammarata
Gervais Reed
Hassan Aden

Others present:

Clayton Medford

Meeting began at 7:00pm

Mr. Niedzielski-Eichner opened the meeting with a recap of last meeting regarding the request to record meetings and notified the members that this meeting is being recorded (audio only).

Mr. Niedzielski-Eichner welcomed the members of the public and said public comment will be at the end. He asked that those comments be aimed toward the benefit of the work of the Subcommittee but any questions and answers from the public to presenters will not be reflected in the minutes.

Mr. Niedzielski-Eichner proposed one additional activity to be added to the work plan – walking through the master list of questions. Data collection will be closed out tonight per the work plan. Mr. Niedzielski-Eichner discussed the group discussion at the end and said Mr. Medford will record those observations and project them for the members to see.

Consideration of Minutes

Motion by Mr. Thompson, seconded by Mr. Sayles. Mr. Cooper and Mr. Becerra need to be added to the minutes. Minutes approved unanimously as amended.

Discussion of Work Plan

Mr. Niedzielski-Eichner sought Subcommittee member interest in a two-hour to half-day opportunity to visit the FC Police Training Academy to learn how trainees are taught about the use of force and to experience the training simulator. Since a number of members expressed an interest, Mr. Niedzielski-Eichner said he will work with Deputy Chief Ryan on scheduling.

Mr. Niedzielski-Eichner said the Police Executive Research Forum (PERF) report is scheduled to be discussed at June 17 meeting, but he does not yet have confirmation that the report will be available in time. If not, he will adjust the Work Plan schedule. When asked, Mr. Niedzielski-Eichner indicated that the contract allows FCPD to comment on the report prior to public release and confirmed that the Subcommittee will have the benefit of seeing those comments. He also indicated that PERF staff will make a presentation, but that it is possible that it will only be made to the full Commission.

Mr. Niedzielski-Eichner reminded everyone that the context of the report is that Chief Ed Roessler requested the PERF review prior to formation of Ad Hoc Commission. Mr. Becerra said the Subcommittee could consider a “phase 2” report after the PERF report is released. Mr. Niedzielski-Eichner said that the Subcommittee can include this in its recommendation if it feels there is more work to be done.

Mr. Niedzielski-Eichner called attention to the task assignments in the Policy and Practices portion of the Work Plan. These reports are to be made on July 15. Mr. Steel said the Oversight Subcommittee is also discussing the relevance of these reports and asked the members who will be providing the summaries to be sure to identify how findings relate to Fairfax County and the work of the Subcommittee.

Mr. Niedzielski-Eichner called attention to the master list of questions and observations. He indicated that most of the Subcommittee questions have been addressed, as well as the questions posed by Mr. Culosi. There remain, however, a large number of unanswered questions from individual members. The large volume coming from the Subcommittee, other subcommittees, and from the Commission is straining the FCPD’s ability to respond in a timely manner.

The support to the Subcommittee is provided by County employees in addition to their other responsibilities. He noted there are 70 total members of 5 Subcommittees and the Commission. He said Subcommittee needs to strike a balance between getting enough information to meet its obligations, while being judicious with requests for a level of detail that, while of interest, may not advance the Subcommittee’s core responsibility.

Mr. Niedzielski-Eichner reminded members that the charge to the Subcommittee is to focus on policy and practices, compare them to police best practices, and identify any gaps. Part of the communication back to the Commission will be findings and recommendations relative to closing the gap between FCPD policy and practices and national best police practices.

While he remains committed to having the County answer Subcommittee member questions, they may have to be grouped according to their priority. He said he is committed to working with those members with specific questions and will be sensitive to the needs of Subcommittee members in their desire to be effective, while also being respectful of resource limits.

He indicated that some of the questions that have been posed are more observations/findings and these are captured in a separate section in the Master List.

He also cautioned against getting down too deeply into specific cases, as the Subcommittee scope explicitly precludes evaluating, investigating or critiquing performance in particular instances.

Mr. Becerra expressed concern that the Subcommittee not go outside its charge. He asked if the FCPD had a budget to support the Subcommittee’s work. He also questioned whether an individual Subcommittee member can task a county employee and does not support being able to do so.

Ms. Shlesinger asked how if Subcommittee doesn’t have all information how can it make recommendations? She said there are unreported use of force incidents. She said she was misinformed by FCPD when she tried to make a complaint two years ago.

Mr. Niedzielski-Eichner said he has no personal experience with FCPD so he cannot empathize nor will he dismiss the feelings of members with that experience. But he will remain mindful of the charge as he laid out before. Ms. Shlesinger described her personal experience. Mr. Steel said Oversight Subcommittee more fits her concerns and experiences.

Mr. Smith said the concern is whether or not we get the answers to questions we ask here. Mr. Shumaker said if we are looking at policy, the first item on the work plan is the collection of data and data is not policy. Mr. Niedzielski-Eichner said this is a difficult to find a balance of perspective. Data informs policy and to that extent it is relevant.

Mr. Shumaker also voiced the perspective that the Commission's work is like an inspector general investigation.

Mr. Thompson suggested that the work of the Subcommittee may be similar to FBI's inspection process – review what's been done and compare it to the manual and point out any shortfalls that need correction. Ms. Shlesinger's experience could, for example, point out one of those shortfalls. Mr. Sayles also noted that there may be personal experiences that are not captured in the data but provide anecdotal insights that could be helpful to members.

Mr. Niedzielski-Eichner reiterated that the Subcommittee is not an IG or inspection team, but a citizen group with limited resources, which would preclude auditing FCPS, even if was charged with doing so.

Mr. Thompson agreed stating that the Subcommittee is limited to reviewing documents and meeting with key staff, but does not conduct interviews with individual staff members and then make the comparison to best practices. In short, he clarified that he did not envision a full inspection of the kind he described is conducted by the FBI

Mr. Smith concurred with Mr. Thompson and said the Subcommittee is not an IG and not an inspector – and its charge is to look at what has been done and see if it compares to best practices.

Regarding the Work Plan, Mr. Shumaker asked that the Subcommittee be informed ahead of its meeting as to who will be presenting and the topics to be discussed so members can be prepared with questions they may want to raise. Mr. Niedzielski-Eichner agreed that this would be an improvement and committed to doing so.

Mr. Niedzielski-Eichner committed to helping ensure that the Subcommittee's work is productive, valuable and as hard hitting as necessary. He did indicate that he has been surprised by the absence of defensiveness on the part of FCPD and that FCPD is already acting on suggestions made during discussions within the Commission and its Subcommittees.

Mr. Shumaker advocated that the Subcommittee should go through the General Order on use of force line-by-line, as it is central to the Subcommittee's purpose.

Mr. Culosi agrees with Mr. Shumaker that the Subcommittee needs to go line-by-line in the Use of Force GO because the recommendations may need to be very specific. Personal experiences could compel members to say one specific part led to their having the negative experience.

Mr. Steel said the Subcommittee should hear the PERF presentation and read the report before go into a detailed review of the GO.

Mr. Cooper asked who the target audience of the general orders – the police who read and use them or the public. He asked if there is the opportunity for a primer or synopsis for the public. He said it is more important for police to understand specifics more than public. The Subcommittee needs to distinguish between symptoms and problem root causes.

Mr. Ryan said the GO target audience is the public because it creates expectations for how police perform. SOPs and guidelines are for police and the GOs are the documents by which the public measures performance. The PERF report should address that.

After discussion, Mr. Niedzielski-Eichner agreed that the Subcommittee should conduct a detailed review of the Use of Force GO and also agreed that this review would likely be more effective after hearing from PERF and reading its report. However, in light of the uncertainty of the PERF Report's availability, he indicated that the Subcommittee's agenda will have to remain flexible for the next few meetings.

Mr. Niedzielski-Eichner introduced Deputy Chief Tom Ryan and reminded members that handouts were available, two of which were draft draft General Orders – Warrant Risk Assessment Matrix and Hostage/Barricade Persons. He noted that "draft" means that the formal internal review process has not been completed.

Mr. Ryan discussed the internal FCPD Use of Force Committee that was convened in the 2011-2012 time frame to review tactical, policy, training and equipment issues surrounding use of force incidents. The Committee's work was for internal purposes and discussion was held with officers involved in the incidents. Mr. Ryan indicated FCPD is in the process of revitalizing this Committee.

He noted that past Use of Force Committee's written reports were sensitive and needed to be reviewed and a determination made of how much, if anything, can be provided to the Subcommittee for review. Mr. Shumaker asked about the confidentiality of information – could the names be redacted? Mr. Ryan said psychological effects on involved officers of seeing the public retelling of the event is a factor in considering release of this information.

Mr. Ryan said a media summary of all officer-involved shootings is being developed modeled after the Philadelphia PD's effort. This was in response to discussion at Communications and Use of Force Subcommittees. Mr. Culosi asked if that would include accidental discharges. Mr. Ryan said all incidents would be included whether or not the gun was fired with intent or accidentally.

Mr. Thompson said he thought the internal UOF committee's focus should not be limited to tactical. Mr. Ryan said the scope of the internal UOF does not include justification determination. He said the department is looking at whether the internal UOF can review that in some way and potentially include citizens but that this is under the chief's purview.

Mr. Steel asked about the IAB and CID reports of closed, high-visibility cases particularly the Oluwa case. Mr. Ryan said synopses and summary of all OIS as described above, likely with more than has been released publicly before, are being developed. Mr. Steel said the synopsis has to have enough information to allow Subcommittee to make recommendations for changes.

Mr. Sayles said he thought ECWs were considered deadly force. Mr. Ryan confirmed they are not. Mr. Steel said ECWs are use of force unless the subject is killed and then it is considered use of deadly force.

Mr. Ryan introduced the FCPD Police Academy leadership and trainers Chantel Cochrane, Pete Davila, Travis Schaney, Brian Hall, and Mr. Carruthers (who is also a Commission member).

Ms. Cochrane runs the Academy. She has 20 years of experience as a FCPD police officer. She identified that the Academy is six months in duration and each class ranges from 50 and 70 recruits, with 5 to 10% attrition on average.

The Academy is 26 weeks and 1000 hours in length, including in-person communications, decision making, judgment calls, CIT, integrity, ethics, excellence, professionalism, legal training, defensive tactics and breakout sessions for firearms and emergency vehicle operations. The Academy serves FCPD, Fairfax County Sheriff's Office, Herndon, Vienna, Fire Marshal and Animal Control. Virginia Department of Criminal Justice Services mandates most of the curriculum, but only requires 500 training hours.

Mr. Sayles asked about training once officers leave Academy, what are the requirements? Ms.

Cochrane indicated that each officer is required to have 40 hours of training every 2 years. For FCPD, the Academy provides 32 hours of career development offered as electives, 4 hours for legal updates and 4 hours for cultural diversity. Each officer receives annually 8 hours of in-service training, half of which is often dedicated to firearms, with the other half focused on trend driven issues, such as handcuffing or baton use.

Mr. Thompson explored the extent to which Academy training is reinforced or dismissed by experienced officers. What do new officers hear from experienced officers when they "hit the streets?" Is their training dismissed and they are then exposed to "this is how it's really done?"

Mr. Ryan said there are officer performance elements, which are an extension of their Academy training. Recruits must fulfill what they have learned in the Academy to meet performance expectations.

Field Training Instructors (FTIs) are responsible helping align Academy training with what the recruit begins experiencing as they assume their actual responsibilities on the street. The Academy provides 40 hours of training for FTIs and periodically updates them as new practices are introduced by the Academy. FTIs receive a \$3.00/hour stipend and teach recruits how to implement the lessons learned at the Academy. FTIs also assess recruit performance and are required to submit daily performance reports.

There are primary and secondary FTIs. Primary FTIs are responsible for the recruit's first 3-4 weeks. The secondary FTIs for next 3 weeks. The primary FTIs are responsible thereafter. Primary checks in with secondary while rookie is with secondary. This provides a check-and-balance on the FTI to ensure that they are performing their role as intended. Mr. Divola said

Mr. Smith asked how police officer values and culture are monitored by the FCPD leadership. Mr. Ryan said Lt. Kane is in charge of FTI program and is in constant contact with head of patrol. Ms. Cochrane said first line supervisors are in very close contact with officers and manage any conflicting

personalities. Leadership performance in this regard is considered in annual performance evaluations. Ms. Cochrane reinforced this by noting that her group is evaluated for their teamwork and the quality of training they provide recruits and experienced officers through in-service training.

Mr. Niedzielski-Eichner asked as a follow-up whether there is an annual FCPD climate survey to monitor the operating culture, including police officer attitudes about their work or if there are issues about which they are concerned.

Mr. Niedzielski-Eichner asked if the training Academy is involved in weeding out recruits who are overly aggressive? Mr. Davila said the Academy's job is to document recruit performance, not to weed them out. Ultimately, the accumulated documentation is presented to leadership and a determination is made on which recruits are kept on and which are terminated.

Ms. Kimm noted that the single image on the police recruitment website is of a police officer firing a gun, not interacting with the public. Ms. Cochrane responded that, contrary to some misperceptions, officers are not attracted to the work because they like driving fast and using firearms. In her experience, the majority of police officers are motivated to serve the community and understand that being an officer requires effectively interacting with the public. Ms. Kimm acknowledged that this may be the majority but one or two may be attracted to those more aggressive aspects and this picture lends itself to that.

Mr. Schaney emphasized the quality of the recruits by noting that only 4% of applicants make it to the Academy.

Mr. Culosi asked to return to use of force policy and asked about ready gun position answer given by Mr. Ryan and asked that the trainers expand on that answer – lowering the gun so the officer can observe hands. Is that written down anywhere? Mr. Hall indicated that this direction to an officer is currently in the combat shooting lesson plan.

Mr. Culosi expressed concern about officers pointing to the center of mass. He noted that pointing the gun is lower on the body than the center of mass the closer the officer is to the suspect, but that the further the distance between the weapon and suspect allows the officer to view hands while pointing at the center of mass.

Mr. Hall said "center of mass" is the center of the largest object available if the officer decides deadly force is needed. If the individual is hiding and the head or foot is exposed, the center of the head or foot is the center of mass. Ready gun is muzzle depressed, finger on the frame of the weapon, and you can observe hands at waistline. It is dependent on distance from the individual.

Mr. Niedzielski-Eichner asked are officers trained to hit the center of mass in order to be protective, or **are they trained to shoot to kill?** Mr. Hall said shooting to kill is not what officers are trained to do, but they are trained to shoot at the center of mass in order to effectively stop the aggressive act. DCJS mandates ready position but does not specify what that is.

Mr. Davila said every officer is trained to understand that when a weapon is drawn someone may die, either by intentional firing of the weapon or by accident. Academy training stresses that the firearm will not injure someone when it is in the holster.

Mr. Culosi noted he was satisfied with the definition of “ready gun”, as supplied by Mr. Ryan in response to his question, but repeated his previously stated concern that increased distance between officer and subject allow for the chest to be targeted by the officer. He further noted that aiming lower on the suspect’s body would be protective without putting subject’s chest in line of fire.

At 9:04, a motion by Mr. Smith to extend time by 30 minutes, seconded by Mr. Sayles.

Mr. Davila discussed restraint of use of force. He’s been in FCPD 27 years, with 16 years at Academy in which he trains on defensive tactics. His goal is to create a culture of safety and a clear understanding of officers’ responsibility to serve their community. This training originally focused on compelling people to comply with the officer’s direction. But the focus has been changed to controlling the circumstances, through voluntary or involuntary compliance. They now look at defensive tactics as a means of control and are changing “defensive tactics” to “control tactics.” Recruits are trained, for example, to seek to prevent subjects from becoming emotionally out of control, through body language, contact, expressions, and voice tone and inflection.

Mr. Schaney has 23 years at FCPD and is taser master at the Academy. Students are given training in how, when and why of using tasers. Each police shift has available enough tasers for each officer on patrol, but each officer is not assigned a taser as is done with a firearm. This is a cost consideration. Mr. Schaney noted that used properly, tasers are a good use of force and reduces the need to draw a firearm.

Mr. Sayles asked Training Academy Staff why the same number of Tasers are assigned to each FCPD station; which resulted in response by staff that carrying Tasers are not mandatory. Mr. Sayles responded that each officer should be required to carry a taser as a less lethal force alternative to the more deadly use of force by weapon.

Mr. Hall has 25 years at FCPD and has been in charge of firearms training for 6 years. FCPD conducts 10 days of firearms training; Virginia mandates only 3 days. The primary mission of his unit is to teach safe and accurate deployment of a weapon, including basic fundamentals and 1 and 2 shot drills, all the way to multiple qualifications including night fire usage (low light and complete), multiple tactical scenarios like shoot- and don’t shoot- situations.

On tasers, recruit is trained to carry on opposite side from gun (support side i.e. non-natural side). Taser is utilized by cross draw.

Mr. Shumaker asked:

1. Does IAD review whether an officer follows de-escalation practices? Yes but there is no checklist – use of force incidents are looked at in totality – use of force template acts as checklist.
2. Is there a requirement officers go through re-training on judgment and decision-making? Mr. Davila said weapons qualifications include some additional scenario-based training, but are not required to focus on an officer’s judgment or decisionmaking.
3. Are scenarios used in training real incidents that happened here in Fairfax County? Scenarios are based on FCPD-specific experiences.
4. What happens if one fails scenario? Mr. Hall said it is stopped, discussed and found out why, review what happened, and replayed until successful.

Ms. Kimm is interested in above-and-beyond aspects of training. She is concerned that statistic that only 300 officers have received CIT training even though it is now required – what will happen to make sure all current officers are CIT trained? Mr. Davila said CIT is interjected in firearms training and Mr. Ryan indicates that the chief’s goal is 100% in a several years.

Ms. Kimm said we have heard anecdotally about unholstering the gun but not pointing it and the discomfort that causes. She asked if unholstering is recorded or reported? FCPD reported that unholstering is not recorded.

Mr. Culosi said that reporting should be considered as a recommendation. Mr. Niedzielski-Eichner agreed that this could be a topic for Subcommittee consideration if proposed by a member.

Mr. Steel asked if the use of tasers would reduce the requirement for an officer to draw his/her weapon. If so, why isn’t each officer assigned one? Mr. Schaney agreed that the availability of tasers has caused a reduction in the number of incidents where an officer is required to use his or her weapon. He indicated that each shift is assigned enough tasers to deploy to every officer, but resources prevent 100% deployment to all officers (to include off duty).

Mr. Steel asked why they are considered non-deadly and is that standard. Trainers confirmed yes.

Mr. Niedzielski-Eichner opened the meeting for public comment.

Mr. Niedzielski-Eichner noted that there was not time for the Subcommittee to generate a preliminary set of observations and findings to date. He asked instead, and as a “homework assignment,” for the Subcommittee members to each compile their own list of observations and findings and forward the list to Mr. Medford, with a copy Mr. Niedzielski-Eichner. All submissions will be compiled into a list that will be reviewed at the next meeting.

Meeting concluded at 9:45

Next meeting is on June 17.

Minutes prepared by Clayton Medford, Office of Chairman Sharon Bulova, clayton.medford@fairfaxcounty.gov