Report of the Use of Force Subcommittee

AD HOC POLICE REVIEW COMMISSION

September 14, 2015

Contents

PREFACE 2
EXECUTIVE SUMMARY 7
INTRODUCTION AND METHODOLOGY 11
FINDINGS AND RECOMMENDATIONS 14
- Philosophy Underpinning FCPD Policy, Programs and Practices 14
- Police Executive Research Forum (PERF) Recommendations 16
- Use of Force Policies and Practices 17
- Use of Force Reporting and Transparency 20
- Body Cameras 22
- Electronic Control Weapons (Tasers/ECWs) 24
- Strategic Weapons and Tactics Techniques 26
- Mobile Crisis Units 28
- Oversight 28
- Workforce Policies and Practices 31

CONCLUSION 34
- Use of Force Subcommittee Charter 34

APPENDIX 34

PREFACE

Fairfax County Board of Supervisors (BOS) Chairman Sharon Bulova established an Ad Hoc Police Practices Review Commission on February 20, 2015; this action was ratified by the full Board on March 3, 2015. Commission Chairman Michael Hershman established subcommittees to facilitate the efficient conduct of the Commission's work within the limited time available prior to delivering a report to the BOS by October, 2015. The Use of Force Subcommittee is one of five Commission subcommittees chartered by Mr. Hershman, with the others being Communications; Mental Health and Crisis Intervention Training; Recruitment, Diversity and Vetting; and Independent Oversight and Investigations.

The Commission is charged with recommending changes, consistent with Virginia law, that the Commission feels would help Fairfax County achieve its goal of maintaining a safe community, ensuring a culture of public trust and making sure our policies provide for the fair and timely resolution of police-involved incidents.

The Use of Force (UOF) Subcommittee was charged with developing proposed recommendations after completing a review of the Fairfax County Police Department's (FCPD) use of force, critical incident response and training policies and practices, specifically with regard to:

- The Police Executive Research Forum (PERF) Report *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*.
- Lethal and non-lethal use of force incidents, including those in which Special Weapons and Tactics (SWAT) teams, military-type equipment, and other high risk tactics were employed.
- A comparison with "best practices" of other jurisdictions and those cited in various national reports, including the use of body and dashboard cameras.
- Threat assessment, de-escalation and incident avoidance policies and practices.
- The provision of medical treatment and other assistance to individuals injured as the result of the use of force.
- The roles of and relationships between FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses.
- The potential for establishing an internal police department Serious Incident Review Board to review cases involving officer involved shootings and other serious incidents to identify any administrative, supervisory, training, tactical, or policy issues that need to be addressed.

The Use of Force Subcommittee's scope and charge is limited to a review of the Fairfax County Police Department and does not include the Sheriff's Department and its operation of the Fairfax County Detention Center. This is of particular note as a report by the Commonwealth's attorney, as well as a video, were recently released that address the death of an inmate, Ms. Natasha McKenna, while in the custody of the Sheriff's Department and after being subjected to four cycles of an Electronic Control Weapon (ECW) or Taser.

While the publicly available information about this event informed our deliberations, the factors in Ms. McKenna's death did not inform our findings or recommendations, as our review was limited to FCPD's use of force policies and practices (and therefore did not include the Sheriff's Department) and, on a practical level, the Commonwealth Attorney's report would not have been available to us in sufficient time to consider it, even if her death was within our scope.

This noted, we anticipate that many of our recommendations on use of force may well be applicable to the Sheriff's Department, as are those recommendations made in the Police Executive Research Forum's Report, which will be discussed later in this report. Of note in this regard will be those recommendations related to the deployment and use of an ECW.

The Subcommittee's Work Plan is attached as Appendix A and is broken into five activities: (1) data collection and review; (2) use of force and critical-incident policies and practices review; (3) benchmarking and gap analysis against best practices; (4) organizational roles, responsibilities and relationships; and (5) findings and recommendations. The UOF Subcommittee was not able to explore sufficiently the matter of organizational roles and responsibilities to be able to offer a fully robust set of findings and recommendations. Should the Subcommittee's charge be extended beyond the completion of this report, as is recommended, then these relationships can be studied more completely.

This Report is conveyed to the Ad Hoc Police Practices Review Commission to support the completion of the Commission's report to the Board of Supervisors. The Use of Force Subcommittee's findings and recommendations were generated following intense exploration of the Fairfax County Police Department's use of force policies, programs and practices, both in terms of its performance against community norms and in relation to national best practices.

The residents of Fairfax County are diverse in culture, color, faith and in life and professional experiences. They are educated and talented and expect high-performing local government services. Many residents are willing to invest time and energy in service to the community, in the spirit of improving and sustaining a high quality of life for all.

The members of the Use of Force Subcommittee are exemplars of the talented and committed community members from which Fairfax County is able to draw to help address matters important to Fairfax County and its future. The following is a listing and brief biographies of the fifteen Subcommittee members, which include seven Commission members; the distinction between Commission and non-commission members was not relevant to the conduct of the Subcommittee's work:

- Phillip A. Niedzielski-Eichner, Chair – Mr. Niedzielski-Eichner is a Fairfax County resident since 1988 and an energy and national security executive with over 35 years of public sector and corporate leadership experience. He has held senior executive service appointments in the U.S. Department of Energy, National Nuclear Security Administration and Nuclear Regulatory Commission and has served as a member of the Fairfax County School Board, Park Authority Board, and Environmental Quality Advisory Board.

- George Becerra* -- Mr. Becerra is a current 16-year federal employee and a Fairfax County resident since 1984. He has been an Economic Statistician and Operations Research Analyst for the Dept. of the Army (Dept. of Defense - Pentagon) and Dept. of Homeland Security (Immigration and Customs Enforcement - Headquarters). He has served the community as Chair of the Fairfax County School Board Minority Student Achievement Oversight Committee; as a member of the community selection panel for the current school superintendent and the SCYPT (Joint Board of Supervisors and School Board taskforce); and as an election officer for 4 years. He is a Citizen Police Academy 2006 graduate and alumni member, and member of several civic organizations.

- Joseph Cammarata -- Mr. Cammarata is a partner in the law firm of Chaikin, Sherman, Cammarata & Siegel, P.C. He is a board certified trial attorney whose practice is devoted to representing persons injured through no fault of their own, including due to abuses of any kind by those who exceed their authority. Mr. Cammarata has been practicing law for over 30 years, and is President of the Trial Lawyers Association of Metropolitan Washington, D.C. Mr. Cammarata was formerly the Chairman of the Criminal Justice Advisory Board and the Community Initiative to Reduce Youth Violence. He is a member of the Board of Directors of the Fairfax Water Authority.

- Brad Carruthers – Mr. Carruthers is President of the Fairfax Fraternal Order of Police, Lodge 77. He has been a Fairfax County Police officer for 22.5 years, during which he worked patrol, neighborhood patrol unit and gangs. For the past 12 years he has been in firearms training and tactics. He has a BA in criminology from Indiana University of Pennsylvania.

- Ralph Cooper* -- Mr. Cooper is a concerned citizen with over 20 years of volunteer, committee member and leadership of varies Fairfax County organizations. He has been active with the local Fairfax County Council of PTA, College Partnership Program, Fairfax Partners for Youth, various positions of responsibility in NAACP Fairfax County (Legal Redress, Education, Civic Engagement Chairman) and NAACP Virginia State Conference plus other community organizations. He is presently a member of the Fairfax County School Board Minority Student Achievement Oversight Committee and Lions Club. Notably, he is author of the Advocate Handbook for Parents (AHBP), the objective of which is to provide parents a one stop document to secure information or identify where information can be located to be able to ask the right questions!

- Sal Culosi – Mr. Culosi is a retired civil servant who was a member of the Senior Executive Service in the Department of Defense and has accrued over45 years of experience as a Defense manager and analyst in planning, programming and budgeting for an annual Defense logistics program of over $70B, applying quantitative methods to resolve complex issues of logistics support and resource allocation. His son, Salvatore J. Culosi, was an optometrist who in 2006 was killed by a FCPD SWAT team in the process of executing a document search, related to gambling, using an aggressive vehicle takedown process, which was reserved for high risk situations but was nonetheless employed even after FCPD SWAT official risk assessment judged him to be low risk.

- Mary Kimm – Ms. Kimm is Editor and Publisher of the Connection Newspapers, a chain of 15 weekly newspapers including 12 hyper-local editions in Fairfax County, where she has worked since 1989. Ms. Kimm's editorials have been cited in local efforts to end homelessness and increase government transparency. She also serves on the Governing Board of the Fairfax County Office to Prevent and End Homelessness.

- William Moncure* -- Mr. Moncure is an Investigator for Code Compliance and a certified Trainer in Property Maintenance Inspections for the State of Virginia, Department of Housing and Community Development. He has over 42 years' of Public Sector enforcement experience in civil and criminal liability, developing and deploying operational plans that addressed violations with positive results, is regularly sought out for input, guidance and recommendations dealing with conflict resolution for Zoning and Law Enforcement with the Fairfax County government. His prior experience as a lead firearms instructor for the Fairfax County Criminal Justice Academy provided institutional knowledge in firearms training, electronic control weapons and the development of some of the existing policies and procedures.

- Randy K. Sayles* -- Mr. Sayles is a retired Denver uniform Police Officer, Detective and Federal Agent, Deputy Assistant Administrator, US Drug Enforcement Administration (DEA); with 35 1/2 years of cumulative experiences in use of force incidents in which he fired his weapon, more than once, and/or was fired upon; while also using all other authorized use of force equipment, of today's police forces, except the Tasers, during assignments nationally and internationally.

- Jodi Shlesinger* -- Ms. Shlesinger has been a resident of Fairfax County for 33 years where she resides with her husband, children and elderly parents. She has served on the board at her local pool for the past 10 years, worked with the board of her Home Owners Association to form the by-laws and currently works as a librarian and special events coordinator at a private school in Springfield, Virginia.

- Michael Shumaker* -- Mr. Shumaker has over 13 years of award-winning, anti-terrorism expertise at US Coast Guard Headquarters. His policies successfully deterred domestic maritime terrorism since 9/11 while protecting civil liberties. Served 20 years as a Navy officer. As Executive Officer of a ship with a mixed-gender crew of 1,400, his duties included supervising the legal office, ship's police force, and jail. During his tenure no complaints were filed against the ship's law enforcement team.

- Joseph P. Smith* -- Mr. Smith, a FBI Supervisory Special Agent with extensive, in-depth experience in internal affairs investigations, retired after 30 years of service. A member of DC Bar & VA Bar for 46 years, he has practiced law for 15 years. He is a former member of the International Association of Chiefs of Police, Panel Counsel/ National Fraternal Order of Police, and former Member of and Counsel to the Board of Directors, Virginia Coalition for Open Government.

- Adrian L. Steel, Jr. -- Mr. Steel is a partner with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Mr. Steel recently served as a member of a commission led by Judge Webster which reviewed the FBI's actions in connection with the 2009 shootings by Major Nidal Hasan at Fort Hood, Texas.

- Bernard E. Thompson* -- Mr. Thompson, Esq., is an attorney and a retired FBI Supervisory Special Agent with over 21 years with the FBI, having served as a Unit Chief at FBI Headquarters and as a Trial Attorney for almost a decade with the FBI's Office of the General Counsel. He is a military veteran who served as a Platoon Sergeant in a combat unit in Vietnam. He served in management positions in the private sector for over ten years prior to his government service. He has presided over a Homeowners Association for over 15 years, and he was ordained in the Baptist Church over 16 years ago.

* Subcommittee members not also on the Commission.

The subcommittee received assistance and important support from Clayton Medford, Chief of Staff to Chairman Bulova, and from the Fairfax County Police Department, with particularly significant contributions from Deputy Chief Tom Ryan and Second Lieutenant David White.

EXECUTIVE SUMMARY

The Use of Force (UOF) Subcommittee of the Ad Hoc Police Review Commission is charged with completing a review of FCPD use of force, critical incident response and training policies and practices.

Before generating its findings and recommendations, the Subcommittee undertook data collection and review and review of use of force and critical-incident policies and practices. It conducted benchmarking and gap analysis against national best practices by studying such reports as the Report of the President's Task Force on 21st Century Policing and the U.S. Department of Justice's reports on various communities' policing practices. Per its assigned scope of work, the Subcommittee considered FCPD lethal and non-lethal use of force incidents, including those in which Special Weapons and Tactics (SWAT) teams, military-type equipment, and other high risk tactics were employed.

The Subcommittee reviewed written summaries of the 37 FCPD police officer involved shootings (OIS) over the last 10 years and interviewed Command, detective and internal affairs personnel to discern pertinent policy and practice lessons to be learned from them.

The Subcommittee received and considered detailed FCPD responses to numerous lines of inquiry, which included such topics as use of force reports, data and analyses; use-of-force policy, training and culture; case review and excessive force litigation; the operations of the internal FCPD Use Of Force Committee; SWAT, advanced tactics and the definition of "barricade;" administrative investigations and disciplinary action; body-worn cameras, the use of the choke hold, and the use of conducted energy weapons (ECW) (a.k.a. Tasers); crisis intervention team model; after action reporting and lessons learned; and budget and resources.

We believe that the philosophy underpinning Fairfax County Police Department policies and practices must be founded upon issues, concepts, and values of policing in a democratic society. Noteworthy among these: the sanctity of human life; protecting constitutional rights; de-escalation and crisis intervention strategies; maintaining order and our quality of life; and a duty to intervene if an officer sees another officer using excessive force.

Further, transparency and communication are the foundations of trust between a police department and the community, all the more so in matters of police use of force. "It is critical that police departments be as open, transparent, and informative as possible about police operations and practices, especially when it comes to police use of force."[1] Transparency and communication on these matters provide the community with confidence that the police force is practicing procedural justice.[2]

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[1] *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*, Police Executive Research Forum Final Report (p. 85), June 2015.

[2] Procedural justice can be viewed in terms of four issues. First, people want to have an opportunity to explain their situation or tell their side of the story to a police officer. Second, people react to evidence that the authorities with whom they are dealing are neutral. Third, people are sensitive to whether they are treated with dignity and politeness, and to whether their rights are respected. Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing (their "trustworthiness"). *Legitimacy and Procedural Justice: A New Element of Police Leadership*, Police Executive Research Forum (PERF), March 2014.

On a related basis, it is a national best practice to collect, maintain, analyze and report robust demographic data on all detentions and use of force.[3] Collection of this data is essential to enable the Board of Supervisors and the FCPD leadership to ensure FCPD personnel are acting in a way that is consistent with the principles of policing in a democracy.

The Subcommittee's work was substantially augmented and facilitated by the June 2015 Report issued by the Police Executive Research Forum (PERF) entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. PERF conducted a review of FCPD's policies, procedures, directives, and training materials and curricula related to UOF. The PERF Report found that "…in several areas, including many aspects of training, emphasis on de-escalation and handling of emotionally disturbed persons, and critical incidents, the FCPD is doing a commendable job and meeting or exceeding national best practices."

PERF did find a number of areas where improvements could be made and sets forth 71 recommendations for change to existing FCPD policies and practices. After a review of the report, discussions with FCPD representatives, including Police Chief Edwin Roessler, and after consideration of public comments, the Subcommittee supports all of the report's recommendations with the exception of the recommendation calling for discontinuing the use of the Precision Immobilization Technique (PIT). The Subcommittee recommends instead that PIT be studied by the FCPD, with a report to the BOS for action as to whether or not its use should be continued.

The PERF recommendations should be implemented pursuant to a publicly available and periodically updated action plan that assigns responsibility and target dates for completion of each recommendation. The necessary resources for full implementation should be provided, and quarterly reports to the public on progress should be made.

We acknowledge that Chief Roessler sought out PERF to conduct its review, with the intent of becoming more effective. He has not only committed to implementing the PERF recommendations, but he also intends to pursue accreditation by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).[4] Further, he told this Subcommittee that he aspires to having FCPD known as <u>the</u> best in the nation. This aspiration is consistent with community expectations that our local government continue to strive to be the best.

This noted, Chief Roessler sets a very high bar for Fairfax County Police and our findings and recommendations are offered in the spirit of helping FCPD achieve this prominent position.

The Subcommittee found, as did PERF, the need for a more unified, clearer and more concise use of force policy. In this spirit, we propose a new, more specific definition. We also call for (a) an unambiguous "sanctity-of-life" philosophy to underpin all UOF-related policy, programs and practices; (b) infusing a renewed commitment to community policing throughout the FCPD culture and organizational structure; (c) establishing "objectively reasonable" as the standard to be followed by an

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[3] Final Report of the President's Task Force on 21st Century Policing, May 2015.

[4] For perspective, it is worth noting that, while Chief Roessler believes CALEA accreditation raises the bar for FCPD, some believe that the Department is already performing substantially above CALEA standards.

officer when determining whether to use force; (d) clarifying requirements with regard to pointing an "unholstered" firearm; (e) restricting vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and there is an imminent risk to the public safety or of injury; and (f) assuring that medical assistance is provided to any person who is obviously injured, alleges an injury, or requests medical assistance.

We accept the principle that transparency and communication are the foundations of trust between a police department and the community; all the more so in matters of police use of force. We agree with PERF's position in this context that "(i)t is critical that police departments be as open, transparent, and informative as possible about police operations and practices, especially when it comes to police use of force." For this reason, we recommend that FCPD collect, maintain, analyze and report robust demographic data on all detentions and use of force.

We recommend that the use of SWAT and other advanced tactics be limited to situations where there is a high risk of violence, resistance, or injury or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors. We support the modifications to the Warrant Risk Assessment Matrix that were devised by FCPD in the midst of our review, which establish criteria for the use of SWAT and establishes responsibility for the granting or denying of authority for the SWAT's use.

We believe that FCPD police patrol officers should employ body cameras to record all interactions with members of the public, contingent on (a) the enactment of laws, policies and procedures that protect the privacy of citizens; and (b) patrol officers being consulted, with feedback provided as to how their concerns and recommendations were considered. The Subcommittee also believes that all police officers should maintain Electronic Controlled Weapons (ECW) or Tasers on their person while on duty, again with patrol officers being consulted and feedback provided as to how their concerns and recommendations were considered. Finally, we assessed PERF's recommendation to prohibit without exception the use of a "choke hold" as a means of controlling a suspect, and we support an unambiguous policy declaration prohibiting its use.

The Subcommittee recognizes that effective recruitment, training and ongoing monitoring of police officer performance are essential and fundamental to FCPD being able to ensure that use of force is applied in an objectively reasonable and responsible manner. We therefore recommend the FCPD maintain a "hire-to-retire" focus on police officer fitness to serve, particularly in relation to any propensity to be overly aggressive in the conduct of duty.

We also recommend that FCPD conduct a biennial workforce climate and culture survey to monitor FCPD's operating culture, including police officer attitudes about all aspects of their work, including the use of force; leadership and equipment; or any perceived barriers to their ability to perform their responsibilities consistent with FCPD's values, philosophy and policies.

Police officers have increasingly become the first responders when a citizen is in the midst of a mental health crisis. Because of the impact of mental health crisis on incidents of use of force, the Subcommittee recommends expansion of Mobile Crisis Units in the County by adding three additional mobile crisis units, one for each human services district.

Independent oversight will provide public accountability and confidence relating to UOF, education of both the public and the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints. We believe therefore that it is a critical component of an effective UOF policy that external independent oversight be instituted.

We also considered four other aspects of oversight and call for (a) FCPD and its officers to receive specialized legal advice on UOF and other critical issues unique to policing; (b) FCPD to collect, analyze, and publish a comprehensive statistical report covering all FCPD stops, frisks, arrest and UOF incidents; (c) revitalizing the existing internal FCPD Use of Force Committee; and (d) the Board of Supervisors to review the Chief of Police's determination in all lethal UOF cases and that the Board issue a public report as to its approval or disapproval of the Chief's determination.

INTRODUCTION AND METHODOLOGY

Fairfax County is one of the safest jurisdictions of its size; it is also one of the safest places to serve as a police officer. The County is annually ranked in the top few wealthiest counties in the nation. It is a county of highly educated, highly engaged residents with very high expectations for its police force.

The department has 1,339 sworn employees. Approximately 980 are assigned to patrol. This number fluctuates throughout the year due to attrition and vacancy rates but this is the base level.

The Use of Force (UOF) Subcommittee of the Ad Hoc Police Review Commission was charged with completing a review of the FCPD use of force, critical incident response and training policies and practices.

As PERF noted in both its written report and its oral presentation to the Commission, Fairfax County Police Department is regarded as one of the best in the nation, and has the ability and responsibility to serve as a national leader in policy. Indeed, Chief of Police Edwin Roessler told this Subcommittee that he aspires to having FCPD known as the best in the nation. Further, as will be discussed, Chief Roessler has committed to implementing 70 of 71 recommendations made by the Police Executive Research Forum (PERF) in a report released as the Subcommittee conducted its work. Finally, Chief Roessler indicates that he also intends to secure accreditation by CALEA.

These aspirations are consistent with community expectations that our local government continue to strive to be the best. Chief Roessler sets a very high bar for Fairfax County Police in this regard, and our findings and recommendations are offered in the spirit of helping FCPD achieve this prominent position.

Relative to police use of force in Fairfax County, PERF noted that "(d)ischarging of firearms remains a relatively rare occurrence in FCPD." It found that just over 5% of the total use of force incidents in 2013, the latest year included in the review, involved officers pointing a firearm and that officers discharged a firearm in 6 cases (about 0.3% of the total). Between 2008 and 2013, PERF noted that pointing of firearm incidents declined by more than 59% (from 229 to 93), and ECW discharges dropped by 35% (from 186 to 120). Further, PERF found that the annual number of firearm discharges during the ten-year period of its review declined from 15 in 2008 to 7 or fewer in each of the next five years. Finally of note, FCPD is completing the third quarter of CY2015 without a firearm discharge.[5]

The UOF Subcommittee convened for the first time on May 6, 2015, and met in ten meetings open to the public. An opportunity was provided at the end of each meeting for the public to offer comments and feedback to the Subcommittee. Formal minutes were maintained for each meeting, as were audio recordings. Both are available online for Commission and public review, as may be of interest.[6] It is worth noting that our recommendations were approved by majority action within Roberts Rules of

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[5] Ibid. PERF, pp. 24-25.
[6] Electronic links to the minutes of the ten UOF Subcommittee meetings and the primary and secondary resources used by the Subcommittee to inform our findings and recommendations can be found at http://www.fairfaxcounty.gov/policecommission/subcommittees/use-of-force.htm.

Order. Our minutes are sufficiently detailed to identify agreements and disagreements and in what magnitude.

Before generating its own findings and recommendations, the Subcommittee undertook data collection and review; review of use of force and critical-incident policies and practices; and benchmarking and gap analysis against national best practices by studying such reports as the Report of the President's Task Force on 21st Century Policing and the U.S. Department of Justice's reports on various communities' policing practices. Per its assigned scope of work, the Subcommittee considered FCPD lethal and non-lethal use of force incidents, including those in which Special Weapons and Tactics (SWAT) teams, military-type equipment, and other high risk tactics were employed.

The Subcommittee reviewed written summaries of the 37 FCPD police officer involved shootings (OIS) over the last 10 years and interviewed Command, detective and internal affairs personnel to discern pertinent policy and practice lessons to be learned from them. The Subcommittee completed an information matrix from these summaries that offers a brief overview of each case. This matrix is attached as Appendix B.

The Subcommittee unfortunately did not have an opportunity to review original documents regarding those incidents, despite assurances that the same access as was provided PERF would be accorded the Subcommittee. Notwithstanding this lack of direct document access, the Subcommittee is confident that it has gained sufficient insight to support the generation of our policy and practices recommendations.

We find that constraints on transparency represent perhaps the greatest risk to sustained confidence in FCPD. In short, we believe that there will be a mutual benefit to both the police and the public with greater openness and communication.

We in this regard must reinforce the position taken by the Communications Subcommittee that "(c)ommunications is the key – the more information provided about police cases, actions, policies and procedures, the better one is able to assess the legitimacy of the agency. When the public determines police actions are legitimate, it leads to increased support and trust in the dedicated public servants who risk their lives every day for our benefit and safety." We would add that the inverse can also be true: where there is less transparency by a police agency, public trust is likely diminished and the level of cooperation that will exist between the public and police will ultimately suffer.

The UOF Subcommittee completed an extensive review of FCPD policies and standard operating procedures, as well as studied a lengthy list of reports, papers and research to discern "best practices" against which we compared FCPD. The listing of these resource documents is provided as Appendix C.

The Subcommittee also received and considered detailed FCPD responses to its numerous lines of inquiry, which included the following topics: use of force reports, data and analyses; use of force policy, training and culture; case review and excessive force litigation; the operations of the FCPD Use Of Force Committee; SWAT, advanced tactics and the definition of "barricade;" administrative investigations and disciplinary action; body-worn cameras, the use of the choke hold, and the use of conducted energy weapons (ECW) (a.k.a. tasers); crisis intervention team model; after action reporting and lessons learned; and budget and resources (see Appendix D).

Subcommittee members were offered the opportunity to ride with police officers during their shifts, which gave those able to do so first-hand, albeit on a time-limited basis, unique insight into the nature of the officers' day-to-day responsibilities. Members were also afforded the opportunity to participate in use of force practicals at the Fairfax County Criminal Justice Academy and tour the Firing Range, where they experienced the training officers undergo using the PRISM simulator.

The remainder of this Report will offer the Use of Force Subcommittee's findings and recommendations relative to its charge to complete a review of the FCPD's use of force, critical incident response and training policies and practices. In the course of its work, the Subcommittee generated many prospective findings and recommendations that were, under their charter, more appropriately considered by one of the other subcommittees. These ideas have been conveyed to them for their potential use and consideration.

As a final introductory note, the UOF Subcommittee was not able to explore sufficiently the matter of organizational roles and responsibilities to be able to offer a fully robust set of findings and recommendations. Should the Subcommittee's charge be extended beyond the completion of this report, as is recommended, then these relationships can be studied more completely.

FINDINGS AND RECOMMENDATIONS

Philosophy Underpinning FCPD Policy, Programs and Practices

The philosophy underpinning Fairfax County Police policy and practice must be founded on issues, concepts, and values of policing in a democratic society. Noteworthy among these: the mission and role of the police in protecting constitutional rights; the sanctity of human life; de-escalation and crisis intervention strategies; and a duty to intervene if an officer sees another officer using excessive force.

Having participated ourselves in a dialogue on how to best articulate a set of principles and policies we believe should underpin and guide FCPD's use of force, we understand and value the national dialogue taking place that juxtaposes a police officer's role as guardian with that of a warrior. A recently published article captures effectively the dynamic tension that exists between (a) a police culture grounded in the belief that it will most effectively protect the innocent and law abiding by being integral to and integrated with the community; and (b) one that believes that effective use of force is the principal means by which the community is protected from the criminal and potentially violent population.

The authors note that "(i)n some communities, the friendly neighborhood beat cop — community guardian — has been replaced with the urban warrior, trained for battle and equipped with the accouterments and weaponry of modern warfare. Armed with sophisticated technology to mine data about crime trends, officers can lose sight of the value of building close community ties." [7] The Subcommittee is concerned in this regard about the over-militarization of law enforcement in this country and seeks to emphasize that Fairfax must continue to avoid moving in this direction

We are fortunate, for example, that Fairfax has avoided some of the most egregious aspects of this evolution, such as not pursuing or arming its officers with surplus post-war military equipment. Yet, we believe that constant attention to FCPD's policing culture is warranted. We understand that community-based policing is the FCPD practice, mission, vision, policy, procedures, practices and officer performance must all be aligned with community policing as its predominant focus.

We recognize fully that police officers must be prepared to respond to threats of violence, but we also strongly believe that our community safety and security – and an effective and trusting mutually beneficial relationship – will be best protected by a police force that is engaged with the community beyond the occasional traffic stop or more extreme circumstances.

The importance of such a philosophical underpinning of police policy is reinforced by how officers spend their time. Most of their time is spent in the community. FCPD officers, for example, respond to more than 5,000 calls a year in response to mental health crises. Most FCPD officers will never fire their

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[7] *From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals,* New Perspectives in Policing, Harvard Kennedy School and National Institute of Justice, April 2015 | https://www.ncjrs.gov/pdffiles1/nij/248654.pdf

service weapons as part of any use of force. In 10 years, only 37 use-of-force incidents in the 1,300 member force have involved firing a weapon, even counting cases in which no one was struck by a bullet or a weapon was fired by mistake. While several officer involved shooting deaths have been the subject of intense community concern, the numbers reinforce the need for sustained emphasis of effective community-involved policing.

We considered in the Use of Force Subcommittee how best to characterize the essential role performed by the police in Fairfax. We, for example, explored the role of a police officer in the oft-used two-dimensional paradigm, the dominant dimension of being a "guardian" and the necessary but less frequently called upon "warrior" dimension. Using this paradigm, the officer must be trained to perform well as both a guardian and a warrior and to be able to discern how to act along the spectrum between the two. In any matter of imminent threats of harm to the officer or to other citizens, we expect the officer to be able to make the correct judgment in a split second.

The warrior dimension has come under greatest scrutiny because of the associated militaristic connotations. Another option is characterizing the police officer as a peacemaker -- a person who is trained and experienced in settling problems; and as a fighter -- a person who is trained and experienced in responding to hostile encounters.

Our Subcommittee, however, did not invest time in reconciling the matters of clarifying roles and culture. We do challenge FCPD to work with the community to update and redefine as needed, the respective definition of roles and relative policing emphasis.

To expand the vision along the guardian/warrior or peacemaker/fighter spectrums, it is clear that police and civilians see the world through very different lenses. The more that police and the community spend time together, review policy together, and review incidents and expectations together, the more they will understand why they sometimes see things differently and the more common ground there will be. Police must embrace and seek civilian input at every possible level, and civilians should have more opportunity to interact with police on what they want and expect from their police department.

Recommendation 1. Ensure that FCPD's philosophy, policies and orders: promote treating citizens respectfully and are protective of their dignity; maintain an appropriate balance between an officer's role as a guardian/warrior or peacemaker/fighter; reinforce a reverence for the sanctity of human life.

Recommendation 2. Adopt policies, programs and practices that:

a. Require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information, when practicable, on a business card to individuals they have stopped;

b. For policing mass demonstrations, continue to employ a continuum of managed tactical resources that are designed to be protective of officer safety and promote de-escalation of tensions; minimize the appearance of a military operation; and avoid provocative tactics, equipment, and language that might heighten tensions.

c. Continue and strengthen opportunities for patrol officers to regularly interact with neighborhood residents, faith leaders, and business leaders;

d. Reward officers for their efforts to engage members of the community and the partnerships they build and make this part of the performance evaluation process, placing an increased value on developing such partnerships;

e. Ensure deployment schedules provide sufficient time for patrol officers to participate in problem solving and community engagement activities.

f. Infuse a renewed commitment to community policing throughout the FCPD culture and organizational structure.

Recommendation 3. Commit and assure in G.O. 201.6 - PRESERVATION OF PEACE AND PROTECTION OF LIFE AND PROPERTY – that medical assistance will be provided to anyone who is injured, alleges an injury, or requests medical assistance, as follows:

a. It shall be the duty of each sworn officer of the Department to: preserve the public peace; protect life and property; assure medical assistance; and enforce and uphold the laws of the Commonwealth of Virginia and the Ordinances of the County of Fairfax.

Recommendation 4. Review policies on use of physical control equipment and techniques to assure that they address any unique requirements of vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others deemed appropriate by the on-scene officer(s).

Police Executive Research Forum (PERF) Recommendations

As noted, PERF conducted a review of FCPD's policies, procedures, directives, and training materials and curricula related to UOF. PERF's report sets forth 71 recommendations for change to existing FCPD policies and practices. We have reviewed each of the PERF recommendations; discussed those recommendations with FCPD; and received and reviewed comments from the public, including suggestions made by the American Civil Liberties Union in a letter to Chairman Hershman.

We have concluded that the PERF recommendations should be implemented pursuant to a publicly available and periodically updated action plan that assigns responsibility and target date for completion of each recommendation. The necessary resources for full implementation should be provided, and quarterly reports to the public on progress should be made. Chief Roessler has stated that this is the intent of the FCPD and his personal intent. He has said that he will advocate for the budgetary resources to ensure full implementation. We expressly confirm the Subcommittee's support for PERF Recommendation #48 which recommends the prohibition of choke holds and neck restraints.

We understand that FCPD will use a senior leadership committee to undertake implementation. As to Recommendation #54, which calls for the termination of the precision immobilization technique (PIT) for stopping a vehicle pursuit, we believe that FCPD should complete an analysis for consideration by the Board of Supervisors on whether or not to maintain PIT.

Recommendation 5. Implement all recommendations but #54 of the Police Executive Research Forum (PERF) and complete a publicly available and periodically updated action plan that assigns responsibility by name or position and target date for completion of each recommendation. For PERF Report recommendation #54, which calls for the termination of the precision immobilization technique (PIT) for stopping a vehicle pursuit, FCPD should complete an analysis for approval by the Board of Supervisors on whether or not to maintain or restrict PIT use.

Use of Force Policies and Practices

During our review of current FCPD policies and practices on the use of force as set forth in General Order 540.1, we identified a number of changes to those policies and practices that we believe are important to the effective and balanced use of force by FCPD, and we recommend that these changes be made. Our conclusions are based on our review of multiple sources including the White House Task Force Report, the PERF Report, and various U.S. Department of Justice reports; input received from a number of FCPD officers and personnel; comments from the public; and the experiences and knowledge of our Subcommittee members.

While we believe that all of our recommendations are important, there are several that warrant particular attention. First, we believe that the establishment of a comprehensive and integrated UOF policy is critical. This policy should cover training, investigations, prosecutions, data collection, and information sharing. Second, we suggest that, as recommended by PERF, the current FCPD definition of "use of force" in General Order 540.1 should be replaced with a more comprehensive definition to provide FCPD officers with clear and concise guidance. Third, one aspect of the revised UOF policy should be a clarification and confirmation of the "objectively reasonable" standard that guides the constitutional use of force. Fourth, given the concerns by the public and by our Subcommittee about the use of weapons in several of the OISs we reviewed, we set forth a number of recommendations relating to the use of weapons and the provision of medical assistance to suspects in OISs.

Fifth, USA Today recently reported numerous cases of police pursuits resulting in either the vehicle being pursued or the police vehicle crashing and causing death or serious injury to suspects, innocent bystanders or the officers involved.[8] It reports that "(a)t least 11,506 people, including 6,300 fleeing suspects, were killed in police chases from 1979 through 2013, most recent year for which NHTSA [National Highway Traffic Safety Administration] records are available. That's an average of 329 a year — nearly one person a day." Findings such as this have caused some jurisdictions to rule out vehicular pursuit altogether.

While we heard justifications for maintaining more flexible pursuits inside Fairfax County boundaries,[9] we have determined on balance that vehicle pursuits should be limited to situations where there is a reasonable suspicion that a violent felony has been committed and that there is an imminent risk to

[8] http://www.usatoday.com/story/news/2015/07/30/police-pursuits-fatal-injuries/30187827/

[9] The case is made by some in FCPD, for example, that Fairfax County has a reputation among the region's criminal element of quickly responding to crimes, whether petty or felonious, and being willing to give chase to fleeing suspects. Such a reputation is believed to serve as a deterrent, causing potential criminals to avoid Fairfax County.

public safety and/or injury to individuals. We understand the FCPD is already considering modifications to the current vehicular pursuit policy.

Finally, we recommend that the FCPD's UOF policies be benchmarked during implementation of the Commission's recommendations and going forward to those of five comparable urban jurisdictions to ensure that FCPD is considering and adopting "best practices".

Recommendation 6. Establish a comprehensive and integrated policy on use of force to include training, investigations, prosecutions, data collection and information sharing. This policy must be clear, concise, and openly available for public inspection.

Recommendation 7. Consistent with the PERF Report, replace the current definition of use of force with a more comprehensive definition as identified below:

a. The current definition in General Order 540.1 is, "Use of Force: Any physical contact above the level of a 'guiding' or 'escort' hold between an officer and another person, or the use of lethal or non-lethal weapons, which further the officer's intent to establish or maintain control or custody or to defend themselves or another person."

b. Proposed new language: "Force means the following actions by a member of the department: any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. Force includes the use of firearms, Electronic Control Weapons (ECWs), chemical spray, bean bag shotgun, PepperBall gun and hard empty hands; the taking of a person to the ground; the use of vehicles; or the deployment of a canine; and excludes escorting or handcuffing a person who is exhibiting minimal or no resistance."

Recommendation 8. Amend General Order 540.1 -- USE OF FORCE -- to address the following:

a. Establish "sanctity of life" clearly and unambiguously as a philosophy and value system that remains paramount in the mind of every officer.

b. Maintain "objectively reasonable" as the standard to be followed by an officer when determining whether to use force and all references to "reasonable" must therefore be understood to mean "objectively reasonable."

c. Include as the definition of "reasonable: "...use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against his or her responsibility to protect public safety, as well as the suspect's civil liberties."

d. Reword, II. POLICY as follows: "A police officer shall employ only such force in discharge of his or her duty as is objectively reasonable in all circumstances. The use of force is to be generally considered by an officer as a last resort after discussion, negotiation or persuasion have been found to be ineffective or inappropriate in light of the situation. While the use of force is occasionally unavoidable, every police officer will refrain from unwarranted infliction of pain or suffering and will never engage in cruel, degrading or inhumane physical or verbal treatment of any person."

e. In revising the General Order, and while first and foremost meeting the criteria specified by the Supreme Court, consider the Customs and Border Patrol's definition with regard to "Objectively Reasonable and the Totality of Circumstances," which is as follows:[10]

i. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to underlying intent or motivation.

ii. In determining whether a use of force is "objectively reasonable" an officer must give careful attention to the totality of facts and circumstances of each particular case, including:

1. Whether the suspect poses an imminent threat to the safety of the officer/agent or others;
2. The severity of the crime at issue;
3. Whether the suspect is actively resisting seizure or attempting to evade arrest by flight;
4. Whether the circumstances are tense, uncertain and rapidly evolving; and
5. The foreseeable risk of injury to involved suspects and others.

iii. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection e.ii., these factors may include (but are not limited to) the:

1. training, mental attitude, age, size and strength of the officer;
2. training, mental attitude, age, size and perceived strength of the suspect;
3. weapon(s) involved;
4. presence of other officers, suspects or bystanders; and
5. environmental conditions.

f. Institute the following use of firearms requirements, by establishing or clarifying that:

i. the act of a police officer placing his or her weapon "in a ready gun position" at a suspect will be a reportable action [NOTE: Un-holstering his or her weapon, pointing downward toward the ground next to an officer's leg, with finger on frame of weapon, is not to be a reportable action in the context of this policy as officers may do so when they reasonably believe or know suspects are nearby, i.e., entering a dark building, alley, other location of concern.];

ii. the "ready gun" position is defined as pointing the weapon, with finger on the frame of the weapon, so the officer can see the suspect's hands and waist.;

iii. the officer must announce "Police!" after and not before attaining the "ready gun" position and if feasible followed by simple, specific and clear direction to the suspect;

iv. the "ready gun" position will be utilized in the specific circumstance where it is necessary to establish control and gain compliance through the pointing of a firearm;

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[10] "Objectively Reasonable and the Totality of Circumstances" can be found in I.B.1-3 (p. 2) in the *Use of Force Policy, Guidelines and Procedures Handbook*, Office of Training Development, HB 4500-01C of the U.S. Customs and Border Protection.

v. the pointing of the firearm will be considered non-deadly use of force in this circumstance if the weapon is not aimed at center of mass, which is normally the chest; and
vi. an officer's finger should be moved from the frame to the trigger of a weapon only if the use of deadly force is authorized under the objectively reasonable standard, which would exclude pointing a weapon at center of mass simply for control and compliance under the "ready gun" position addressed in iv. above.

g. Requirements for assuring medical assistance should be instituted consistent with the following:

i. State in Section II that "[i]n all situations, medical assistance shall be provided promptly to any person who is obviously injured, alleges an injury, or requests medical assistance."
ii. Incorporate a separate implementation section, including a requirement that an operational and implementation plan be created and incorporated in the General Order.
iii. Assure that any such plan includes ECW (Taser) non-lethal incidents and specifies the officer's medical action requirements in the event that an ECW deployment is taken against a suspect.

h. A requirement should be established with regard to the state of the officer at the time of an officer involved death or serious injury per the following: Drug and steroid testing will be conducted on police officers involved in incidents that result in death or serious injury as soon as possible after the incident but not longer than "T" hours, where "T" is determined by medical experts at the time to detect whether drugs or steroids were present in the officers at the time of the incident.

Recommendation 9. Benchmark FCPD UOF policies and practices with those of five urban jurisdictions that are comparable in their economic base, population density, and population demographics to Fairfax County.

Recommendation 10. Restrict vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and that there is a potential for imminent risk to public safety and/or injury to individuals if pursuit is not initiated.

Use of Force Reporting and Transparency

The UOF Subcommittee believes that transparency and communication are the foundations of trust between a police department and the community; and all the more so in matters of police use of force. PERF agrees by stating that "(i)t is critical that police departments be as open, transparent, and informative as possible about police operations and practices, especially when it comes to police use of force."[11]

[11] Ibid. PERF, p. 85.

We have learned that it is a national best practice to collect, maintain, analyze and report robust demographic data on all detentions and use of force. We believe that collection of this data is essential to enable the Board of Supervisors and the FCPD leadership to determine if FCPD personnel are acting in a way that is consistent with the principles of policing in a democracy. Transparency and communication on these matters provide the community with confidence that the police force is practicing procedural justice. (President's Task Force on 21st Century Policing).

We are told that, informally, both police officers and members of the public would describe procedural justice in action as being a "good cop and doing the right thing." More formally, procedural justice focuses on perceived impartiality during interactions between police and the communities they serve, participation from the public during these interactions, fairness, and consistency of treatment.[12]

In August, FCPD published synopses of Officer Involved Shootings over the past 10 years. A notable first step, the information contained in these synopses is limited, and we make recommendations to guide these public communications in the future.

Our review of the data in the synopses indicates that a significant percentage of officer involved shootings involved homeless individuals. Nationally, as many as 50 percent of individuals shot by police are in mental health crisis, with similar data evident in Fairfax County.[13] This finding is the cause of our recommendation that demographic data collected include information on homelessness and possible mental health crisis in all detentions and police use of force.

FCPD leadership knows that more transparency about use of force incidents and other police matters is urgently needed, but the power of inertia and FCPD's historical culture are powerful forces against change. This is a process, but reticence about sharing information will be among the most challenging tasks for FCPD in response to the work of the Commission.

In its report to the full commission, the Communications Subcommittee cited FCPD lack of transparency as the major source of current scrutiny: "Communications in recent high-profile use of force and critical incident cases were mishandled, inadequate and untimely, leading to loss of public trust and questions about the legitimacy of police actions.. … The failures in both communications and its Freedom of Information Act policies have created this crisis of confidence for FCPD."

Recommendation 11. Engage in robust public reporting on the demographics of the suspects in all use of force incidents and in-custody deaths, including for each incident: race, gender, age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury.

Recommendation 12. Collect and publicly report online all uses of force that result in death or serious injury; specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior employment of use of force by the officer(s) involved and

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[12] Ibid. *From Warriors to Guardians*
[13] Ad Hoc Police Review Commission Mental Health and CIT Subcommittee Final Report, Aug. 17, 2015.

determination of its appropriateness; and (c) opportunities for officer, supervisor, and commander training. (Note: Release of use of force data does not necessarily have to include names of officers or victims until cases are concluded.)

Recommendation 13. Annually report to the U.S. Department of Justice through the FBI's Uniform Crime Reporting System, all use of force and in-custody deaths, and disseminate such data to the public.

Recommendation 14. Assure that timely and consistent information is presented for all officer involved shootings and lethal incident synopses should be made available within 72 hours, to include the following:

a. A narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings.

b. The details available in all press releases, updates and other public information should be integrated into the summaries, including names suspects and officers and links to press releases and their updates provided.

c. Demographic information: race, age, gender, whether the call included concerns about a mental health crisis, whether the suspect was homeless.

d. Information on what special teams were involved, if any.

e. Appropriate information about whether/what discipline was administered in cases with policy violations.

f. Any changes of policy or training that result from review and lessons learned from the use of force incidents.

Body Cameras

The Use of Force Subcommittee believes that the FCPD would benefit from formally adopting a program for the use of Body Worn Cameras (BWC) by its police officers while conducting police activities. We find that the following primary benefits can be gained by the use of BWC:

- Increased community trust and a decrease in the variety of problems that currently stem from interactions between police departments and community members.

- Improved evidence collection, positive strides in officer safety, and a decrease in citizen complaints against the officers. The latter may bring with it a sharp decrease in the total costs usually associated with citizen complaints, to include time spent on such cases by both prosecution and police personnel.
- Decreased numbers of complaints against police officers in various police departments, both within the USA and internationally. There has also been an observed rise in civility when BWC are worn.

One additional advantage is the so-called "civilizing effect" that results from the use of a body camera. Statistics have clearly shown a decrease in use of force encounters, and in the resultant number of complaints by civilians against the local police departments once those departments employ BWC. The reduction in complaints and the level of violence from both law enforcement officers and civilians with

whom they interact daily perhaps serves as the greatest motivation for FCPD to begin using the cameras.

A recent New York Times article offers a caution, however, by noting that "(e)xperts say that cameras probably change for the better how the police and the public treat each other, but they do not know how much….Recent studies showed that when officers in Rialto, Calif., and in Mesa, Ariz., wore body cameras, complaints against the police fell sharply. But body camera advocates and skeptics alike say they do not know how much that reflects a real decline in police misconduct, and how much was a drop in spurious civilian complaints; it may be that both groups behave better when they are on camera."[14]

Regardless, a prerequisite to FCPD adopting the use of BWC is that patrol officers and other "stakeholders" must be provided the opportunity to provide meaningful input into the initial implementation of the pilot program. This program of inclusion should result in improved participation and acceptance of the BWC by the officers and management personnel, as well as members of the community in general.

Other police departments have, for example, found success in the implementation phase of their BWC programs when they engaged their police personnel from the very beginning of their BWC program. In this manner, police officers not only came to appreciate the rationale for the cameras, but they also embraced the technology once they discovered the potential benefits of using the video feed to accurately depict what occurred during their encounters with citizens, as opposed to allegations initially lodged against them by members of the community.

Similarly, when members of the public acceptance will be greater if the community is: (a) advised of the impending use of BWC; (b) given an opportunity to express its comments, concerns and ideas from a fresh perspective, i.e., a non-law enforcement viewpoint; and (c) given the time to prepare for and adapt to seeing the officers wearing the cameras.

An important consideration in the design of laws, policies and practices with regard to BWC implementation is protection of personal privacy and the related impact on citizen engagement if they understand that interaction with police officers will be recorded. We believe a privacy-protective and public-access-to-information balance can be struck in this regard and it may well be that current laws governing publicly available information may already provide the necessary protections with regard to video footage

FCPD should create a system that allows it to periodically evaluate the efficacy and to create statistical data regarding the use of the videos. This will allow a sense of transparency, promote public confidence in the program, and allow the agency to periodically evaluate whether departmental goals are being met with regard to the use of the cameras. Such data should also be made available to the public on a periodic basis. One major advantage to such evaluative studies will be the ability to demonstrate how much a department will save, financially or otherwise, by using the videos.

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[14] *Glare of Video Is Shifting Public's View of Police*, New York Times, July 30, 2015; or http://nyti.ms/1DdxstP.

Concluding, the use of Body Worn Cameras seems to be a wise and timely decision by the Fairfax County Police Department. The potential rewards from such a program should instill a strong sense of community trust in the FCPD and its police officers and should, in turn, offer important benefits to the officers themselves. We note that FCPD has proposed a BWC program and has begun community meetings on the proposed program. [15]

Recommendation 15. Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the following:

a. The enactment of laws, policies and procedures that protect individual privacy.

b. Police patrol officers being consulted, with feedback provided as to how their concerns and recommendations were considered.

c. Implementing a training program not only for all police officers, but the wide-ranging personnel who will oversee, process and manage the digital data, as well as prosecutors who will use the data in criminal prosecutions.

Electronic Control Weapons (Tasers/ECWs)

ECW, also known as Conducted Energy Weapons, are most commonly known by the manufacturer's trade name "Taser." ECWs inflict large charges of electric shock. ECWs are viewed by proponents as a critical tool for use in avoiding the escalation of a situation into one in which deadly force or another less-lethal type of force becomes necessary. Opponents believe ECWs can be relied upon too heavily by some police officers when lesser methods of subduing person may be available. Furthermore, this concern has been heightened by the recent incident in the Fairfax County Adult Detention Center and news stories about persons who have died as a result of the use of an ECW.

Current FCPD policy on the use of ECWs is set forth in General Order 540.1.G.3 and implemented through SOP 06-605. That policy classifies ECWs as "Non-Deadly Use of Force" and requires that only officers trained in the use of ECWs may employ them. We understand that all FCPD officers are being trained in the use of ECWs and that the FCPD has a sufficient number of ECWs to allow patrol officers to have an ECW when on patrol.

The principal focus of our review of the use of ECWs was whether the FCPD should adopt an "all-carry" requirement. We heard from FCPD patrol officers and training personnel with various perspectives on such a requirement. Some believe that an all-carry requirement is a critical component of a proper UOF policy, while others note that having an ECW available detracts from the consideration of ways in which to de-escalate a situation. Concerns were also expressed as to space available for ECWs on the belts of smaller officers.

On balance, we believe that an all-carry policy should be implemented for patrol officers and detectives and plainclothes officers when on duty. With qualifying initial training and periodic in-service training,

[15] See http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2015/public-safety-body-camera-memo.pdf].

officers should be able to properly de-escalate a situation without inappropriately relying on their ECWs. Alternatively, officers will have the ECWs available to use appropriately in lieu of other significant, more lethal, use of force.

The Philadelphia DOJ report recommends required-carry, as does the Cleveland settlement agreement.[16,17] The DOJ Ferguson Report asserts that officers should view ECWs as one tool among many, and "a weapon of need, not a tool of convenience;" while not depending on ECWs, or any type of force, "at the expense of diminishing the fundamental skills of communicating with subjects and de-escalating tense encounters."[18]

As with BWCs, it is essential that patrol officers as well as detectives and plainclothes officers be consulted concerning the implementation of the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.

Because an ECW can in certain circumstances be lethal, we believe that ECWs should be classified as less-lethal weapons rather than non-deadly weapons, a change promoted by PERF's 2011 Electronic Control Weapons Guidelines and PERF's recent report to FCPD.[19]

We note that current FCPD SOP 06-025 provides in Section IV.D.1 that only one ECW deployment should be used against a suspect, but that subsequent cycles may be used to achieve the desired result if reasonably necessary. Consistent with both the Philadelphia and Cleveland DOJ reports, we believe that supervisory approval should be required for ECW use in excess of three cycles on a suspect absent exigent circumstances.
We have made several other recommendations based on practices recommended in the materials we reviewed as well as suggestions made to the Subcommittee, including those from the ACLU. In addition, we fully endorse the recommendations made in the PERF Report.

Recommendation 16. Reclassify Electronic Control Weapons as "less-lethal weapons" rather than "non-deadly weapons" per the recommendation by the 2011 Electronic Control Weapons Guidelines and the PERF Report.

Recommendation 17. Mandate that all uniformed officers in enforcement units carry an ECW on their duty belt (or elsewhere on their person if necessary) when on patrol. Our recommendation in this regard relative to the execution of the mandate is contingent on police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.

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[16] Philadelphia U.S. Department of Justice (DOJ) Report, Recommendation 8.3.
[17] Cleveland DOJ Settlement Agreement, Paragraph 62.
[18] Ferguson DOJ Report, p. 31.
[19] Police Executive Research Forum (PERF) Electronic Control Weapon Guidelines, 2011, p. 11; and PERF Use-of-Force Policy and Practice Review Report, June 2015, Recommendation #30.

Recommendation 18. Mandate that all detectives and plainclothes officers, regardless of rank, carry an ECW in their vehicles when on duty. Our recommendation in this regard relative to the execution of the mandate is contingent on police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.

Recommendation 19. Regarding the term "excited delirium," define in the General Order 540.1 – USE OF FORCE – replace all use of "excited delirium" with a more medically and physiologically descriptive term and provide an explanation for the appearance of a suspect's lack of physical response to ECW use on them, and the conditions that may generate the appearance of being unimpaired by the ECW, such as is known to be induced by PCP use.

Recommendation 20. Prohibit use of an ECW on a handcuffed, or otherwise restrained individual, who is actively resisting, unless an objectively reasonable officer concludes that the resistance could result in serious injury to him- or herself or others and less severe force alternatives have been ineffective or are deemed unacceptable for the situation.

Recommendation 21. Prohibit use of an ECW on a frail or elderly person, child or a pregnant woman unless deadly force would otherwise be justified, since they face an elevated risk from ECWs.

Recommendation 22. Absent exigent circumstances, require supervisory approval for ECW use on a suspect in excess of three cycles.

Recommendation 23. Treat each ECW cycle as an independent application of the device, thus requiring its own justification, since multiple or prolonged ECW shocks may increase the risk of adverse effects on the heart or respiratory system.

Strategic Weapons and Tactics Techniques

FCPD currently uses a three step process together with a threat assessment in determining whether to employ SWAT.[20] There is no decision-making flow chart, but FCPD uses a non-public six page Risk Assessment and Mitigation Form. The Subcommittee was provided with a one page form for public dissemination.

FCPD is considering pulling all of the pertinent policies and guidance on the use of SWAT together into one general order. A draft general order for the use of the Warrant Risk Assessment Matrix and the Tactical Analysis Worksheet has been prepared and provided to the Subcommittee, but the draft general order does not collect all SWAT policies and protocols.

It is not clear to the Subcommittee what situation presents "high risk" nor does there appear to be guidance as to how to balance the various factors to make the required "high risk" determination. We

[20] Presentation by Commander David Moyer, Operations Support, at the May 20, 2015 UOF Subcommittee meeting.

believe it is essential that a definitive list of factors be formally established for making a "high-risk" determination, as well as assuring that a decision to use SWAT is ultimately the responsibility of a single commander.

Recommendation 24. Employ SWAT and the use of other advanced tactics only in situations where there is a high risk of violence, resistance, or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors that are captured in the recent modifications to the Warrant Risk Assessment Matrix.

Recommendation 25. Consolidate FCPD policies and protocols, including threat assessment, supervisory approval, training and post-use review and lessons learned, for the use and documentation of SWAT and other advanced tactics.

Recommendation 26. Require that all police divisions, most notably the Narcotics Division, employ the same risk assessment procedures as SWAT for planning any high-risk operation.

Recommendation 27. Ensure that there is broad community understanding of FCPD SWAT capabilities and how and when SWAT can be deployed.

Recommendation 28. Ensure that SWAT SOPs and the recently updated threat assessment process are clear in their requirement for approval by a single designated command officer who will bear overall responsibility for each use of SWAT.

Recommendation 29. Adopt – or reinforce those already adopted -- the following as FCPD SWAT "best practices" –

a. Establish policies and practices that ensure SWAT is deployed proportional to the unique needs of each individual incident.
b. Include a trained crisis negotiator with every SWAT deployment.
c. Require SWAT officers to wear body cams during every deployment.
d. Require that every SWAT deployment results in a post-deployment report that documents the following, in a manner that allows for the data to be readily compiled and analyzed for lessons learned:
    i. the purpose of the deployment;
    ii. the specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel;
    iii. whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose;
    iv. whether a distraction device was used and, if so, what type and for what purpose;
    v. whether an armored personnel carrier was used and, if so, for what purpose;
    vi. the race, sex, ethnicity and age of each individual encountered during the deployment, whether as a suspect or bystander;
    vii. whether any civilians, officers, or domestic animals sustained any injury or death;
    viii. a list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals; and

ix. a brief narrative statement describing any unusual circumstances or important data elements not captured in the list above.

Mobile Crisis Units

Police officers have increasingly become the first responders when a citizen is in the midst of a mental health crisis. This is certainly true in Fairfax County, where the Police Department responds annually to more than 5,000 calls for service related to individuals living with a mental illness who need assistance. It appears that this year that number might climb to over 7,000 calls, with such calls averaging 20 a day.[21]

A review of the last 10 years of FCPD OISs undertaken by this Subcommittee revealed that at least 40 percent of the shootings involve calls for service to address a mental health crisis. Mental health crises are likely implicated in a similar percentage of all use of force incidents. "Nearly half of all fatal shootings by law enforcement locally and nationally involve persons with mental illnesses."[22] Because of the impact of impact of mental health crises on incidents of use of force, we believe expansion of Mobile Crisis Units in the county is warranted.

Recommendation 30. Establish as a budget priority the purchase and 24-hour staffing of three additional Mobile Crisis Units, by directing the immediate funding of a second Mobile Crisis Unit, in support of the Mental Health Subcommittee recommendation 15; and over the appropriate budget cycles, but no later January 1, 2017, fund of two additional Mobile Crisis Units, for a total of four units, one for each human services district.

Oversight

Independent oversight will provide for public accountability and confidence relating to the use of force; education and insights for both the public and the police; and a positive, ongoing feedback loop that could result in the reduction of both UOF incidents and complaints. We believe therefore that independent oversight is a critical component of an effective UOF policy. This belief is consistent with the position taken by the President's Task Force on 21st Century Policing (Recommendation 2.8), the National Association for Civilian Oversight of Law Enforcement (NACOLE), as well as recent DOJ reports.

We also considered four other aspects of oversight. First, we believe that it is important that FCPD and its officers receive specialized legal advice on UOF and other critical issues unique to policing and, therefore, believe that a police legal advisor should be established within FCPD. The police legal advisor would provide advice and training on UOF and other legal issues and would also be responsible for ensuring the timely implementation of changes to policy and practices. It is worth noting that the FBI

[21] The Mental Health and Crisis Intervention Subcommittee Final Report, Aug. 17, 2015.
[22] Ibid, Mental Health and CIT

has had for over 30 years similar legal advisors in its field offices where they can provide direct advice and training as needed to agents on critical issues involving the legality of techniques and operations.

Second, we heard concerns from the public and Subcommittee members as to the need to ensure that the use of force is not being employed by FCPD in a manner that is discriminatory on the basis of race, gender, ethnicity, homelessness, or mental health conditions. We learned that FCPD lacks comprehensive data that would enable us to evaluate such concerns, and we therefore believe that FCPD should collect, analyze, and publish a comprehensive statistical report covering all FCPD stops, frisks and arrests and UOF incidents. Such data will enable the Board of Supervisors and FCPD to monitor and identify any discrimination or other concerns in FCPD's use of force and to take corrective action as may be needed.

Third, the Subcommittee learned that the existing internal FCPD Use of Force Committee addresses primarily administrative and tactical issues. It generally does not address substantive issues such as the decision to employ UOF and de-escalation and alternatives that were applied as well as supervisory, training, or policy issues that need attention.

The 2007 Rohrer report to the community on the Salvatore Culosi shooting referred to plans to enhance responsibilities for the Committee, and Chief Roessler has indicated his concurrence with the need for an enhanced Committee. We have not yet, however, seen the charter for the enhanced UOF Committee. Should the Subcommittee's charge be extended beyond the completion of this report, as is recommended, then we would be in a position to review and comment on the charter for the enhanced Committee.

We note that the DOJ Cleveland settlement agreement provides for the establishment of an internal police department Force Review Board and sets forth the composition, responsibilities, and activities of the FRB.[23] We believe that FCPD should consider these paragraphs as it enhances the role and responsibilities of the FCPD Committee.[24]

We further believe that at least two members of the public should be added to the internal UOF Committee to ensure that the police and public can mutually benefit from their respective views about a UOF situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input; should protect against real or perceived conflicts of interest; and should assure that civilian members are bound by the level of confidentiality that will be protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations.

We believe also that it is important that the internal Committee receive and consider after action reports and that it meet regularly with the Independent Auditor and the Civilian Review Panel (no less than semi-annually) to discuss any concerns relating to the use of force by FCPD and any changes in policy or practices that may be warranted.

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[23] Ibid. DOJ Cleveland, paragraphs 124 -130.
[24] *See also* White House Task Force Action Item 2.2.6 concerning the establishment of Serious Incident Review Boards.

Finally, we believe that the significance of a police officer lethal use of force demands a review independent of FCPD and that the Board of Supervisors is best positioned to review and issue a public report on the Chief of Police's determination in all lethal UOF cases on the community's behalf.

Recommendation 31. Implement independent investigative oversight and civilian review of UOF incidents. Consistent with the findings of the White House Task Force and the recommendations of NACOLE, independent oversight and civilian review will provide public accountability, trust and confidence, education of both the public and the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints.

Recommendation 32. Establish a police legal advisor position within FCPD who would not only advise the department on legal issues but also ensure implementation of recommendations and timely implementation of policy changes.

Recommendation 33. Collect and analyze data, and publish an annual statistical report, covering all FCPD stops, frisks, citations, arrests, and use-of force incidents by police station and magisterial district. Include the race, gender, and ethnicity of the individual in the data collected; and note whether the suspect is homeless and if a mental health crisis is suspected or a factor in the suspect being frisked, cited, arrested, and/or subjected to force. The data should also include the race, gender and ethnicity of the FCPD personnel conducting the stop, frisk, citation, arrest, and/or use-of-force and whether the interaction was initiated by FCPD or by the suspect. Finally, document the outcome of each incident and regularly report the collected data to the Board of Supervisors and the public and post the data and analysis online.

Recommendation 34. Reconstitute the existing FCPD Use of Force Committee to review selective use of force events, to include the decision to employ UOF, the use of de-escalation and alternatives, compliance with applicable law and FCPD policies and practices, as well as administrative, training, supervisory and tactical issues.

a. The UOF Committee should receive and consider after action reports (AARs) on each selected UOF event, identify lessons learned, and make recommendations as to any needed changes in policy or practice. The UOF Committee should meet on a regular basis (no less than semi-annually) with the Independent Auditor and the Civilian Review Panel to identify and address issues of concern arising out of UOF incidents and FCPD policies and practices.

b. At least two members of the public should be appointed to the UOF Committee to ensure that the police and public can mutually benefit from their respective views about a use of force situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input and should protect against real or perceived conflicts of interest and assure that they are bound by the level of confidentiality that will protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations.

c. Experts and representatives from other law enforcement agencies should be invited to attend UOF Committee meetings to provide critical external perspective, insight and expertise on a permanent or ad hoc basis.

Recommendation 35. The Board of Supervisors should review the Police Chief's determination in all lethal UOF cases and go on record with approval or disapproval of the action.

Workforce Policies and Practices

The Subcommittee recognizes that effective recruitment, training and ongoing monitoring of police officer performance are essential and fundamental to FCPD being able to ensure that use of force is applied in an objectively reasonable and responsible manner. We support in this regard, the Recruitment, Diversity and Vetting Subcommittee's position that "(e)nsuring an applicant is physically, morally and mentally suitable for employment with the department is crucial." We would add that maintaining these suitability standards throughout a police officer's tenure is equally important, particularly as relates to officer discretion in the use of force.

We note, for example, that a President's Task Force panel on Officer Safety and Wellness considered the spectrum of mental and physical health issues faced by police officers. The spectrum ranged from the day-to-day stress of the job and its likely effect on an officer's physical health; the need for mental health screening; traffic accidents, burnout, suicide, and how better to manage these issues to determine the length of an officer's career. The wellness and safety of law enforcement officers is critical not only to themselves, their colleagues, and their agencies but also to public safety. An officer whose capabilities, judgment, and behavior are adversely affected by poor physical or psychological health may not only be of little use to the community he or she serves but also a danger to it and to other officers.[25]

Of note in this regard, CALEA has established a mandatory standard for all police agencies that calls for an emotional stability and psychological fitness examination be conducted of each candidate prior to appointment to probationary status, using valid, useful, and nondiscriminatory procedures.[26]

Courts have also held that an agency may be responsible for its officer's violent behavior if it knew or should have known that the officer was so inclined. For example, in the case of *Bonsignore v. City of New York*, an officer shot his wife and then killed himself. The city was found negligent because, in part, the officer "was never identified as a problem officer, despite his displaying many of the signs that should have flagged him as having mental or emotional problems…."[5] The court held that a law enforcement department must take reasonable precautions to hire and or retain officers who are psychologically fit for duty. The doctrine of official immunity may not be invoked to protect an agency from allegations of vicarious liability, including negligent retention.[27]

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[25] See http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf.
[26] CALEA, 32.6.6.
[27] See http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2449&issue_id=82011.

While the Subcommittee found no empirical evidence to support or dispute our belief, anecdotal information from our engagement with police officers suggest that in-service training opportunities are limited in the current fiscally constrained environment.

We do recommend in this overall context that FCPD conduct a biennial workforce climate and culture survey to monitor FCPD's operating culture, including police officer attitudes about all aspects of their work, including the use of force; leadership and equipment; or any perceived barriers to their ability to perform their responsibilities consistent with FCPD's values, philosophy and policies.

Recommendation 36. Give emphasis in police officer basic and in-service training to:

a. The distinction in the use of "ready gun" and muzzle pointing in the conduct of a building search and room clearing.

b. Skill development in the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force.

c. The expected and effective use of Crisis Intervention Training.

d. Tactical and operational training on lethal and nonlethal use of force, with emphasis on de-escalation and tactical retreat skills.

Recommendation 37. Establish a "hire-to-retire" focus on police officer fitness to serve, particularly in relation to any propensity for being overly aggressive in the conduct of duty. This focus should be a key component in (a) recruitment, vetting and selection; (b) ensuring that the Early Identification System is sufficiently robust in- monitoring of OISs, excessive use of force incidents, and complaints of abuse of power[28]; (c) monitoring through basic officer training and in-service training and as a part of each officer's annual evaluation for other known and understood risk factors to ensure that they maintain the right personality and temperament for policing in a community policing framework; [29] (d) reinforcing the "duty-to-intervene" by fellow officers to be protective of the public and fellow officers; and (e) providing services, as appropriate, to assist officers who may need attention or treatment.

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[28] The April 2013 Police Department Administrative Investigation Process Audit Final Report states: "The FCPD did not utilize an early identification system or formal monitoring process to identify, train and work with members for whom data indicators suggest a relatively high number of complaints, or other patterns of behavior, which should be reviewed. However, management has advised and is taking steps to establish the Early Identification System (EIS) using IAPro, beginning July 1, 2012. It is our understanding that the IAB will maintain the EIS and present a monthly report to the chief of police…." (p. 2)

[29] We acknowledge and give due credit to FCPD's commitment to holding officers accountable for their engagement with the community. While we advocate for a renewed commitment to community policing, we commend FCPD for including as a performance dimension of "community orientation" in the standard offer performance evaluation. The following listing of community-focused expectations are taken directly from the current Police Officer's Evaluation form and addresses the **Community Relations Performance Dimension:**

- Effectively and professionally liaisons with the public. This includes initiating contact when appropriate, being available or responding in a timely manner, showing compassion and empathy when appropriate, exercising interpersonal and problem solving skills, and willingly giving information and assistance.
- Seeks out knowledge to enhance understanding of community issues.
- Sees issues from community's perspective.
- Comfortably and equitably deals with diversity.
- Demonstrates and fosters respect for individual differences.
- Maintains community awareness, responds to and schedules meetings with community.

Recommendation 38. Conduct a study of the relationship of the supervisor to the patrol officers, including the current ratio as a potential factor in strengthening the leadership direction provided to patrol officers in non-routine situations, particularly as it relates to the potential for use of force.[30]

Recommendation 39. Conduct a workforce climate survey and publish summary results on a biennial basis to monitor FCPD's operating culture, including police officer attitudes about their work, leadership and equipment; or any perceived barriers to their ability to perform their responsibilities consistent with FCPD's values, philosophy and policies. Use the detailed survey results broken down by organizational unit as a basis for dialogue between and among police officers, supervisors and the command structure.

[30] PERF Review recommendation #17 states in part, "…supervisors and commanders must not only read and review these reports, but also must question report writers when they see inconsistent statements or generic, boilerplate language in these reports. Furthermore, supervisors should be required to review any available video or audio recordings and seek out any possible witnesses to the incident for verification of facts." PERF also notes, "it is important for the FCPD to recognize that the on-duty supervisor…plays a critical role, not only in ensuring that the use of less-lethal force is properly reported after the fact, but also in responding to any high-risk incident in which injury or the complaint of injury is possible. Based on information provided by the responding officers and dispatchers, the sergeant should attempt to get to all high-risk scenes as quickly as possible in an attempt to "slow the situation down" and look for opportunities to de-escalate as much as possible." (p. 49)

CONCLUSION

With the completion of this Report, the Use of Force (UOF) Subcommittee has largely completed its charge from the Ad Hoc Police Review Commission to undertake a review of FCPD's use of force, critical incident response and training policies and practices. Our review resulted in 40 recommendations organized under ten topical headings.

The bulk of our recommendations focus on policies, practices and initiatives we recommend after a review of national best practices and considering the PERF analysis and recommendations. Clearly improvements can be made to standard operating procedures and general orders – the policy framework within which police officers must operate – particularly with regard to use of force and SWAT. We have also concluded that staffing and technology enhancements in the areas of body worn cameras, electronic control weapons, and mobile crisis units will reduce the use of force incidents.

We believe that the philosophy underpinning Fairfax County Police Department policies and practices must continue to be founded upon issues, concepts, and values of policing in a democratic society. We discussed, but did not reconcile, how best to characterize the essential roles played by FCPD police officers in the conduct of their responsibilities to protect our community. We also believe that a key step to sustained confidence and trust in FCPD is greater openness and transparency, particularly with regard to an officer involved use of force that leads to serious injury or death. A broader community discussion of this nature would be timely and welcomed.

Regardless of how the community comes to clarify and understand the role of the police officer in today's times – as guardian and warrior or peacemaker or fighter, as examples -- FCPD must continue to inculcate within the police force a commitment to the sanctity of human life and protection of constitutional rights; and give emphasis to de-escalation and crisis intervention strategies over use of force.

Thank you for the opportunity to be of service to the Commission and for being able to serve our community.

Use of Force Subcommittee Charter

While we have largely completed our charge, time and the demands of our task have left some work still to be completed. Further, we believe that maintaining our Subcommittee will benefit FCPD implementation of our recommendations.

Recommendation 40. The charter for the UOF subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to (a) meet its charge to "…review the roles of and relationships between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses; (b) follow up on open issues, such as the internal FCPD UOF Committee charter; and (c) support implementation of any of the UOF recommendations for which UOF Subcommittee participation would be beneficial.

Appendix A

UPDATED: Use of Force Subcommittee Work Plan

Activity	Tasks	Assignment	Meetings
Data Collection and Review	1. Recent use of force incidents (lethal and non-lethal) involving FCPD. 2. Data summarizing FCPD use of force interactions, officer involved shootings resulting in death or injury, and in-custody deaths from 2005 to 2015. 3. Incidents in which SWAT teams, military-type equipment, and other high risk tactics were employed 4. Use of Force Committee	FCPD	• May 20th and June 3rd
Understand Policies and Practices Review FCPD use of force and critical incident response policies and practices	1. General Orders and SOP 12-045; other policies and practices	All Members	NA | ASAP
	2. Training	FCPD	June 17th
	3. Threat assessment, de-escalation and incident avoidance	FCPD	June 17th
	Observations and Findings	All Members	June 17th
Benchmarking a) Review "best practices" on <u>use of force and critical incident response</u>. b) Determine how FCPD compares. Recommend changes to close any identified tasks.	1. Police Executive Research Forum Report	PERF & FCPD	July 1st
	2. DOJ reports on Cleveland police department	Sal Culosi	July 15th
	3. DOJ report on Ferguson police department	Randy Sayles	July 15th
	4. DOJ report on Philadelphia police department	Mary Kimm	July 15th
	5. The Report of the President's Task Force on 21st Century Policing	Hassan Aden	July 15th
	6. The March 2011 "Electronic Control Weapons Guidelines" published jointly by the Police Executive Research Forum and the U.S. Department of Justice Office of Community Oriented Policing Services.	Joe Smith	July 15th
	7. Policies on the use of **body cameras and dashboard cameras**, including when they are required to be used, the	Bernard Thompson	July 15th

	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		
	8. Policies on the provision of **medical treatment** and other assistance to individuals injured as the result of the use of force	Joseph Becerra	July 15th
	Observations, Findings, Recommendations	All Members	July 22nd
Organizational Roles, Responsibilities, and Relationships Review the roles and relationships in connection with use of force and critical incident responses	1. FCPD and the Office of the County Attorney	FCPD & County Att.	July 29th
	2. FCPD and Office of the Commonwealth's Attorney	FCPD & Comm. Att.	July 29th
	Observations, Findings, Recommendations on Organizational Responsibilities _____ Review & Clarify All Recommendations	All Members	July 29th
Findings and Recommendations Based on the review of existing FCPD policies and practices and a review of the policies and practices of other jurisdictions and the cited and other resources, develop proposed recommendations to the Board of Supervisors for changes and/or next steps for consideration by the Commission	Ranking of Recommendations	All Members	August 12th
	Approve Report Outline and Writing Assignments	Chair	August 12th
	First Draft Completed	Chair and Members	August 19th
	Approve Report to Commission	All Members	August 26th

Appendix B

CASE NUMBER	DATE	DISTRICT TOWN	SUBJECT NAME	AGE	RACE	INJURY	MENTAL HEALTH?	ARMED?	CHARGES	OFFICER NAME	Notes	CRIMINAL?	POLICY VIOLATION?
5014000912	1/14/2005	Franconia	Roderick D. Jordan	34		wounded		gun	Attempted Capital Murder of Officer, Attempted Robbery, Use of Firearm in Felony.	Not given		no	no
5141000102	5/21/2005	McLean	Stacy Darrell Smith			none		no	Malicious Bodily Injury to Officer, Possession of Marijuana & Cocaine, Hit & Run, Disregarding Officer's Command to Stop	Not given		no	no
5188002654	7/7/2005	W. Springfield	not given			wounded	X	knife	none reported	Not given		no	no
5227000367	8/15/2005	Franconia	Antonio Hill	23		grazed? officer shot in foot	X	no	Malicious Wounding and Abduction.	Not given	officer wounded by police weapon	no	no
5279002956	10/6/2005		none			none			none reported	Not given	unintentional discharge	no	yes
5302001305	10/29/2005	Franconia	Joseph Oliver	56		wounded	X	guns	Attempted Capital Murder of Officer, Use of Firearm in Felony	not given		no	no
5335002676	12/1/2005	McLean	Philip Luther Moore	23		wounded		no	Attempted Malicious Wounding of a Law Enforcement Officer and Grand Larceny.	not given		no	yes
6003000806	1/3/2006	Mount Vernon	Jonathan White	29		wounded		BB gun	Possession of Stolen Property (vehicle) and Felony Speed to Elude	not given	PIT questions	no	no
6024002994	1/24/2006	Fairfax	Salvatore Culosi Jr.	37	white	fatal		no	none	Deval Bullock	SWAT	no	yes
6128001916	5/8/2006	Sully	Michael Kennedy	18	white	fatal		heavily	deceased	2 officers killed	2 officers killed	no	no
6250002596	9/7/2006	Falls Church	Marlon Ian McDougal	24		wounded		no	carjacking and burglary with the intent to commit robbery	not given	pursuit, stopped by sheriff deputy car striking	no	no
6347001041	12/13/2006	Mount Vernon	Edward R. Agurs Jr.	39		fatal		no	deceased	not given	bank robbery	no	no

6357000168	12/23/2006	Falls Church	Peter Zabdiel Gomez	22		none		no	Attempted Malicious Wounding of a Law Enforcement Officer	not given	officer fired weapon, missed	no	no
7143002806	5/23/2007	Mount Vernon	Randall Leroy Rollins	28		fatal		gun	deceased	not given		no	no
7254000214	9/7/2007	Herndon	Rocky L. King	26		wounded		guns	Attempted Capital Murder of Officer, Use of a Firearm in Felony	not given		no	no
7304000270	10/31/2007	Burke	Edward Connor	71		fatal	X	guns	deceased	not given		no	no
7339000061	12/5/2007	Fairfax	not given	27		wounded		gun	Possession with Intent to Sell Marijuana and Possession of a Firearm in Felony	not given		no	no
8011002473	1/11/2008	Franconia	Brent Shorter	51		fatal	X	knife	deceased	not given	homeless	no	no
8033000305	2/2/2008	Franconia	Jeffrey Scott Koger	38	white	wounded		shotgun, knife	Attempted Capital Murder of Officer, Use of a Firearm in Felony, Aggravated Malicious Wounding	not given	bizarre case	no	no
	2/12/2008	Mount Vernon	Ashley McIntosh		while	fatal car accident		none	not OIS	Amanda Perry	car accident	no	yes
8187003076	7/5/2008	Oakton	David Michael Przewlocki	54		fatal	X	BB gun replica	deceased	not given		no	no
8320001172	11/15/2008	McLean	Dean Martinez	34		wounded	X	gun	Carrying a Concealed Weapon, Carrying a Concealed Weapon into an Establishment that Serves Alcohol, and Brandishing a Firearm	not given		no	no
8345001390	12/10/2008	Ended in Arlington	Brook Hailu Beshah	19	black	fatal		plastic replica BB gun	deceased	not given	"Based on the man's injuries,	no	no
8355003077	12/20/2008	Springfield	Zeeshan Sarwar	30		no injury			Driving While Intoxicated, Refusal to Submit to a Breath or Blood Test, Assault on Officer, Speed to Elude, Hit and Run	not given		no	no

9103000080	4/13/2009	Fairfax	Vincent Ramon Jones	46		fatal		knives	domestic violence call	not given		no	no
20093170191	11/13/2009	Mount Vernon	David Masters	52	white	fatal	X	none	deceased	David Scott Ziants		no	yes
20100360039	2/4/2010	Herndon	Not Given?	25		wounded	X	BB airgun	none stated	not given	Currently in litigation.	no	no
20103090016	11/4/2010	Falls Church	Joseph Lawrence Michel	50		wounded		no	Felonious Assault, Attempted Malicious Wounding of a Police Officer, Grand Larceny	not given	Pursuit and PIT	no	no
20111120173	4/22/2011	Springfield	Joseph Anthony Croft	49		fatal	X	knife	deceased	PFCJohn Parker		no	no
20112020046	7/21/2011	Sully	Ricardo Leon	34		fatal	X	shotgun, knife	deceased	PFC Jonathan Keitz; PFC Stephen Sylces		no	no
20121410040	5/19/2012	Springfield	Gray Alan Combs Jr.	22		fatal	X	samurai sword	deceased	PFC J. Kevin Clarke	homeless	no	no
20121490124	5/28/2012	Mount Vernon	Stephen P. Collier	61		wounded	X	knife	Destruction of Property and Assault on a Law Enforcement Officer	PFC Stephen Copp.		no	no
20121910022	7/8/2012	Mount Vernon	Nicholas Allen Kaelber	21		fatal		handgun	deceased	PFC Edward Carpenter		no	no
20130990188	4/9/2013	Franconia	Maxwell Scott Eisenman	37		wounded	X	plastic replica	Assault on a Law Enforcement Officer.	PFC Shannon Sams, PFC Robert Marshall. PFC Eric Runkles		no	no
20132410240	8/29/2013	Springfield	John Geer	46	white	deceased			deceased	Officer Adam Torres		yes	yes
20133030280	10/30/2013	Mount Vernon	James Bryant	28		deceased	X	officer's baton	deceased	PFC Mohammed Oluwa	litigation pending; homeless	no	no
20142510203	9/8/2014	Franconia	not named	60s		wounded	X	handgun	none identified	Sgt. Joseph Furman, PFC Gene Taitano	suicidal	no	TBD
20143060056	11/2/2014	Sully	not named			no injury		no	none identified	not named	pursuit	no	TBD

Appendix C

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Appendix C

Question	Answer
Use of Force Reports, Data & Analyses	
1. Provide details on all deadly use of force cases since 2006, and all criminal and IAD investigations since 2009.	Synopsis for all officer involved shootings for the period of 2005-2013 are posted on the Chief's Page at www.fairfaxcounty.gov/police. Discharging a firearm towards animals are not included.
2. Provide the number of uniformed officers in FCPD per each year in the report?	The department has 1,339 sworn employees. Approximately 980 are assigned to patrol. This number fluctuates throughout the year due to attrition and vacancy rates but this is the base level.
3. Explain why the yearly totals of discipline cases was so small out of the total number of UOF cases (e.g., in 2010 three discipline cases out of 408). http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/use-of-force-statistical-summary.pdf	Use of force incidents are unique to the circumstances the officer(s) were presented at the time of the calls for service. Both General Order 301 and 540.1 describe what is expected of an officer regarding the use of force. The vast majority of UOF incidents involve unambiguous officer compliance with these orders and hence not subject to administrative review. In this light, the use of force numbers will fluctuate and not all use of force incidents generate an administrative investigation.
4. Explain why the above report shows UOF incidents numbering over 400 in 2010-13 but page 6 of http://www.fairfaxcounty.gov/policecommission/materials/2013-iab-annual-report.pdf shows UOF for 2009-2013 ranged from 84-102 (the same upward trend as in #3 above) then p. 11 shows the same years ranged from 539 to 443?	In the 2013 IAB Annual Report, page 6 "Use of Force" refers to the number of administrative investigations that were conducted where the use of force by an officer was investigated. Not all use of force incidents are investigated as an administrative investigation. For example, if an individual who is being arrested but is resisting, the officer then utilizes a physical control technique to gain control is considered a use of force. However, that physical control technique does not necessarily generate an administrative investigation. Use of Force complaints which are investigated as an administrative investigation generally are generated by citizens, by injuries to the individual, and/or by officer/department. Therefore, the numbers on page 6 will differ from the numbers located on page 11. The numbers on page 11 describe the overall use of force Incidents reported where the numbers on page 6 are the use of force incidents investigated as an administrative investigation.
Use of Force Policy, Training & Culture	
5. Based on the list of SOPs how can the UOF subcommittee gain access to: ▪ 06-024 CEW ▪ 06-025 PepperBall System ▪ 06-026 Citizen Reporting System ▪ 08-034 Patrol Rifle Program ▪ 12-045 Investigation of Deadly Force Deployment 01-01-12 ▪ 12-046 Early Identification System 11-05-12 ▪ 13-047 Police Response to Bomb Threats and 01-01-13 Bomb Incidents ▪ 13-048 Special Operations Hostage/Barricaded 04-01-13 Persons ▪ 13-049 Marine Patrol 04-01-13	Sent as attachments. SOP 06-025 CEW was previously provided. SOP 13-048, Special Operations Hostage/Barricaded Persons, will not be provided. A new General Order 520.3 about Hostage/Barricade Persons is and has been provided to the Subcommittee.

Question	Answer
▪ 13-050 Mandatory and Specialized Training 04-01-13 ▪ 13-051 Civil Disturbance Unit 04-01-13	
6. What metrics does FCPD employ for UOF comparable to those used in the "Final Report of the President's Task Force on 21st Century Policing?" (see page 19)	For statistical purposes and analysis, the FCPD does not assign any values or metrics to the different types of use of force.
7. "Communities should support a culture and practice of policing that reflects the values of protection and promotion of the dignity of all, especially the most vulnerable." (see p. 45 - 4.4, Final Report of the President's Task Force on 21st Century Policing). How does FCPD do this?	The FCPD's mission is to protect ALL persons and property by providing public safety services and the fair and impartial enforcement of the laws of the Commonwealth of Virginia in the County of Fairfax, while promoting community involvement, as well as stability and order through service, assistance and visibility. (derived in part from the Department's mission statement)
8. Does FCPD have a similar Law Enforcement Code of Conduct that includes UOF to that of Sheriff David Clarke, Jr., of Milwaukee Co, WI? That is: "A police officer will never employ unnecessary force or violence and will use only such forces in discharge of duty as is reasonable in all circumstances. The use of force should be used only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person."	The FCPD does have a policy statement regarding use of force but it is not the same as Milwaukee. The policy is written as the policy statement of General Order 540.1. "II. POLICY It is the policy of the Police Department that force is used only to the extent reasonably necessary to defend oneself or another, to control a person during an investigative detention or mental detention, and to effect arrest. In all situations, medical assistance shall be provided to any person who is obviously injured, alleges an injury, or requests medical assistance."
9. Does FCPD have use of force continuum from non-lethal to lethal? I don't see that in Gen'l Order 540.1	In General Order 540.1, Section VI is the use of force model which is a use of force continuum from non-lethal to lethal.
10. What is the FCPD definition of defense of self and defense of others?	Officers are legally allowed to defend themselves and others from the threat of serious bodily injury or death. General Order 540.1, Section IV Regulations, Subsection A, Deadly Force reads as follows: In any situation where an officer is otherwise acting lawfully, the use of deadly force is justified in the defense of the officer's life or other person's life. Also, the use of deadly force is justified in protecting the officer or public from serious injury.

Question	Answer
	In addition, self-defense and in the defense of others were discussed in the meeting on June 3, 2015 and the discussion is captured in the meeting minutes.
11. Are officers taught only to shoot to kill? Why?	Any application of deadly force is to stop an aggressive action by a subject who poses a clear and immediate threat of death or bodily injury to the officer or another party. Officers are not instructed in any phase of training that the intent of discharging a firearm is to shoot to kill.
12. How often do FCPD officers review UOF guidelines? Is there a written and practical (simulator) exam? How often? Do any fail? How are they remediated?	Beginning in the Academy, officers are consistently reviewing use of force guidelines; whether it is in roll calls, inservice, academy classes, or academy training. During the Academy, officers are tested extensively on use of force. Recruits have to pass written exams, which covers use of force. In addition, recruits have to pass practical exercises in the use of force tools such as Tasers, Batons, firearms, hands on, etc. As for any written test and proficiency test, recruits have only three attempts to either answer questions correctly or demonstrate proficiency. If after three attempts the recruit fails to answer a question correctly or demonstrate proficiency, the recruit is either dismissed from the Academy or assigned to attend the next Academy class. Officers are required to meet the minimum standards as directed by the Department of Criminal Justice Services. However, the Department's standards not only include the Department of Criminal Justice Services standards, but are even more stringent. By having more stringent standards, the Academy and the Department are a national leader in training recruits. Beyond the Academy, officers are trained in and review use of force through numerous methods. Officers are required to participate in two inservice training days a year which includes use of force. Officers who attend an elective class reference use of force have use of force policies reviewed. All squads have roll call training where use of force is discussed and in many instances, squads conduct their own practicals. During inservice, the Academy conducts refresher training in batons, handcuffing, and on hand cuffing

Question	Answer
	techniques. Though there are no written exams for the refresher training, the Academy staff monitors each officer for proper technique and proficiency. Officers are not allowed to carry or use a Taser unless they complete and pass a Taser class. During that class, there is a written exam that the officer's must pass as well as a practical exercise.
13. What UOF training do officers receive when others, including fellow officers, are in the line of fire.	During firearms training and inservice training (twice a year), the cardinal rules of safety are discussed. One rule is to know your target and what is beyond to include pedestrians, buildings, vehicles, other officers, etc. Officers, during their training scenarios, are taught to be cognizant on cross fire and whether others are present and where they are located (not just for firearms, but also for other forms of use of force such as OC, baton, Tasers). Cross fire situations are sometimes inevitable but are to be avoided when possible. Officers who are rifle qualified are instructed on the speed and penetrating power of their round and to be extremely cognizant of what is beyond their target when discharging their weapon. The requirement to qualify twice a year at the firearms range, as well as the encouragement to practice at the range is essential to ensuring that officers place their rounds only on the intended target.
14. Is there an SOP for a Sgt to arrive at the scene and take charge?	Certain individual calls or situations require supervisor presence, action or oversight but there is no universal policy regarding a supervisor response, as there is only one or two supervisors per district with 12-15 units under their supervision. They cannot be everywhere at all times so some discretion and flexibility is required. The department utilizes Master Police Officer's to supplement police supervisors, as they are senior officers with proven leadership and knowledge/skills/abilities that are in a non-supervisory role but who can assist junior officers with scene management.
15. What are the policies, standard operating procedures, concerning giving chase?	The pursuit policy is in General Order 501.1 that is posted on the Commission web site.
16. How do officers and supervisors evaluate the risk to the public when chasing a suspect? Can there be any real time feedback? What about drawing guns in traffic/public/when people are present? Lunchtime on Richmond Highway seems like a circumstance where you would give chase or draw	Factors to be considered when pursuing a suspect in a vehicle are outlined in General Order 501.1. In addition, officers receive regular training in emergency vehicle operation at the Fairfax County Police Emergency Vehicle Operation Center.

Question	Answer
guns only in extreme circumstances, like the kidnapping of a child. This is a screenshot from the video:http://www.connectionnewspapers.com/photos/2015/may/13/74239/	
17. Who is making the choices about how the police department and the county communicate with families of people who have been affected by police use of force? Written policy vs discretion?	Detectives from the Major Crimes Division (MCD) handles the most serious use of force cases and an officer involved shooting is a good example. There is no written policy that specifically dictates how this is to be handled and has always been done at the discretion of the lead detective, with supervisory oversight. This is because each case is different, dynamics of those involved are unique and the lead detective is in the best position to determine timing. They take their role very seriously in regards to communicating with families and attempt to do so even under the most difficult circumstances. The reasons for communicating with the family are numerous and are done to help explain the investigative process, answer any questions the family may have in general, keep them abreast of the status of the investigation and gather additional information. Some families are more receptive than others, but it is our duty to maintain contact with them for the reasons listed above. In select cases over the years, detectives have been directed not to have contact with family members for different reasons at different points during the investigative process. This direction did not come from MCD and was usually in regards to a potential civil law suit or other legal matter. The closest related policy is under GO 501.2 Investigative Responsibilities which states: Section IV B: *Periodic contact shall be made with crime victims to determine if any further information can be learned and to notify them of any changes in case status. Contacts may be made either by telephone or in person. Notification of a change in case status should coincide with the status change. All contacts shall be documented in the incident reports and supplements.* Section VI. A. 2. *The term "victim" shall also mean a spouse or child of such a person, a parent or legal guardian of such*

Question	Answer
	a person who is a minor, or a spouse, parent, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in this section.
18. Who does the Chief of Police report to? Under what circumstances does he need to communicate with superiors about use of force and the ongoing investigation? What did the Board of Supervisors know and when did they know it?	The Chief of Police reports to the County Executive (CE) and the Deputy County Executive (DCE) for Public Safety. Methods of communicating with the Board of Supervisors (BOS) include direct emails, phone calls, awareness emails from the Police Public Information Office (PIO) or the Office of Public Affairs (OPA). When directed by the County Attorney, the Chief of Police attends closed session meetings with the BOS. All Officer involved shooting cases are communicated to the BOS, CE, and DCE methodically as the event unfolds through emails, phone calls and often alerts from the Police Liaison Commander at the Department of Public Safety Communications. The affected station commander will contact the BOS member whose district the OIS occurred. This is in addition to the Chief of Police, PIO and/or OPA making notifications as well.
19. What is the UOF culture within FCPD?	The matter of UOF culture was raised by the UOF Subcommittee with the Academy instructors at the June 3, 2015 meeting. FCPD's UOF culture is indirectly addressed through its recruitment and training programs and through the oversight and accountability provided by its management and supervisory leaders. A key to maintaining a responsible UOF culture within the police ranks is the quality of its officers. The Academy staff noted that only 4% of applicants make it to Academy. 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 holster. Finally, the goal of training officers on defensive tactics is restraint in the use of force and 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

Question	Answer
	language, contact, expressions, and voice tone and inflection. Two related issues were raised by Subcommittee members at the meeting. Department-wide climate surveys have been previously conducted, but there is no program for the annual conduct of such a survey. Climate surveys are, however, informally conducted by individual subunits of the Department. Finally, an observation was made that the only recruitment photo on the FCPD website shows an officer a police officer firing a gun, not interacting with public. The Department understands the observation, but believes that officers are attracted to the work because of the opportunity to serve the community and to help people.
20. Is there is 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?	Department-wide climate surveys have been previously conducted, but there is no program for the annual conduct of such a survey. Climate surveys are, however, informally conducted by individual subunits of the Department. The Department also receives formal feedback on a routine basis from all the employee groups, the Employee Quality Improvement Program, and the Supervisors Employee Quality Improvement Program, and when Departmental leaders visit roll calls and speak with officers.
21. Can FCPD post its policies regarding officers going out on or staying on patrol who are experiencing stress in their domestic life that could impact their performance on patrol?	The FCPD does not have a policy reference officers experiencing stress in their private life. However, when officers display signs of stress which are recognized by other officers, supervisors, or department staff, supervisors discuss the signs of stress with the employee. There are resources that are available to officers such as the Employee Assistance Program (different programs available such as counseling), Peer Support, Police Psychologists, Police Chaplains, and other county programs. In some instances, the supervisor, through their chain of command, can seek a Fit for Duty examination. (Example: A supervisor hears an officer making comments such as "The world would be better without me." or "No one will miss me if I am not here." Fearing the officer is suicidal, the supervisor immediately relieves the officer of duty and secures their weapon. The supervisor then recommends a fit for duty (as officer is not able to perform their job) via their commander. The commanders will determine whether a fit for duty examination is appropriate based on known and unknown information. Once the determination is made, the requests

Question	Answer
	is processed through the Administrative Support Bureau and then to the Chief of Police for final approval.) Fit for Duty examinations are coordinated through the Administrative Bureau. All medical, including psychological diagnoses, are protected by confidentiality laws, including HIPAA unless there is a risk of harm to self or others, or there is a suspicion of child or elderly abuse, or if the employee signs a release form, or in response to a court order. Please refer to General Order 430.4, Incident Support Services for more information and Fairfax County Policies and Procedures Memorandum No. 32, Employee Assistance Program for more information.
22. How many FCPD officers are married or related to attorneys in the Commonwealth Attorney's office?	Unknown; this information is not collected.
Case Review & Excessive Force Litigation	
23. Provide those cases and similar ones back to 2006 which is the period specified in our Scope of Work.	It is being prepared for the Chief's page of the FCPD website.
24. A list of all police involved incidents that resulted in death or injury that includes the date of the incident, a summary of the events and outcome (since 2006).	The Chief of Police will post a synopsis of Department involved shootings on the Department web site. This is under development at this time.
25. A timeline of information released, plus an explanation of why certain kinds of information were and weren't released.	The media releases for each of these events were posted on the ad hoc commission website. An explanation of what was or was not released is vague but would be willing to answer specific questions on this.
26. What is the policy for how information is made public in general. History and epistemology of the FCPC communications policy. Exactly what is it?	General Order 401 and 401.1 have the media release policy of the department and are posted on the ad hoc commission website.
27. It would be very helpful to have the presentation we had at the last meeting, but about a specific case and the details involved. In the case of David Masters, it appears the case is closed and it would be appropriate to understand the investigation step by step through this particular case.	A presentation of a closed case from our Criminal Investigation Bureau from the criminal perspective is possible. This would not include the administrative investigation. An entire meeting would be required for this and no documents would be handed out.
28. Can we see everything involved in at least one closed case, the incident reports, the investigation reports, etc. all of the documents that parallel the documents ordered released in the Geer case. What video exists? Other evidence? Again, it appears the Masters case might be a good case study. What can we see?	The Chief of Police will post a synopsis and other information regarding the Department's officer involved shootings but will not be releasing any case reports, files or documents from the criminal or administrative case.
29. Was the video released in the Masters case the only video? It appeared that another patrol car would have had a better view of the final moments of the event.	The video that was released was the only video the Department had of the incident. The other patrol vehicles involved were not equipped with in car video cameras.

Question	Answer
30. The issue of access by the Subcommittee (and the full Commission) to the IAB and CIB reports for the closed "high visibility" UOF incidents which have been identified needs to be resolved in a way that is consistent with the VFOIA but still allows us to fully understand what happened in those situations so that we can evaluate whether polices changes should be considered and recommended. As I mentioned, the example of Dr. Culosi could provide valuable information on the decision to use SWAT and the manner in which weapons were held as the attempted service of the warrant proceeded. I spoke with Deputy Chief Ryan about the issue after the meeting, and he said that he would look into how we could resolve the issue and provide access, but we need to follow up timely. Maybe, if the full reports can't be made available, then redactions could be made as necessary to protect confidential sources and the like before release. These are all closed cases so there would be no administrative or criminal proceedings that would still be ongoing. Synopses of the reports are not sufficient.	In reference to Dr. Culosi's case, please see "Report to the Community" dated January 11, 2007. http://www.fairfaxcounty.gov/police/news-releases/special-reports/pdf/community-report-salvatore-culosi.pdf
31. Provide details of the Annual Comparison by Type of Litigation 2009-2013 for years 2010-13 involving the six Excessive Force (see p. 27).	The Department does not maintain the case files for each lawsuit. The Department receives notification of the lawsuit which is then logged and forwarded to the County Attorney. All documents associated with the lawsuits are maintained by the County Attorney's office or the court in which the lawsuit was filed. Therefore, for details on each court case, please refer to the case, docket number, and appropriate court: 2010: Campbell vs Fairfax County, VA, et. al (United States District Court for Eastern District of Virginia, 1:10CV1245) The Department was advised that the case was tried before a jury, and the jury ruled in favor of the involved officers, finding that they did not arrest the plaintiff without probable cause, or use excessive force in effectuating the arrest. 2010: Walls v Sepehri (Circuit Court of Fairfax County, CL-2009-0018394 then case was transferred to the Eastern District of Virginia, 1:10cv44). The Department was advised that the plaintiff dismissed her own lawsuit prior to trial.

Question	Answer
	2010: Blondell v Amos, Wyatt, and Wright (United States District Court for Eastern District of Virginia, 1:10CV249) The Department was advised that the case was tried before a jury, and the jury ruled in favor of the involved officers, finding that they did not arrest the plaintiff without probable cause, or use excessive force in effectuating the arrest. 2012: Lodhi v Fairfax County Police Department (United States District Court for Eastern District of Virginia, 1:12CV485) The Department was advised that this matter was dismissed by the Court based upon finding that the plaintiff failed to show any evidence upon which a jury could find that the involved officer had used excessive force in the arrest of the plaintiff. 2013: Akowuah v County of Fairfax, Fairfax County Police Department, and Waked (United States District Court for Eastern District of Virginia, 1:13CV83) The Department was advised that this matter was dismissed by the Court based upon finding that the plaintiff failed to show any evidence upon which a jury could find that the involved officer had used excessive force in the arrest of the plaintiff. 2012 is listed as having two lawsuits referencing excessive use of force. The Department received a notice of claim (not a lawsuit) in 2012 which was captured as a lawsuit in the Internal Affairs Bureau 2013 Annual Statistical Report. The notice of claim was associated with the 2013 lawsuit, Akowuah v County of Fairfax, Fairfax County Police Department, and Waked. Therefore, the statistics for 2012 should be 1 instead of 2.
32. Will the FCPD and Commonwealth's Attorney explain to the UOF subcommittee why the FCPD officer who killed Mr. Geer on Aug. 29, 2013, has not been charged or exonerated 20 months after the fatal shooting and remains on paid administrative leave?	The Commonwealth Attorney has convened a grand jury in this case to be held in July 2015. The Commission Chairman directed that the Commission members exclude the Geer case from their deliberations.
33. Question about the statement that accompanied the release of the name of the officer who shot John Geer. In January 2015, this statement still asserts the explanation of the shooting officer, even though documents ordered released by the court show that four other officers agreed with each other and disagreed with the shooting officer. Why does the statement repeat the assertion that Geer lowered his hands?	The Commission was instructed to avoid discussion of the Geer case.

Question	Answer
34. In November 2011, Officer Oluwa was the subject of a civil rights lawsuit after Oluwa and another officer beat James Darden. Per p. 30 of the minutes of the 4/10/12 Board of Supervisors' meeting, business discussed in recess/closed session included: "*James Darden v. Colonel David M. Rohrer, Officer Christian J. Chamberlain, Officer Mohammed S. Oluwa, and Fairfax County*, Case No. 1:11cv828 (E.D. Va.)." Was the homeless man beaten in the face? Was a baton used? How did such a beating comport with General Order 540.1?	The case documents can be viewed at the United States District Court for the Eastern District of Virginia under docket 1:2011cv00828. Synopsis: Officers were watching a hotel off of Jefferson Davis Highway in the Mount Vernon District Station for narcotics activity. Mr. Darden was stopped and the officer's believed Mr. Darden was attempting to swallow crack cocaine. The officer's employed a physical control technique to prevent Mr. Darden from swallowing the narcotic. Mr. Darden was subsequently drive stunned by another officer utilizing the Taser. The force used was in compliance with the Department's policies. The case was tried before a jury in the aforementioned civil litigation, and the jury ruled in favor of both involved officers, finding that they did not use excessive force against Mr. Darden.
35. In a 2005 incident, did Officer Oluwa employ UOF with a man described in the media as potentially suicidal? How did such a UOF comport with General Order 540.1? What UOF was used during this incident? Reporting indicated that the young man resisted being grabbed. "Oluwa distracted him through conversation while Buisch got close enough to grab the man. Though he resisted, the officers, together with a U.S. Park Police officer, managed to get him back from the river and into their police cruiser." Source: http://www.connectionnewspapers.com/news/2005/mar/02/mount-vernons-heroes-celebrated/	Officers were called for a suicidal subject who might be armed with a handgun (per subject's father). The subject was found near the river and there was concern the subject might jump in. Officer Oluwa distracted the subject while other officers were able to grab the subject and get him away from the river. The use of force used (hands on by grabbing the subject, bringing him away from the shore, and securing the subjects hands) was utilized to protect the individual from harming themselves and was in compliance with the Department's policies.
FCPD Use of Force Committee	
36. Why did FCPD allow its internal Use of Force Committee to become dormant circa 2012? Who and on what date decided to revive it? Why? When will it be revitalized?	The FCPD is in process of returning, through revisions to departmental policy, the UOF Committee to a prominent means for learning lessons from significant UOF incidents.
37. What is the written Commonwealth or County directive that made past internal Use of Force Committee written reports "sensitive" and in need of "a determination made of how much, if anything, can be provided to the Subcommittee for review" according to Mr. Ryan? Are there Use of Force Committee written reports we can't see? Who made that determination? By what and whose authority would anything be redacted that's given to us?	Previous UOF Committee reports are sensitive because they have historically always been considered internal-use documents to support officer training and to identify gaps in FCPD practices that needed closure or action. Participation by officers in UOF Committee deliberations has been voluntary after good-faith assurances have been provided that information provided would only be internally available. In light of these assurances, FCPD is obligated to seek officer concurrence to publicly share the reports.

Question	Answer
The answer is not responsive to the questions. What is the written Commonwealth or County directive? The first sentence is a clear case of the ambiguity inherent in passive voice: "they have historically always been considered internal-use documents to support officer training and to identify gaps in FCPD practices that needed closure or action." Who historically ruled they were internal use docs? Why can't the UOF subcommittee view them? Officers talking to the internal UOF Committee are being given immunity without calling it that. Will the reconstituted internal UOF Committee continue giving such assurances? Why?	Chief Roessler has committed to the Subcommittee to providing members access to additional UOF Committee reports.
SWAT & Advanced Tactics	
38. Which individual cases prompted SWAT to create the Warrant Risk Assessment Matrix and how each case would have scored had the matrix existed at the time? Are Warrant Risk Assessment Matrix and Threat Assessment Form one and the same?	The Culosi case prompted the development of the Threat Assessment Form. The threat assessments have not and currently do not provide a "score". It is unlikely that if SWAT would be utilized today that same case were run through our current risk assessment matrix, there is no way to accurately recreate a past case (e.g., Culosi case) on the new form. Several of the detectives, supervisors and commanders are no longer available to provide the information they knew, or was available to them, at that time. The best the Department can provide is a statement that based on the information we have at this time, high risk tactics would not have been authorized based on today's threat assessment form. The Warrant Risk Assessment is the same as the Threat Assessment Form. For continuity, the Department is only using the term "threat assessments" and is no longer using the term "risk assessments". In the past, both terms were used interchangeably. The new form being piloted now (the one shared with the subcommittee) was not prompted by any case.
39. Which of the individual cases caused FCPD to employ UOF and what type(s)?	See above response – no additional cases.
40. Did any of the cases before use of the Matrix result in problems?	No.
41. When did use of the Matrix become mandatory?	2008

Question	Answer
42. What are details of each case for which use of the Matrix resulted in SWAT being deployed and employed UOF?	Since 2008, SWAT has not utilized deadly force in a search warrant situation since the adoption of threat assessment.
43. Can we see the completed Matrix so that we can see EINs to see if there are any patterns at all levels in the chain of command?	The Matrix, over the years, has almost always been completed by the same command level officers. The majority of SWAT cases start in Organized Crime and Narcotics (see Risk Assessment Statistical Summary) and their commander will sign the initial request. The Special Operations Division commander will then review the request. These are the same commanders for several years until they are promoted, they are transferred, or they retire. Therefore, yes there would be patterns because of organizational assignments and the chain of command required for approval. There is not a compiled spreadsheet tracking all approvals to provide, even if there was there would be patterns because of the business process cited above, in short it is certain commanders jobs to review and sign the matrix.
44. At one of our subcommittee meetings, FCPD mentioned its Threat Assessment (TA). Does the TA equal the Warrant Risk Assessment Matrix? If not, can FCPD provide a copy of a blank TA & a completed TA from an actual situation for our review?	The FCPD Threat Assessment equals the Warrant Risk Assessment Matrix. Individual Subcommittee members are invited to review the Tactical Threat Assessment Form in its entirety, since only an abridged version can be made publicly available, as posted on June 18th. Those interested should reach out to Major David Moyer at David.Moyer@fairfaxcounty.gov.
45. What is the definition of "advanced tactics"? Is it SWAT? [see http://www.fairfaxcounty.gov/policecommission/materials/statistical-summary-risk-assessments.pdf "illustrate[s] the event types where advanced tactics were recommended.	There is no nationally recognized definition of advanced tactics. However, the Department believes that advance tactics is training outside of the basic recruit academy for specialized situations (hostage rescue, high risk search warrant, high risk vehicle intercept/takedown, etc.) and may utilize equipment not available to the standard patrol officer or detective.
46. Where advanced tactics were recommended, which & how many events were accepted for their use?	Accepted versus rejected was not tracked. All search warrants will require the new risk assessment form so in the future we will be able to determine total risk assessments versus those where SWAT was approved.

47. How many of each type of case occurred in the same period but didn't require "advanced tactics"?

RISK ASSESSMENT SUPPLEMENT Cases not Requiring Advanced Tactics*	2013		2014	
	Total Cases	Adv. Tactics	Total Cases	Adv. Tactics
Burglary	1071	3	914	4
Gang Participation Charges**	28	1	62	0
Grand Larceny	13,677	1	13,162	0
Narcotics	5,041	25	4,449	34
Narcotics/Gang Participation	***	1	***	0

Question	Answer

Robbery	411	3	400	2
Sex Offense	326	1	264	0
Gambling	17	0	11	1
Sovereign Citizen (fraud-type case)	2,970	0	3,748	1
Human Trafficking Investigations**	22	0	40	1

*The above numbers are located here:
http://www.fairfaxcounty.gov/police/crime/statistics/2013/20132014groupaibroffensesstatisticalreport.pdf.
**The Gang Participation Charges and Human Trafficking numbers were obtained from the specific divisions who investigate those crimes. FCPD only began collecting human trafficking statistics in October 2013.
***The data base does not collect information on how many gang participation and narcotics cases overlapped.

48. Can FCPD provide a table showing entities (Patrol Bureau thru Organized Crime/Narc) and all event types and numbers for each event by entity with totals?

FAIRFAX COUNTY RISK ASSESSMENT SUPPLEMENT	2013	2014
ORGANIZED CRIME AND NARCOTICS	25	31
Event:		
1. Narcotics	25	30
2. Gambling	0	1
PATROL BUREAU	4	7
Events:		
1. Burglary	3	4
2. Grand Larceny	1	-
3. Robbery	0	2
4. Narcotics	0	1
CRIMINAL INVESTIGATIONS BUREAU	4	1
Events:		
1. Robbery	3	0
2. Sex Offense	1	0
3. Human Trafficking	0	1
CRIMINAL INTELLIGENCE DIVISION (GANG UNIT)	2	4
Events:		
1. Gang Participation	1	0
2. Gang Participation/Narcotics	1	0
3. Narcotics	0	3
4. Sovereign Citizen	0	1

49. As to SWAT, some have questioned why SWAT was used recently in Great Falls in connection with a gambling situation involving a high stakes poker game. I don't think that we have ever asked about that, and it seems that we should understand why SWAT was used given that it would appear to be a low risk situation in terms of possible violence or resistance.

Previously, the Organized Crime and Narcotics conducted a search warrant using SWAT on a high stakes poker game in Great Falls which involved hundreds of thousands of dollars. The organizer hired armed security who were armed with high power rifles and handguns. There were 60 individuals participating in the poker game and 6 of those individuals were armed with handguns.

In the referred case, Organized Crime and Narcotics conducted a search warrant using SWAT on a high stakes poker game in Great Falls which involved hundreds of thousands of dollars. Some hands were $10,000 buy-ins. SWAT was used because:

- An individual in the previous investigation was participating in this poker game. That individual was one of the 6 armed individuals.

Question	Answer
	• With the expectation of large amounts of cash, there was concern that the participants would be armed (as in the previous case) and there would be armed security present. • In cases of high stakes poker games, the advertisement for such games tends to be word of mouth. Since word of mouth cannot be controlled, there is a possibility that individuals who want to commit a robbery are either participating in the poker games or will arrive to commit a robbery. In this particular case, the poker game was by invitation only. However, the concern for unknown individuals participating and/or arriving was high. • The size of the house was approximately 10,000 square feet. Executing the search warrant on that size of residence was beyond the capabilities of Organized Crime and Narcotics.
Barricade	
50. Provide definition of barricade situation	The newly released GO 520.3 - HOSTAGE / BARRICADED PERSON - defines a barricaded person as: A person who uses any shelter, conveyance, structure, building, open field, or other location as a barrier against law enforcement, and refuses to exit and submit to lawful authority.
51. There were no barricade cases in 2013. Is that true or which UOF situations are not in this report? Where are they?	All use of force incidents are included in FCPD reporting; there were no barricade cases in 2013.
52. Sounds like the definition of barricade would permit SWAT action short of a known, unarmed suspect in the open. ▪ As defined by SWAT: BARRICADE "A person who uses any shelter, conveyance, structure, or building as a barrier against law enforcement and refuses to exit and submit to lawful authority. A person who is known or believed to be armed and in a position of hiding and refuses to submit to lawful authority." ▪ Does standing behind a closed screen door inside one's home constitute a "barrier" under the definition of "barricade"?	Proposed Barricaded Person's definition: Any person who uses any shelter, conveyance, structure, building, open field, or other location as a barrier against law enforcement and refuses to exit and submit to lawful authority.

Question	Answer
▪ If a person doesn't open the door to someone who claims to be FCPD, but is unknown to the person, is he/she a barricade candidate?	A barricade is not defined by the obstacle with which an individual is standing behind. In fact, a barricade can exist without any obstacles present. The "barricade", in context, is related to the totality of the circumstances to include threats made, perceived or potential weapons, environment, charges, etc., and not just the obstacle with which a person may or may not be standing behind. The dictionary definition does not, in this instance, define what a "barricade" is. A barricade in law enforcement is not simply a "thing," such as a barrier, fortification, or blockage, but a "situation." This situation is one in which the person is using a shelter, conveyance, structure, building, open field, etc, as a barrier to law enforcement and refuses to exit and submit to lawful authority when instructed to do so. A screen door is a barricade if the person is standing behind it and refuses to exit and submit to lawful authority. However, the term barricade does not in any way mandate a specific response by the officers nor does it automatically require advanced tactics. In fact, the overwhelming number do not, as indicated by the low frequency of a SWAT response to barricade situations. The response or actions of the officers will depend, as stated, on the totality of the circumstances known to or encountered by the officer(s), to include threats made by the subject, actual, perceived or potential weapons, environment, charges, etc.
▪ How is "lawful authority" defined for a barricade and where?	If the person doesn't open their door and is unsure it is the police, the officers will ensure that the person clearly knows they are the police. They will have DPSC call the home, utilize the PA system, knock repeatedly on the door if safe to do so and yell to identify themselves as police officers. This is routinely done. In any action where the potential to arrest

Question	Answer
	exists or a search warrant will be executed, the department will always have a uniform presence so that there is no mistake on the part of the person that they are dealing with the police. So while someone may initially not know who they are dealing with, the department has measures in place to ensure that they know exactly who is at their door. Could this eventually result in being considered a barricade situation by the police if it's a person who claims they did not know that they were the police? Highly unlikely that they would not know that they were dealing with the police based on the measures utilized as mentioned above, but if they refuse to open the door and the police have legal authority to issue the lawful commands, then it could be considered a barricade. However, just because it is considered a barricade, it doesn't in any way mean that advanced tactics (SWAT) would be deployed. It would depend on the totality of the circumstances as to whether advanced tactics would be warranted.
	There is no specific definition for legal authority as it relates to a barricade. Rather, law enforcement officers are granted legal authority by the Code of Virginia. VA Code 15.2-1704 states:
▪ 1st sentence is mute on weapon. So, if a person doesn't open the door to someone who claims to be FCPD, but is unknown to the person, is he/she a barricade candidate? 2nd sentence mentions being armed. Does being armed make a difference?	A. The police force of a locality is hereby invested with all the power and authority which formerly belonged to the office of constable at common law and is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.
▪ What constitutes being armed in the barricade definition? Does a knife constitute being armed? If so, then any person who refuses to exit their home or allow FCPD entry could be considered potentially armed, i.e., knives in kitchen and therefore justify SWAT. ▪ The definition of "barricade" in the SWAT SOP is different than the one used in the draft GO	B. A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in § 16.1-340, 16.1-340.1, 37.2-808, or 37.2-809, (ii) to serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1, (iii) to execute all warrants or summons as may be placed in his hands by any

Question	Answer
distributed at the 06/03/15 meeting; which is operable? ▪ For example, "open field" is in the draft GO, but not the SWAT SOP. How can a barricade situation be in an open field? ▪ Sect. IV of GO 520.3 contradicts with the above hypothetical scenario: "In the event of a <u>single person barricade</u>, and based on the priority of life, entry into the shelter, conveyance, structure, building, open field, or other location should be avoided."	magistrate serving the locality and to make due return thereof, and (iv) to deliver, serve, execute, and enforce orders of isolation and quarantine issued pursuant to §§ 32.1-48.09, 32.1-48.012, and 32.1-48.014 and to deliver, serve, execute, and enforce an emergency custody order issued pursuant to § 32.1-48.02. A town police officer, after receiving training under subdivision 8 of § 9.1-102, may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant can be found within the corporate limits of the town. Situations that officers respond to are complex and often rapidly evolving, and they must take into account the totality of circumstances known to them at that time. Individual situations depend on the totality of circumstances and situational assessments are conducted routinely by officers and supervisors on scene. The assessments include facts and circumstances known and unknown. They are different as the draft general order has a new definition which will be the governing definition.

Question	Answer
	As stated in the draft General Order, an open field can mean an individual who is in the open, not actively using a structure, conveyance, shelter, building or other structure as a barrier against law enforcement and refuses to exit and submit to lawful authority. Example: Officers respond to a call for service for a suicidal subject sitting in the middle of a soccer field, armed with a rifle, refusing to submit to lawful authority. The individual is considered in an "open field." This distance and lack of cover provide an impediment to police safely making an arrest.
Administrative Investigations & Disciplinary Action [Ref: FCPD Internal Affairs Annual Report http://www.fairfaxcounty.gov/policecommission/materials/2013-iab-annual-report.pdf**]**	
53. Explain why only 20% of UOF cases result in admin investigation and the sustained rate is 1-4/year and why "all reported use of force incidents do not require an administrative investigation" [see the second figure on p. 11].	Use of force incidents are unique to the circumstances the officer(s) were presented at the time of the calls for service. As such, the use of force numbers will fluctuate and not all use of force incidents generate an administrative investigation. For further information, refer to General Order 540.1 and General Order 301. General Order 540.1, Use of Force, Section IV, Regulations, Subsection H. http://www.fairfaxcounty.gov/policecommission/materials/5401-general-order.pdf H. Reporting the Non-Deadly Use of Force and Investigation of Injuries 1. Officers who use non-deadly force shall immediately inform their on-duty supervisor of the use of force incident. Unless circumstances exist which prohibit the notified supervisor from responding, the supervisor shall respond to the scene of any use of force incident where injury results, or a vehicle, CEW, or PepperBall System is utilized. The notified supervisor shall review the circumstances surrounding the use of force incident and notify the duty officer or appropriate commander of the occurrence of: a. Any non-deadly use of force, accidental injury, or any other situation resulting in serious injury or death to any person. b. Any medical treatment provided by EMS, Department personnel approved by OMD, or medical facility resulting from the non-deadly use of force, accidental injury, or any other situation resulting in medical treatment to any person. c. Any use of the Precision Immobilization Technique (PIT).

Question	Answer
	2. The duty officer or the appropriate commander will determine if an injury is to be designated a serious injury. This determination will be based, in part, on information from medical personnel. At the earliest opportunity, the duty officer or commander will notify the appropriate bureau commanders of all injuries designated serious. 3. The on-duty supervisor shall ensure that the use of all non-deadly force is documented on an Incident Report in I/LEADS. Self-inflicted and/or accidental injuries and all non-deadly force that involves the complaint of injury or medical treatment shall be documented in I/LEADS on a Use of Force Supplement, and investigated as follows: a. Serious injury or death to any person resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation: ▪ Investigative Authority: The Major Crimes Division and the Internal Affairs Bureau. ▪ Investigative Format: CIB Criminal Investigation and Internal Affairs Bureau Administrative Investigation. ▪ Documentation Review: The commander of the Internal Affairs Bureau shall review the administrative investigation and forward the investigation to the appropriate bureau commander. b. Medical treatment for non-serious injuries, provided by medical facility personnel resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation to any person: ▪ Investigative Authority: The on-duty supervisor. ▪ Investigative Format: Administrative investigation and a Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries, and type of medical treatment provided. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward copies of the incident reports and administrative investigation to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs commander. c. Medical treatment for non-serious injuries provided by EMS personnel, Department personnel approved by OMD, or refusal of treatment by any person who has obvious non-serious injuries or alleges a non-serious injury resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation: ▪ Investigative Authority: The on-duty supervisor or above.

Question	Answer
	▪ Investigative Format: Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries observed or the complaint of injuries, and the fact that medical treatment was administered or refused by the injured person. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward copies to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander. 4. The on-duty supervisor shall ensure that the use of all non-deadly force that does not involve the complaint of injury or medical treatment shall be documented and investigated as follows: a. Use of non-deadly force which involves striking a person, discharging a chemical agent or CEW, or utilizing a vehicle to contact a vehicle or person, to include use of the PIT: ▪ Investigative Authority: The on-duty supervisor or above. ▪ Investigative Format: Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, the fact that no injuries were observed or the fact that no complaint of injuries were made. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward a copy to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander. b. Use of non-deadly force which involves pointing a firearm in response to the actions of a subject, physical control techniques to establish control and gain compliance, or vehicle incident techniques that do not involve contact with a person or object: ▪ Investigative Authority: The on-duty supervisor or above. ▪ Investigative Format: Incident Report completed by the involved officer, detailing the incident, describing the type of force used, the fact that no injuries were observed or the fact that no complaint of injuries were made. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward a copy to the division commander for concurrence and subsequent forwarding to the appropriate bureau

Question	Answer
	commander and to the Internal Affairs Bureau commander.
54. What is the definition of PIT (Precision immobilization technique)?	Precision Immobilization Technique (PIT): The intentional act of using a police vehicle to physically force a fleeing vehicle from a course of travel in order to stop it. The Precision Immobilization Technique is a specific, technical maneuver that requires advanced practical training prior to use. The use of the Precision Immobilization Technique is considered non-deadly force.
55. In 2013, were there 66 investigated UOF cases (p. 2, par 6) OR were there 102 Administrative Investigation cases for UOF (p. 6 bottom table)?	There were 66 administrative investigations involving 102 employees. The number 443 is the total number of use of force incidents reported during 2013 which include both citizen generated complaints (15) and internally generated documentation (428). The 442 use of force incidents are inclusive of the 66 administrative investigations that involved 102 employees.
56. Explain why as the number of criminal cases dropped by 11% from 2010 to 2013, the UOF cases rose by 8.5%?	A more appropriate data indicator for comparison/possible explanation of increase in use of force in the two specific years 2010 and 2013 is the increase in number of arrests. Use of Force incidents increased from 408 to 443, an increase in 35 incidents in the four year period. Arrests increased from 49,568 to 53,269, an increase in 3,701 during this same period. The Use of Force cases increased by 8.5% during this period, while the number of arrests increased by 7.5%. As there is a definite correlation between use of force and arrest, it is likely that the increase of 35 Use of Force incidents is the result of the increase of 3,701 arrests during this same period. The Use of Force incidents (35) represent an increase of less than one percent of the total increase in the number of arrests during this time period (3,701).

57. For 2006-15, how many UOF cases resulted in each type of Administrative Discipline shown across the top of the table on p. 8? Please add a column showing for 2006-15, how UOF incidents there were each year and how many were investigated by IAD.

Use of Force Incidents*	2006	2007	2008	2009	2010	2011	2012	2013
Total	386	446	515	539	408	482	417	443
Administrative Investigations	60	63	77	85	78	72	56	66
Conducted by IAB	**	**	**	14	13	14	6	4
Resulting in Disciplinary Action	2[2,2]	1[1]	0	0	3[2,3,4]	7[1,1,1,1,1,1,3]	5[1,1,1,2,3]	2[2,3]

* The Internal Affairs Bureau Annual Statistics report has not been completed for 2014 and 2015.

**Unknown, was not recorded

1. Oral
2. Written
3. Suspension
4. Disciplinary transfer

58. Explain both reports where UOF is mentioned and explain the data so the Subcommittee can do some data analysis. How could Internal Affairs be	The table "Use of Force Reports by Assignment (Investigative Office)" (provided on page 12) refers to the entities that investigated/recorded any use of force

Question	Answer
the subject of UOF incidents (slide 12) and how does IAD investigate its own?	incidents. In order to know where employees who were involved in an administrative investigation were assigned, please refer to the attached table titled "Employee Assignments " which can also be found on page four, "Employees Involved in Administrative Investigations by Assignment".
59. All reported use of force incidents do not require an administrative investigation (see p. 11 under the 2nd table). Who decides that an administrative investigation is N/A?	Policy determines whether an administrative investigation is conducted by either a supervisor or the Internal Affairs Bureau. See General Order 540.1, Use of Force, Section V., "Use of Force Reporting by Type of Force Employed and Injury/Treatment". The table is provided as an attachment, "Table GO 540.1".
60. How is it decided that an administrative investigation is N/A? What GO or SOP applies?	General Order 301 and 540.1 outlines this process. They are posted on the Commission website.
61. Which UOF incidents require documentation? What's the reference?	General Order 301 and 540.1 outlines this process. They are posted on the Commission website.
62. Use of Force Investigative Outcome histogram: 2012 "Not sustained" bar is too short (see p. 11); it should be 52 per the table above that figure.	The bar should be at the 52 mark and has since been corrected.
63. Why does the above report state on p. 2 that there were 10 suspensions in 2013, but the table on pp. 8-9 shows a total of 20? Perhaps the answer is the * on p. 9. If so, it indicates that some suspended officers violated UOF in 2 or more categories.	On page 2, there were 10 suspensions in 2013 yet on page 8/9, it shows there were 20 suspensions. The 20 listed suspensions include every violation an employee was suspended for. There were 10 officers suspended for a total of 20 violations (administrative cases had multiple sustained violations).
64. Explain the second table on p. 9. Is it saying one civilian was suspend for UOF? What are the details as to why one officer was terminated?	The table is saying that a civilian was suspended for a sustained violation which was not for use of force. The officer was not terminated but rather resigned prior to termination (see question 24).
65. Provide details on all "discharge firearm" cases shown on p. 13? The # of discharges went from 2 in 2009 upward every year until 6 in 2013.	All officer involved shootings synopsis (2005 – 2013) will be posted on the Chief's Page at www.fairfaxcounty.gov/police. Discharging a firearm towards animals will not be included.
66. The asterisk on p. 13 shows discharge firearm includes against 2 animals. Provide the data for firearm discharges only against people in 2009-2012.	All officer involved shootings synopsis (2005 – 2013) will be posted on the Chief's Page at www.fairfaxcounty.gov/police. Discharging a firearm towards animals will not be included.
67. Does an officer under investigation retain his firearm?	Please refer to SOP 12-045, Investigation of Deadly Force Deployment, Section D, Subsection 3.
68. For FCPD, explain the benefit to the taxpayers and appropriateness of "retirement in lieu of discipline" vs. "termination."	This action is not taken as any benefit to the taxpayers and without consideration of appropriateness as any employee vested in the system has the right and option to retire at any point they are eligible. The department has no legal standing to prevent an employee from retiring, even in lieu of termination. There is no disciplinary action that can legally be taken which could impact retirement benefits. Retired

Question	Answer
	personnel are subject to criminal prosecution but are not subject to internal disciplinary action.
Body-Worn Camera	
69. Would body worn camera have expedited investigation of any officer-involved shootings in Fairfax? How?	It is unknown if a body worn camera would have expedited any investigation involving an officer-involved shooting and an answer would require speculation that may or may not address the unique circumstances involved in each shooting incident. This noted, FCPD is proposing a pilot program for introducing body-worn cameras into patrol officer use to generate just this type of information for evaluation.
70. Attached is a PDF copy of an article from the Sunday, May 31, 2015 Outlook Section of the Washington Post called "Five Myths" regarding use by police of body cameras. Does FCPD agree or disagree with the claims made in this article?	The Department is aware of the experiences of other departments as outlined in the article. As a result, the Department is preparing to initiate a pilot body camera program. During and after the pilot program is complete, the Department will evaluate all aspects of the program.
71. Are all police cars equipped with dashboard cameras at this point? How is the video triggered? Does it run continuously? When is it reviewed?	All patrol cruisers are equipped with ICV cameras, (to include k-9 vehicles). 650 ICV units were purchased. The ICV cameras can be triggered by following: ▪ Activation of Emergency lights ▪ Officers can manually trigger a recording either from the camera or their belt worn Mic ▪ There is also a G-FORCE sensor in the car that will trigger a recording in an accident or if the vehicle experiences high G forces The cameras are running continuously and capturing data. However, the Video Processing Unit (VPU) does not store this data (A/V) until ICV has been activated. Once activated, the system records 30 seconds of data prior to the activation. The video data can be reviewed on the MCT prior to being uploaded or can be reviewed in the back end client after being uploaded. The New GO has the following section under Supervisor Responsibilities: A. Supervisors should review their officers' recordings for the purposes of gathering information that may be useful in preparing employee evaluations or establishing training needs. A supervisor may request a DVD of the video for training purposes. When a recording is burned to DVD for training purposes, a copy may also be forwarded to the Criminal Justice Academy for inclusion in their training files.
Choke Hold	

Question	Answer
72. Provide a copy of its recent order banning choke holds. I searched for "choke hold" and "chokehold" on the Fairfax Co. website and found only GO 540.1 which wasn't "recently issued" (see below); it came out 1/1/13. Background: P. 62 of the PERF report states: RECOMMENDATION #48: Prohibit "choke" holds in policy. The FCPD should prohibit "choke" holds and neck restraints as a use-of-force option. (Note: The Fairfax County Police Department has recently issued an order to implement this recommendation.)	General Order 540.1 IV. G. 1. c. states "a choke hold is prohibited except…threat of serious physical injury or death) and the academy does not teach recruits or incumbent officers to use the carotid restraint as a primary control hold. What the academy did teach was how to escape the hold if it was ever put on them while in the field, but in so doing the recruits have to apply the carotid restraint so that their partner can escape from it. The academy also discussed with officers, that as a last resort, they could use the carotid restraint in situations where deadly force is justified and they have no other options available. They did not however, teach the carotid restraint to be a standard or effective tool for officers. In addition, the academy was complying with Department of Criminal Justice Services (DCJS) mandated teaching objectives in teaching the carotid restraint, as DCJS requires that it be taught in order to complete the academy and be certified as a law enforcement officer. The PERF review looked at what the Department was doing and said that technically, even though the Department doesn't teach it to use it, demonstrating how it is done is considered teaching it and therefore, if it is taught it becomes policy. Their recommendation was that all demonstrations of it be stopped, which the Department immediately did. Colonel Roessler also issued an order based on the PERF report to further emphasize his commitment that the Department does not teach the carotid restraint. To comply with the DSCJS mandate, the instructors during academy training will demonstrate the carotid restraint on each other but no recruit will demonstrate or use or attempt the carotid restraint.
73. Provide the DCJS Requirement on choke-holds and Colonel Roessler's order regarding teaching the carotid restraint.	DCJS requirement is as follows: **Performance Outcome 6.14.** Use touch pressure or striking pressure to control a person. **Training Objectives Related to 6.14.** A. Given a written, audio-visual, or practical exercise, identify body pressure points. B. Given a practical exercise, demonstrate pressure point control techniques. **Criteria:** The trainee shall be tested on the following: 6.14.1. Identification of body pressure points a. identify carotid choke hold as deadly force 6.14.2. Demonstration of pressure point control techniques

Question	Answer
	a. touch b. strike **Lesson Plan Guide:** The lesson plan shall include the following: 1. Identification of body pressure points a. identify carotid choke hold as deadly force 2. Demonstration of pressure point control techniques 115 of 270 VIRGINIA CRIMINAL JUSTICE TRAINING REFERENCE MANUAL **2012** a. touch b. strike _____ Colonel Roessler's order, "Choke Hold Prohibition," dated May 28, 2015, is attached. The essence is captured in the following excerpts: "The Fairfax County Police Department's Criminal Justice Academy shall immediately cease teaching, demonstrating, training, and using the carotid artery restraint (choke hold)…. 'Choke' holds and neck restraints as a use of force option are not sanctioned by the Fairfax County Police Department." "In a situation wherein it is necessary for an officer to protect himself or others from imminent threat of death or serious bodily injury, and the officer's most appropriate tools and training have not worked or are not available, the officer may as a last resort turn to other tools and defensive tactics to save themselves or others."
Use of Conducted Energy Weapons | Tasers Gen'l Order 540.1 - "Conducted Energy Weapons are designed to offer the police officer an alternative to physical force in many situations. The use of the CEW is regulated by SOP 06-025."	
74. Can FCPD clarify whether conductive energy devices (CED) = Conducted Energy Weapons (CEW)? Can FCPD provide a copy of SOP 06-025?	Yes, Conducted Energy Weapons and Conducted Energy Devices is the same as Tasers. A copy of SOP 06-925 is provided on the Subcommittee website.
75. Why does FCPD uniformly distribute Tasers to all stations rather than those with the most incidents of UOF? Why does FCPD not require that all Tasers at each station that can be issued on each shift are issued?	As was presented in the June 3, 2015 meeting, each officer who is trained in using a Taser has the opportunity, at each shift, to have a Taser. Each station has approximately 33 Tasers for patrol and at no point is there more than 33 officers on patrol in a district at the same time. There are no shortages of Tasers at the stations. This matter was discussed further with Chief Roessler at the Subcommittee's July 1st meeting.
Crisis Intervention Model	
76. Does FCPD have CIT? How many? Crisis Intervention Team (CIT) model was first developed in Memphis in 1988 following a tragic incident in which a Memphis police officer shot a mentally ill	Yes. The Department has an extensive and robust CIT program, with approximately 400 patrol officers and approximately 100 non-patrol officers (supervisors, detectives, command staff) certified, which is modeled

Question	Answer
man. The police department teamed up with local mental health experts, advocates, and academics to design a comprehensive plan for police training and policies for managing individuals with mental illness. The model was successful, and other police departments began implementing their own CIT programs.	after Memphis and been in effect since 2007. The Community Services Board in Fairfax County partners with the Police Department in this effort. Since the formation of the program in 2007, we have trained as follows: ▪ 2007- 1 class with approximately 30 officers (total 30 officers) ▪ 2010- 1 classes with approximately 30 officers (total 30 officers) ▪ 2011- 2 classes with approximately 40 officers each (total 80 officers) ▪ 2012- 4 classes with approximately 40 officers each (total 160 officers) ▪ 2013- 3 classes with approximately 40 officers each (total 120 officers) ▪ 2014- 2 classes with approximately 40 officers each (total 80 officers) The total number of officers based on the listing is actually 500
After Action Reporting | Lessons Learned [See attached "Preparedness Cycle] Without collecting AARs and taking corrective action (11 o'clock on the figure), an organization or system never improves and keeps making the same errors. AARs are crucial feedback to prepare officers for incidents as demonstrated in the preparedness cycle.	
77. Does FCPD have a formal, written after action report (AAR) system for UOF cases? Does it address what went right and what didn't and identify the persons and supervisors responsible for good and bad decisions?	Yes, as has been discussed with the Subcommittee at its June 17, 2015 meeting, an internal UOF Committee has been convened in the past for this explicit purpose. An example of a Use of Force Committee report has been provided to the Subcommittee. FCPD is in process of revising this process in order to be able to make lessons learned public to the extent possible.
78. Has the Chief of Policy shared UOF lessons learned from the deaths caused by FCPD officers within FCPD to prevent recurrence? Which shootings? What lessons were implemented from each case? How quickly did officers receive those lessons?]	From many officer involved shootings, the Department has learned lessons which have helped develop training courses such as tactical decision making for supervisors and officers, shoot/don't shoot scenarios, sympathetic response, etc. In addition, there have been use of force reports produced which analyzed the incident and provided recommendations. The administrative investigations associated with officer involved shootings also provides recommendations which, in many instances, are implemented. Also, in the Culosi report to the community, there were recommendations that were provided and also implemented. Some recommendations that were implemented were risk assessments and the appropriate entities to review the risk assessments. Plus, the lessons learned included training in sympathetic response, command oversight and review of high risk incidents, and required training before engaging in high risk tactics. The Department expanded first aid training and issued equipment is a lesson learned from officer involved incidents. Lessons learned and new training, equipment, and discussions come from all different cases, incidents,

Question	Answer
	and events. Lessons learned are not exclusively generated by officer involved shootings.
79. Does the PD have a separate unit whose function it is to follow the needed changes and evaluate policies after they have been adopted by FCPD? For example, the FBI has a Critical Incident Response Division which, among other things, evaluates critical incidents in terms of tactics; the Bureau (at least used to) an Office of Planning & Evaluation which looked more at what I think is the type of planning to which Mr. Shumaker refers. It is this latter function to which I refer as to whether the FCPD has an office for such evaluation.	While FCPD performs the functions characterized in Mr. Shumaker's chart, it does not maintain a separate unit that is uniquely assigned these functions.
80. "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." Weren't most of the UOF cases reported in open source media which suggests the psychological effects have already been experienced? How will the officer in the report know we're looking at a report about him? Why does he right (to what exactly?) trump the right of the public to know? Is there a law barring the UOF subcommittee or public from seeing them? Does the public have a right to know what its employees are doing?	The matter of psychological impact on officers of mortally wounding another human being was explored in depth at the June 22, 2015 Ad Hoc Commission meeting. The slide set used by Dr. Steve Band is located on the Commission's website and is informative in this regard.
Resources	
81. From the 05/20th meeting, "Are there parts of the PD that have staffing shortages?" The answer is "No response offered." Can we get a response to this?	FCPD actively participates in the Fairfax County annual budgeting process by making funding recommendations to the County Executive, who must make a determination of the FCPD priorities in relation to other service demands on County resources. The County Executive proposes his priorities and funding profile to the Board of Supervisors for its consideration. FCPD actively participates in the BOS considerations by answering questions posed to it. Relative to staffing, at any moment in time, there are numerous vacancies on the Department. Vacancies that occur from retirements, resignations, deaths, or terminations tend to take, at a minimum, 1 year to fill. There is consistently a 5-6% vacancy rate. See www.fairfaxcounty.gov/dmb/fy16-fy20-public-safety-staffing-plan.pdf for more information.
82. Related to the above question is a two part question: How many officers are assigned to the	Answer: Internal Affairs Staffing:

Question	Answer
unit (whatever its name) responsible for investigation of police shootings (I'm assuming obviously that there is one) and what is their usual length of assignment there? How many officers are assigned to Internal Affairs and what is the usual length of assignment there?	1 Major (Commander) 1 Captain (Commander of Investigations) 1 Lieutenant (Commander of Inspections) 6 Second Lieutenants (1 assigned to Inspections) 2 Sergeants The average length of assignment is 2 years. Cold Case Unit Staffing 1 Second Lieutenant 4 Detectives Not considering promotions, temporary assignments, and transfers, the average length of assignment is 5 – 8 years.
83. Address the types and quantity of Dept of Defense equipment it has received, how it has used it, which equipment was involved in UOF incidents? Can FCPD explain whether it has returned DOD equipment?	The FCPD used to participate in the federal 1033 program. However, the FCPD has not obtained any federal equipment in over 15 years and any such equipment is no longer in inventory. The federal 10-33 program is which allowed law enforcement agencies to acquire property for bona fide law enforcement purposes that assist in their arrest and apprehension mission (see www.dispositionservices.dla.mil/leso/pages/1033programfaqs.aspx) Any equipment the FCPD acquired is no longer in service or used. The FCPD, when it participated in the 1033 program, obtained small scale items such as helmets, night vision, and rifles. The rifles were used to begin the FCPD's Patrol Rifle Program after the LA bank robbery shoot out (see www.dailynews.com/general-news/20120227/north-hollywood-shootout-15-years-later) The Department is currently researching whether any equipment obtained through the 1033 program was used in a use of force incident.