
Police Civilian Review Panel

Meeting Agenda

Location: Conducted electronically due to COVID-19 Pandemic

Date: January 28, 2021

Time: 7:00 pm

Agenda details:

I. Call to Order

II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Recognition of Chief Roessler
- c. Discussion on Four-Year Review

III. Adjournment

Fairfax County Police Civilian Review Panel: Four-Year Review 2020



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EXECUTIVE SUMMARY

On March 3, 2015, then Chairman of the Fairfax County Board of Supervisors, Sharon Bulova, created the Ad Hoc Police Practices Commission (“Ad Hoc Commission”) to review the policies and practices of the Fairfax County Police Department (“FCPD”). One of the recommendations of the Ad Hoc Commission was that the Board establish civilian oversight of the FCPD. Specifically, the Commission proposed a hybrid model where an Independent Police Auditor would review investigations relating to the use of force, and a Civilian Review Panel, drawn from the community, would review all other investigations relating to allegations of serious misconduct and abuse of authority by FCPD officers.

On December 6, 2016, the Board of Supervisors established the Fairfax Police Civilian Review Panel, a nine-member civilian oversight body. The mission of the Panel then, as now, is “to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity, and impartiality of the investigation.” *See* Appendix A (Action Item).

The Panel has two methods of review. First, individual Complainants may file Complaints directly with the Panel. This initiates an investigation by the Internal Affairs Bureau (IAB) of the FCPD. If the Complainant is unsatisfied with that investigation, the Complainant may request a further review by the Panel. Second, individual Complainants may file their Complaints directly with the FCPD. Again, this initiates an investigation by the IAB, and if the Complainant is unsatisfied with that investigation, the Complainant may request that the Panel review the investigation.

This Four-Year Review looks critically at the first four years of the Panel’s existence in order to analyze its successes, its failures, and where the Panel can go from here. When the Panel was created, it was the first of its kind in Fairfax County. It was up to the founding Panel Members to establish Bylaws and procedures for the Panel’s operations. The FCPD found itself for the first time subject to direct civilian oversight, and the Panel and the FCPD needed to work together to ensure that the Panel could operate efficaciously.

This Four-Year Review draws upon the Panel’s foundational documents, *see* Appendices A-C, the Panel’s meeting minutes, complaints before the Panel, the Panel’s Annual Reports, *see* Appendix D, the Panel’s Review Reports, *see* Appendix G, and other Panel records to compile a full history and analysis of the Panel. The “History” portion of this Four-Year Review walks step-by-step through the Panel’s activities, from its first meetings to drafting and ratifying its bylaws, to its meetings and deliberations on panel procedures, to its training sessions, and to its now-typical Review Meetings. This Four-Year Review endeavors to be as comprehensive as possible in order to inform the public, Panel Members, the FCPD, and the Board of Supervisors about how to best advance the work of the Panel and to enhance police legitimacy and community trust.

The authors of this Four-Year Review attempted to be fair, thorough, and realistic in their assessment of the Panel’s activities. Where the authors believe the Panel has been especially successful, they have tried to highlight and emphasize the reasons for such success. Where the authors identify certain potential changes that are needed, they say so. The authors praise the work of the FCPD where it is warranted, but they also point out areas where there may still be work to be done. The authors also attempt to put the Panel’s work in context, especially in 2020, where questions of police oversight and accountability became central topics in a national conversation on race and policing following George

Floyd's public slaying at the hands of Minneapolis police officers that sparked protests across the country and the DC Metropolitan Area.

This Four-Year Review includes specific proposals for how the Panel might evolve in the future. The authors are cognizant that not all of the proposals will be necessarily endorsed by the FCPD or the Board of Supervisors, but nevertheless identify potential, meaningful and positive improvements.

This Four-Year Review is broken into three parts. First, the longest portion of the review, is the comprehensive history of the Panel, with every meeting and action summarized and, where appropriate, discussed. Second, the review analyzes the Panel's first four years with an eye toward positive change. Third, the review offers specific recommendations for how to enact such positive change.

As the comprehensive history recounts, the first year of the Panel, 2017, was a year in which the Panel had to create a new entity from scratch. The Panel focused on drafting its Bylaws and figuring out how it would turn the parameters of the authorizing Action Item into a reality, but the Panel did not actually get to the process of reviewing Complaints.

In 2018, the Panel's focus shifted from broad questions to drilling down into its operational procedures as it started to take Complaints for the first time. The Panel also focused its efforts on community outreach that year and did its best to make it known to Fairfax residents that a new, independent oversight body was taking citizen Complaints.

In 2019, the Panel showed that it can learn on the job. The year was marked by a renewed focus on training for Panel Members, and a critical change to the Action Item and Panel Bylaws which would allow the Panel to better explain its findings. The Panel had seen that its reports were too short on detail to be as useful as they could be and responded accordingly.

Finally, 2020 was a year of collaborative success and yet also major challenges. The Panel worked with the FCPD and the Board of Supervisors on the creation of a Recommendations Matrix which would allow the Panel and the FCPD to confer publicly on Panel Recommendations. At the same time, the country faced the COVID-19 pandemic, and Panel business, like all business, had to change and adapt to emergency circumstances. And on top of the pandemic, the Panel also confronted a country, a Commonwealth, and a county engaged in a national conversation about race and policing, putting the Panel's work under even more scrutiny.

The Analysis points out the successes of the Panel's first four years while also recounting the challenges. It explains the ways in which the Panel has been a part of a broader effort by the FCPD to become one of the most transparent police departments in the country, and praises the work of the FCPD in collaborating with the Panel. The Analysis highlights the FCPD's decision to ensure, for instance, that Fairfax County residents have access to data about how policing operates in their community. The challenges identified include operational difficulties, such as the growing need for an Executive Director and more resources, but also the Panel's need to maintain its independence.

At its most basic level, the Four-Year Review Analysis comes to two general conclusions, which admittedly operate somewhat in tension.

First, the ever-improving working relationship between the FCPD and the Panel has been central and key to its success. The FCPD and the Panel are not, and should not be, in direct opposition to each other. The FCPD shares the very goals of the Panel: to ensure that FCPD officers behave appropriately and effectively all the while enjoying community support. The now-public dialogue

between the FCPD and the Panel has had a positive effect on police practices and procedures. Specifically, the creation of a public Recommendations Matrix, *see* Appendix E, has offered the Panel an opportunity to publicly advise the FCPD and an opportunity for the FCPD to publicly explain what it has or has not done to respond to such recommendations. Sunlight being the best disinfectant, this has allowed the community to better understand the FCPD and hopefully has improved community trust. Moreover, having reviewed numerous FCPD Internal Affairs Bureau (“IAB”) investigations, the Panel is confident that the FCPD has been responsive and diligent and that the overall quality of investigations is to be commended.

Second, however, the Panel appreciates that independence from the FCPD, in both practice and perception, is centrally important to whether the Panel will be able to achieve its mission. The Panel recognizes that not all community members feel that they will be afforded a “fair shake” with respect to their complaints regarding the FCPD. In light of recent legislative changes adopted by the Virginia General Assembly, the Board of Supervisors is now authorized to afford the Panel greater operational authority, and in light of public sentiment, the Panel anticipates that a debate and discussion regarding that authority is imminent. Therefore, the Panel here provides specific ideas for how the Panel can enhance its independence and, hopefully, its efficacy while still maintaining the positive working relationship with the FCPD which is critical to the missions of both the Panel and the FCPD.

Finally, the Four-Year Review ends with specific recommendations for how the Panel can evolve and move forward in a more efficacious manner based on the comprehensive history review and analysis set forth in this document. These include, but are not limited to, recommending that the Board of Supervisors allow the Panel to hire an Executive Director with monitoring capability; that the Board of Supervisors and FCPD work to ensure that the Panel has access to electronic records and the ability to review investigations on its own time; that the Panel create summary review procedures to dispense with frivolous Complaints; that the Panel be given some limited investigative authority; that the Panel be given more options for how to make its findings; and that the Panel commit to public forums with both the community and the rank and file of the FCPD.

HISTORY

Panel Origins: 2009–2016

Determining the exact genesis of the current civilian oversight efforts within Fairfax County is a rather difficult task and will largely depend on who you ask in the County and or the greater Commonwealth. It took the hard work of various community stakeholders including, but not limited to: county residents, county advocacy groups, county office holders, employees, and volunteers to arrive at our current iteration of police civilian oversight. The hybrid model in place, which employs both a Civilian Review Panel and an Independent Police Auditor, is the culmination of the hard work of the named and unnamed community members who were all part of this movement. Under the hybrid model, the Civilian Review Panel reviews investigations relating to allegations of serious misconduct and abuse of authority by Fairfax County Police Department (“FCPD”) Officers while the Independent Police Auditor reviews investigations relating to the use of force.

2009

Significant efforts to create civilian oversight of the FCPD can be traced back over a decade to when the late Mr. Nicholas Beltrante, Jr. established the Citizens Coalition for Police Accountability (CCPA). Mr. Beltrante, Jr., a retired D.C. homicide detective, sparked the discussion of civilian oversight within the County after the Nov. 13, 2009 deadly shooting of Mr. David Masters, a Vietnam veteran, by an FCPD officer. According to local reporting the “incident and the secrecy surrounding the county investigation” was the impetus for this grass-roots movement. *See generally* Appendix N (“Three Years Later: No Police Oversight Board,” *The Connection Newspapers*, April 11, 2013). As a result, Mr. Beltrante, Jr. lobbied for the creation of a police citizen oversight board appointed by the Fairfax County Board of Supervisors. At the time, Mr. Beltrante, Jr. and the CCPA were unable to get the Board to establish such body.

2013

Four years after that incident, the FCPD and the County would revisit the issue of police accountability. Specifically, on August 29, 2013, the FCPD received significant media and public attention again when county resident, Mr. John Geer, was killed by an FCPD Officer. Mr. Geer had been unarmed at the time with his hands above his shoulders while a holstered gun was on the ground nearby. Issues of “transparency” by the FCPD were again cited by engaged community members seeking accountability of the FCPD. *See generally* Appendix O (“Fairfax County Appears Poised to Move from Opacity to Openness,” *The Washington Post*, July 25, 2016).

2015

This time, the unfortunate event resulted in a more concerted review by the Board of Supervisors and led to the March 3, 2015 creation of the Ad Hoc Police Practices Review Commission by then-Chairman Sharon Bulova. The stated purpose of this Commission was to address the issues being raised by community members by engaging:

the community in an open and transparent process to recommend changes that the Commission feels would help Fairfax County to Achieve its goal of maintaining a safe community, ensuring a culture of public trust and making sure county policies provide for the fair and timely resolution of police-involved incidents.

See Appendix M (Fairfax County Ad Hoc Police Practices Review Committee Final Report) at 1. Within this important mandate, the Commission was tasked with the specific items of:

- Reviewing existing policies, practices and programs regarding police-community relations;
- Reviewing existing policies, practices and laws regarding police-involved incidents, including:
 - History of recent use-of-force (lethal and non-lethal) incidents involving FCPD and subsequent public release of information;
 - FCPD use-of-force training policies;
 - FCPD threat assessment policies;
 - FCPD Internal Affairs Bureau policies.
- Reviewing the policies, practices and laws regarding the public release of information, including:
 - Relevant provisions of the Virginia Freedom of Information Act and statutory and case law;
 - The roles of Police Public Information Officers and the Office of Public Affairs;
 - The role and relationship between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth’s Attorney.

See generally *id.* at 8–10. The behemoth effort of the Commission yielded 202 recommended actions for the County and the FCPD to implement in order to help the County achieve the “goal of maintaining a safe community ensuring a culture of public trust and making sure county policies provide for the fair and timely resolution of police-involved incidents.” See *id.* at 8.”

2016

On December 6, 2016, pursuant to the specific recommendation by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission, the Board of Supervisors approved the enabling action item which formally created independent police oversight in the County. Fairfax became one of a handful of localities within the Commonwealth to operate civilian oversight of the police department and the first in the Commonwealth to adopt a hybrid model including both a Civilian Review Panel and an Independent Police Auditor.

Regarding the historic vote, then-Chairman Bulova expressed her satisfaction for the moment as follows: “Establishing a police civilian review panel is a historic step in the right direction toward increasing trust and transparency between police and residents,” Bulova said. “I’m proud of how far we’ve come in implementing the recommendations made by the ad hoc commission, and establishing this panel represents a significant milestone.” See Appendix P (“Board of Supervisors Approves Police Review Panel,” *The Fairfax Times*, December 9, 2016).

Then-FCPD Chief Edwin C. Roessler Jr. also expressed his approval of the effort, explaining “I’m very proud of Fairfax County today. What we have is the community, political leaders and highly engaged police department...working together to accomplish a great effort to create more transparency and accountability to the community we serve. This was the right move.” See *id.*

Despite the widespread approval, the vote was not unanimous. Springfield District Supervisor Pat Herryty opposed the measure and expressed his concerns regarding the Panel, “I have a number of serious issues with the Police Civilian Review Panel proposal including the following: it has an unknown fiscal impact in a very difficult budget year, it adds to multiple levels of review that police complaints already go through, it makes us the only jurisdiction in Virginia with two independent

review boards for police complaints, it has a number of legal issues with the implementation, and it negatively impacts the morale in our police department.” *Id.*

Panel Activities: 2017

Two-Thousand Seventeen was the foundational year for the Panel in which the Panel was tasked with taking the general language of the Action Item and creating a specific operational framework for Panel business. The vast majority of the Panel’s work in 2017 focused on simply figuring out how the Panel would work in the future. At the end of the year with such plans in place, the Panel voted to take its first Complaint.

Importantly for understanding the history and current operating procedures of the Panel, the Panel’s 2017 Annual Report lays out in general the scope of the Panel’s authority as determined by the Action Item and the Panel’s bylaws, which were developed by the Panel over the course of 2017. *See* Appendix D.1 (2017 Annual Report); *see also* Appendix B (Panel Bylaws). Specifically:

The Panel serves as an independent avenue or “portal” for members of the public to submit Initial Complaints (i.e., a complaint not previously submitted to the FCPD) concerning allegations of abuse of authority or serious misconduct by an FCPD Officer. The Panel also has the authority to review completed FCPD internal administrative investigations regarding a complaint of the same nature filed with the Department against an officer. The Panel may conduct a Review of an investigation within its scope only upon a request from the complainant. All FCPD letters to complainants advising them of the results of the Department’s investigation of their complaints also inform them of their right to seek a review of the investigation by the Auditor or the Panel depending on the nature of their complaint.

As a part of its Review, the Panel may hold a public meeting at which an FCPD representative will review and answer questions about the investigation, including findings of fact, evidence collected and received, witness statements, and action taken or not. Only Complaints as to incidents occurring on or after December 6, 2016, may be considered by the Panel. Examples of Complaints that the Panel may receive and/or review include:

- The use of abusive, racial, ethnic or sexual language or gestures;
- Harassment or discrimination based on race, color, gender, sexual orientation, religion, national origin, marital status, age, familial status, immigration status, or disability
- Acting in a rude, crude, angry, retaliatory or threatening manner not necessary for self-defense;
- The reckless endangerment of a detainee or person in custody;
- Violations laws or ordinances; or
- Other serious violations of Fairfax County of FCPD policies or procedures.

The Civilian Review Panel does not address the potentially criminal use of force or police involved shootings. Cases of that magnitude would likely involve an investigation by the Commonwealth’s Attorney and would be monitored and reviewed by the Independent Police Auditor (“Auditor” or “IPA”), Richard G. Schott.

The Panel may hold public meetings on issues within the Panel’s jurisdiction and on law enforcement policies and practices at which the public is invited to comment to assist the Panel in making recommendations for policy and practices changes to the Chief of Police and Board of Supervisors. The Panel may also meet periodically with the Auditor concerning his

findings and conclusions as to use of force cases so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to changes in policies and practices that may be warranted.

See id. at 2–3.

January

In January of 2017, the search for inaugural panelists formally began with a public call for applicants. Per the authorizing Action Item, Panel Members were to be appointed by the Board of Supervisors for terms of three (3) years. Further, Panel Members may be appointed to no more than two (2) consecutive terms. The Panel Members would then elect one of their members to serve as Chair of the Panel, except for the first Chair, who was to be appointed by the Board of Supervisors.

As explained in the Action Item, the Panel is composed of nine (9) members each being a resident of Fairfax County with expertise and experience relevant to the Panel's responsibilities. In order to ensure impartiality and guard against the appearance of a conflict of interest, the Board of Supervisors required that no Panel Member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. Although no Panelists can be former members of the FCPD or the FCSO, at least one of the Panel Members shall have prior law enforcement experience to ensure that a former law enforcement practitioner contributes to the important deliberations of the Panel.

Additionally, under the Action Item, the Board must consider the following factors, among others, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board must invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board must also under the Action Item accept into the pool of candidates self-nominated individuals.

County residents answered the call for service and the Board of Supervisors received hundreds of resumes from community members that were interested in serving in the newly formed panel.

February

In February of 2017, a diverse group of nine panelists were identified by the Board of Supervisors and nominated to three-year terms. Among the initial nine, the Panel consisted of three Ad Hoc Commission alumni: Douglas Kay, Randy Sayles, Adrian Steel. The other founding Panelists nominated were Hollye Doane, Rhonda VanLowe, Hansel Aguilar, Kathleen Davis-Siudut, Steve Descano, and Jean Senseman. *See* Appendix J (Panelist Biographies)

March

These initial nine Panelists took their Constitutional oaths and were sworn in on March 20, 2017. Adrian Steel was appointed as the first Chair of the Panel by the Board of Supervisors. The Honorable William H. Webster, former Director of the Federal Bureau of Investigation as well as the Central Intelligence Agency, gave remarks to commemorate the occasion. Judge Webster related how his experiences as a judge and as FBI and CIA Director led him to have a strong belief that transparency

is necessary in order to maintain public trust. He said that civilian oversight of police is key to having a country where people are safe, feel safe, and have trust in law enforcement

On March 27, 2017, at the inaugural meeting of the Panel, Chairman Steel opened the meeting by emphasizing that this was a newly formed body, thus the initial meetings would be focused on setting up “business procedures,” including operating procedures and processes. *See* March 27, 2017 Meeting Minutes.¹ As he explained, the Panel would need to propose bylaws to be approved by the Board before the Panel would be ready to hear citizen complaints. He discussed the possibility of having public forums and meeting with community groups to hear their input. Additionally, Chairman Steel reminded the Panel of the separation of duties of the Independent Police Auditor and the Panel, as approved by the Board.

Chairman Steel recognized Ms. Julia Judkins, legal counsel to the Panel, and explained that she did research, per the request of the Board, pertaining to Virginia Law and the functions of the Panel in Fairfax County. According to the legal research, the authorizing laws are different when comparing cities and counties and thus there were limitations to what the Panel could do including that the Panel lacked investigative authority.

April

In coordination with Major Gun Lee of the FCPD, who served as the Panel’s liaison, the Panel Members received training from the FCPD on April 8, 2017. In this meeting, Major Lee reviewed various General Orders (GOs) and Standing Operating Procedures (SOPs) that were of importance to the work of the Panel, including:

- GO 001-Ethics and Integrity
- Regulation 201 –General Responsibilities
- Regulation 202 –Prohibited Activities
- GO 301 –Internal investigations
- GO 310.2 –Disciplinary Actions and Appeals
- GO 501.2 –Investigative Responsibilities
- SOP 12-045 –Investigation of Deadly Force Deployment

Additionally, Major Lee outlined the following topics and how they would intersect with the work of the Panel:

- PD Internal Affairs Bureau –Overview and Administrative Investigation Process
- PD Criminal Investigations Bureau –Overview and Criminal Investigations Process Involving Employees
- PD Victim Services Section

This training and dialogue was important for a newly instituted oversight body and for members that did not have a law enforcement background.

The Panel met next on April 24, 2017. The primary purpose of this meeting was for Panel Members Rhonda VanLowe and Doug Kay to present drafted bylaws. Mr. Kay and Ms. VanLowe based their drafted bylaws directly on the Action Item.

¹ This Four-Year Review relies heavily on the Panel’s meeting minutes. The meeting minutes have been left out of the Appendices given their numerosity, but all meeting minutes of the Panel can be accessed at: <https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>.

Aside from grammatical and line edits to the first draft, the Panel discussed the following issues to be included in the next version of the bylaws:

- Whether the term “complainant” or “individual” should be used
- What would be a better word than “portal” for where to submit complaints as it may be seen as limiting because it implies a strictly web-based interaction.
- How to define the term “use of force.”
- Whether the timeline for Panel review of complaints specified in the Action Item should be reconsidered
- The relationship between the Action Item and the Panel bylaws
- How to clearly define and separate the process one would follow to file an initial complaint directly with the Panel as opposed to a “Review Request” where the Complainant would be asking the Panel to review an already completed investigation initiated independent of the Panel.
- Whether to include a specific reference to the Panel’s Code of Ethics.
- How to specify rules of procedure in terms of what constitutes a quorum.
- Whether to remove specific code citations.
- How to refer to unprofessional conduct.
- How to define and differentiate between complaints that are the purview of the Police Auditor and those of the Panel.

See April 24, 2017 Meeting Minutes. Unable to come to definitive conclusions, the Panel planned a meeting a week later to take up these issues.

May

On May 1, 2017, the Panel met to discuss the progress of the draft Bylaws. Panelists reviewed the draft jointly and commented on various aspects of the documents. Specifically, Panel Members discussed the following items to be clarified on the next draft of the Bylaws:

- What constituted officer actions considered to be an “abuse of authority” or “serious misconduct.”
- The definition of “brandishing” of weapons.
- Whether the initial jurisdictional review decision can be appealed.
- Whether the definition of “abuse of authority” and “serious misconduct” apply to an officer when off-duty.
- The process to be followed when the matter of a complaint is the subject of a criminal, civil, or administrative proceeding.
- Whether the Panel is permitted to hear testimony from witnesses not initially interviewed by the Police Department.

See May 1, 2017 Meeting Minutes.

An additional training session and meeting was held on May 13, 2017. The training session was again organized and coordinated by Major Gun Lee. The training session included representatives from various departments of the FCPD:

- Media Relations Bureau –Julie Parker, Bureau Director
- Crisis Intervention Team –PD Lieutenant Ryan Morgan
- Criminal Justice Academy –PD Major John Piper
- Operations Support Bureau –PD Major David Moyer

- Legal Considerations –Julia Judkins, Legal Counsel

See May 13, 2017 Meeting Minutes.

June

The panel met twice in June of 2017. On June 1, 2017, the Panel held its regular business meeting where some final amendments to the Bylaws were made to submit to the Board of Supervisors for review and approval. The initial Bylaws, and all Bylaws amendments, are attached to this review as Appendix A.

During a meeting on June 27, 2017, the Panel conducted a “mock review” of an alleged racial profiling incident. The exercise was instrumental in allowing the Panel and the various community stakeholders to observe what future Complaint deliberations may look like. This test case allowed the opportunity for the Panelists to go through the full range of motions of a complaint review process: From receiving the initial request for a review, to arranging visits with IAB to review the file, to hosting a review meeting, to deliberating on the case, and finally to holding the final vote on the Complaint. Based on the experience of conducting the exercise, the Panel had the following recommendations: (1) that the IAB enhance the quality of the audio recordings that are part of the investigative file; (2) that the IAB ensure that all Panel Members have access to the same materials; (3) that the Panel create general guidelines on how the Panel should interact with Complainants; and (4) that the Panel create a list of common and acceptable questions that Panel Members should ask complainants. *See* June 27, 2017 Meeting Minutes.

July

The Panel did not meet in July of 2017, but both drafts (Ethics and Bylaws) that were submitted to the Board of Supervisors, were approved on July 11, 2017. *See* Appendices B and C. This meant the panel became fully operational and ready to receive complaints.

August

At the August 3, 2017 meeting, Ms. VanLowe was elected Vice Chair of the Panel by unanimous vote. Under the Panel’s bylaws, she would become the first elected Chair of the Panel at the conclusion of Chair Steel’s term.

Continuing his work on training members of the Panel, Major Lee used the August meeting to provide dates to Panel Members to go on ride-alongs with FCPD officers and encouraged those Panel Members who want to take one to let him know. Vice Chair VanLowe commented on how valuable the experience of riding with an officer had been to her.

The meeting then turned to outreach strategies. Vice Chair VanLowe and Panel Member Hollye Doane then reported on the plans for the first public forum. Panel Member Steve Descano reported on the plans that he and Panel Member Kathleen Davis-Siudut were developing for meetings with community and officer organizations. *See* August 3, 2017 Meeting Minutes.

September

At the Panel’s September 17, 2017, meeting, the Panel invited Mr. Paul Ashton, Chair of the D.C. Police Complaints Board (PCB), to speak about the PCB’s structure, mission, jurisdiction and process for reviewing citizen complaints against the Metropolitan Police Department (MPD). Although

the PCB's oversight structure differs substantially from the review model adopted by Fairfax County,² the Panel was nevertheless interested in how the PCB processed complaints and made recommendations on policy changes to the D.C. Mayor, City Council and MPD. The presentation was informative to the Panel, and Panel Members agreed that it was important to learn from other civilian oversight boards and panels. Chair Steel informed the Panel that he, Mr. Aguilar, and Independent Police Auditor Richard Schott would be attending the annual meeting of the National Association of Civilian Oversight of Law Enforcement (NACOLE) in Spokane, Washington the following week. He said they would report back to the Panel what they learned about current developments in civilian oversight.

The Panel also addressed how to identify and process complaints that had been filed directly with the FCPD since the Panel's inception but were unknown to the Panel. These types of investigations might be reviewable by the Panel, but the Complainants may not have been notified that they could request reviews. Mr. Schott reported to the Panel that he and IAB Commander Major Gervais Reed had identified several complaints that they had determined would fall within the Panel's review authority. He informed the Panel that the Complainants would be sent a letter notifying them of the results of the FCPD investigations and their opportunity to request a review from the Panel. The Panel discussed whether the Panel Members should also have input on that identification process. The Panel voted to authorize the Chair and Vice Chair to confer with Mr. Schott and Major Reed regarding the complaints they had identified and to also identify any additional complaints received. The Panel agreed that the results of that review should be presented to the Panel at the next meeting. The Panel also agreed that it should proceed expeditiously to adopt procedures for processing all complaints, and that once that was completed, there would be written protocols and standard templates to use for communicating with Complainants in the future.

The Panel addressed a variety of administrative matters during the rest of the meeting, including an update that the Panel's Website was operational and that a press release had been issued by Chair Sharon Bulova announcing that the Panel and Independent Police Auditor were accepting complaints. In addition, Ms. Doane informed the Panel that a printed brochure about the Panel would be published in four languages and soon would be ready to distribute to public sites across the county. *See Appendix I (Panel Brochure).*

The importance of continued outreach to the community through meetings, the media and printed materials was discussed. Mr. Descano, who had agreed to spearhead community outreach efforts, reported to the Panel that he had contacted a number of community organizations, including the NAACP, CASA in Action, Unitarian-Universalist Church in Reston, various Route 1 groups, Police Citizen Advisory Committees, and the Chief's Diversity Council. He asked for other suggestions and Chair Steel noted that all the Panel Members should be involved in some type of outreach to introduce the Panel to the community. Ms. Davis-Suidut offered to prepare talking points and a PowerPoint presentation for outreach meetings. *See generally* September 17, 2017 Meeting Minutes.

² According to its enabling statute, the PCB is composed of five members, one of whom must be a member of the Metropolitan Police Department (MPD). The statute specifies that the other four must have no current affiliation with any law enforcement agency. In order to ensure community representation, the statute requires that all Board members must be residents of the District of Columbia, and they serve staggered three-year terms without compensation. The Mayor nominates members to the Board, who must then be confirmed by the Council. *See* <https://policecomplaints.dc.gov/page/opc-police-complaints-board>.

October

At its meeting on October 19, 2017, the Panel continued to plan for additional outreach in order to inform the community that the Panel was ready to start accepting Complaints and reviewing investigations. In particular, the Panel focused on the agenda and logistics for its upcoming public meetings for comment, referred to by Panel Members as “public forums.” The Panel determined that the first forum would be held on November 16 in Annandale and the second would be held on December 12 in Reston.

However, Panel Members differed on the purpose of the forums. Some believed that the Board of Supervisors had consented to the Panel holding forums only for the purpose of introducing the community to the members of the Panel and familiarizing them with the complaint process. However, they did think that the Board intended such meetings to be open-ended, where individuals could discuss specific problems with police. In fact, the Panel’s counsel advised that there could be serious legal issues if the Panel held unrestricted open meetings for comment. Others, including the Chair, felt that community members should be able to freely address the Panel on all issues of public safety at public forums. Such discourse, they argued, was essential to the Panel’s role in recommending policy changes concerning policing in the community. The issues concerning public forums would continue to challenge the Panel for the next few years. At this meeting, however, the Panel agreed that, for the purpose of the upcoming public forums, the Panel could receive comments on issues relating to the Panel’s jurisdiction, as well as matters relating to the complaint review process. *See* October 19, 2017 Meeting Minutes.

A draft brochure was circulated to the Panel Members for their review with the goal of publishing copies in time for the first forum. *See* Appendix I (Panel Brochure). Mr. Schott reported on his work with the County’s Channel 16 to create a 10-minute video that would describe the Panel and IPA. It was also reported that the Office of Public Affairs had posted messages on Facebook and Twitter regarding the Panel and IPA.

Chair Steel and Vice Chair VanLowe reported that they had conferred with Mr. Schott and Major Reed regarding the investigations that they had identified as being potentially reviewable by the Panel. They reported that after discussion and inquiries about certain complaints, they were satisfied with the determinations made by Mr. Schott and Major Reed. The identified Complainants would be sent letters informing them of their opportunity to request a Panel review of the investigations. The Panel agreed that going forward the Chair and Vice Chair would continue to work with Mr. Schott and Major Reed to identify those complainants that need to be informed about their ability to request a review. *See* October 19, 2017 Meeting Minutes.

November

On November 9, 2017, the Panel continued planning for its first public forum. Panel Members also spent considerable time discussing future public outreach for the purpose of letting the community know that the Panel was ready to accept complaints. Mr. Descano reported that five or six community groups were interested in receiving a Panel outreach presentation in 2018.

Major Lee updated the Panel on the police Crisis Intervention Team (CIT) training scheduled for November 15 and noted that two Panel Members were scheduled to attend. He said that there would be another session in early 2018 and encouraged more Panel Members to attend. Chair Steel and Mr. Sayles reported on the November 1 Forum held by the Ad Hoc Commission to update the community on its public safety recommendations. They noted that attendance was limited but that the issues raised included: (1) the timeline for release of the 2016 Use-of-Force statistics and analysis of the 2015

statistics; (2) disproportionality as reflected in the 2015 Use-of-Force statistics; (3) the recent arrest by FCPD of a person attending the Annandale parade; and (4) the need for an online docket to list the complaints received by the Panel, investigations being reviewed, and reports issued by the IPA and Panel. *See* November 9, 2017 Meeting Minutes.

Mr. Schott provided a brief report on the NACOLE annual conference that he attended, along with Mr. Aguilar. He noted that he was told by many attendees that it typically takes a number of years for new civilian oversight panels to become fully effective, since it takes a while for the public to learn about the review process and gain trust in oversight.

On November 16, 2017, consistent with the provisions of the Action Item and the Panel's Bylaws, the Panel held a Public Forum in Annandale.³ The forum was advertised through the County's website, social media (e.g., Facebook and Twitter), and through local media. Then-Chairman of the Board of Supervisors, Sharon Bulova, attended the forum and expressed her support for the work of the Panel and explained that she believed the at the Panel would promote transparency and openness in community policing.

Following remarks by Chairman Bulova, the eight members of the Panel in attendance (Vice Chair VanLowe was unable to attend) introduced themselves to the public and provided their backgrounds and how they ended up on the Panel.

After introductions, Chair Steel provided an overview of the Panel including a discussion of the Panel's formation, how Panel Members were selected, the terms of service, the Panel's purpose, and the work conducted to date. Most importantly, Chair Steel explained that the Panel would review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested.

Following Chair Steel's presentation, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. He explained that in contrast to the Panel, the Auditor is responsible for monitoring and reviewing Internal Affairs investigations of police officer involved shootings; in-custody deaths; use of force cases that result in death or serious injury; and any other use of force cases in which a public complaint is received.

Panel Members Kathleen Davis-Siudut and Doug Kay discussed the complaint filing process, explaining that written complaints or requests for review can be submitted to the Panel via the Auditor's office in person, by mail, or online, at which point they are shared with the FCPD. Then the FCPD conducts the investigation and sends findings to the complainant and the Panel/Auditor. The Panel itself conducts public meetings to review investigations, during which it may hear from the complainant and an FCPD representative.

It was important to note some key limitations of the Panel and the Auditor. For instance, neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. Nor do they do not have jurisdiction over the Sheriff's Office or federal law enforcement (*i.e.*, ICE). And neither the Panel nor the Auditor can review complaints related to incidents that occurred before December 6, 2016, and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

³ As explained in the 2017 Annual Report, the Action Item and the Bylaws dictate that "[t]he Panel may hold public meetings on issues within the Panel's jurisdiction and on law enforcement policies and practices as which the public is invited to comment to assist the Panel in making recommendations for policy and practices changes to the Chief of Police and the Board of Supervisors." *See* Appendix D.1 (2017 Annual Report) at 3.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. The questions/comments included:

- To the majority of residents, the FCPD and the Sheriff's Department are considered law enforcement officials. Does the Panel or the Auditor have authority to take complaints about the Sheriff's Department?
- How much business/how many complaints do you expect to receive?
- Where will your meetings be held?
- If the Auditor reviews an investigation and disagrees with the FCPD's decision in regards to disciplining an officer, does he have the authority to change the discipline imposed or charge an officer with a crime?
- Is there anything this panel can do to respond to complaints about the Sheriff's Department or ICE? Is there a legal impediment if the Sheriff wants this Panel to review? Why not invite the Sheriff's Department and ICE to attend these forums?
- A speaker noted that many individuals who would want to submit a complaint would likely be minorities. Given the racial and ethnic makeup of the Panel, how can the community be assured that the Panel will be sensitive to the concerns of minority populations in the county and help them to navigate the complaint process (which may be seen as complex and lengthy)?

See November 16, 2017 Public Forum Meeting Minutes. In other words, the community members who attended the public forum seemed most interested in understanding the scope of Panel authority – and in some ways directly questioned the Panel's limited mandate – and called for assurances and explanations as to how the Panel would effectively function as an independent arbiter open to all members of the community.

December

At the Panel's business meeting on December 7, 2017, The Panel considered its first Request for Review of a police investigation, which involved an investigation initiated when a police officer failed to respond to a subpoena in a civil suit. See generally Appendix G.1 (CRP-17-01 Review Report). The Panel considered whether it had jurisdiction to review the investigation. Some Panel Members were concerned that the email requesting the review asked for a monetary remedy that is outside of the Panel's authority to grant. The email also was unclear as to whether the Complainant was asking the Panel to review the investigation or whether she was asking for something different. The Panel voted to send a response to the Complainant asking for clarification on whether she would like the Panel to proceed with a review of the investigation. See generally December 7, 2017 Meeting Minutes.

Vice Chair VanLowe also raised the need for the Panel to develop written procedures and practices to follow when receiving and reviewing complaints and requests for review. Panel Members agreed that the Panel should develop a procedural manual and a series of template letters to use for processing complaints. Vice Chair VanLowe also emphasized the need to determine what the Panel can discuss in meetings and report about the content in investigative files, the timing of responding to initial complaints and requests for review, how the Panel will correspond with Complainants, and when Panel Members can make appointments to review investigative files at police headquarters. These issues would be further considered by the Panel during Ms. VanLowe's chairmanship that she would assume in March of 2018.

Panel Members also addressed a number of additional topics during the remainder of the meeting, including preparations for its upcoming December 12 public forum and whether to schedule future forums. The Panel agreed to postpone scheduling additional forums until it had completed its

outreach efforts to specific groups. Mr. Descano said he was currently scheduling outreach meetings to take place from January-March and asked Panel Members to sign up to attend. Mr. Schott informed the Panel that he and Vice Chair VanLowe were featured on Channel 16's program, "Connecting with Supervisor Hudgins."

Chair Steel raised a concern that many FCPD officers had a misperception about the role and responsibilities of the Panel. Major Lee encouraged Panel Members to meet with officers and offered to set up opportunities for Panel Members to attend roll calls in district stations. Major Reed noted that more clarification would occur naturally as the Panel's work progressed. The Panel agreed that it should consider a strategy for outreach to the FCPD.

Chair Steel provided an update on the FCPD's Body Worn Camera pilot program, which was approved by the Board of Supervisors to start in March of 2018. He said that Panel Members may want to go on police "ride-alongs" in the Mason or Mt. Vernon districts during the pilot period.

On December 12, 2017, again consistent with the provisions of the Action Item and the Panel's Bylaws, the Panel held a second Public Forum in Reston. The forum was advertised through the County's website, social media (e.g., Facebook and Twitter), and through local media. Then-Hunter Mill District Supervisor Cathy Hudgins attended the forum and expressed her support for the work of the Panel and explained that she believed the at the Panel put in place a process that would allow the community to have greater oversight over the FCPD.

Presentations proceeded along the same lines as at the November 16, 2017 Public Forum. Unsurprisingly, there were then many similar questions to the previous forum as well. Again, the questions primarily concerned the scope and limitations of the Panel's mandate and questioned how the Panel would be able to provide meaningful oversight that the community could trust. Such questions included:

- Why does neither the Auditor nor the Panel have the authority to investigate complaints against the FCPD?
- Why are there two oversight bodies – the Auditor and the Panel – rather than one?
- Do you have to be involved in the incident to submit a complaint?
- How is the FCPD involved in the Auditor and Panel's review processes? How can citizens be assured that the FCPD is forthcoming with all evidence received and findings?
- Why can't the Auditor and Panel take complaints about ICE?
- Can you tell me more about Chairman Steel's background? How many attorneys sit on the Panel?
- How did the Board of Supervisors select individuals to serve on the Panel?
- Can the Panel make policy recommendations to the FCPD?
- What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?
- What are you doing to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?
- Do you only look at individual cases?
- Are all complaints received by the Auditor and Panel available to the public for viewing?

See December 12, 2017 Public Forum Meeting Minutes. Again, the Panel had to explain that neither the Panel nor the Auditor could have investigatory authority due to the lack of enabling legislation. The Panel further explained that it would be reviewing investigatory information provided by the police, but also explained that at public meetings the Panel could question an FCPD representative

about the contents of the Investigation Report and that the Panel could request additional investigation. Again, the Panel needed to explain that it could review complaints against the FCPD exclusively, not ICE or other law enforcement bodies. The Panel assured the public that it was working on additional outreach strategies, including to minority communities and non-English speaking communities (and was working on translations of its materials).

Recap

The 2017 annual report summarized the year as follows:

The Civilian Review Panel has had an active first year in beginning its task to provide effective civilian oversight. We successfully organized ourselves and drafted and adopted the Bylaws which govern our work. We are receiving and processing Initial Complaints and Requests for Review . . . We are reaching out to the public through forums and speaking before numerous community groups and organizations. We have more to do. We need to work to more broadly spread the word about what it is we do. We need to adopt clear procedures and standards to govern our work and to ensure that there is a clear record detailing the Panel’s rationale for our actions. We look forward to working with the public and the FCPD in the next year in achieving the goals set for us by the Board of Supervisors when it created the Panel.

See Appendix D.1 (2017 Annual Report) at 12.

It is hard to overstate the novelty of the Panel at its inception and the work that needed to be done to create a working Panel. The Panel and the Independent Police Auditor – and more specifically, the hybrid model of police oversight involving a bifurcation of use of force complaints and other complaints – was unique to Fairfax County and not seen anywhere else in the Commonwealth. Panel Members, all volunteers, worked with the Auditor and staff in the Office of the IPA to create bylaws and a code of ethics, but their work went even deeper. The Panel needed to create basic administrative items such as a complaint form, *see* Appendix H, a brochure for distribution across the county, *see* Appendix I, a website, complete with descriptions of purpose and mission and instructions on how to file a Complaint, and the Panel needed to have these materials translated into Korean, Spanish, and Vietnamese so that they could reach all parts of the County. The Panel further needed training, and it needed the help of the FCPD to even know what training it should have.

The Panel also needed an outreach strategy to make sure that the community knew that it even existed and was a place where community members could go to seek additional police oversight.

As a result, while the Panel was very busy in 2017, it did not actually complete the reviews of any Investigation Reports. In fact, the Panel received only one Initial Complaint in 2017, and following the FCPD investigation, there was no review request made (and therefore, the Panel did not review the Investigation Report). The Panel also received one Review Request related to a completed investigation, but the Panel did not complete its review until 2018, when the Panel started reviewing investigations in earnest. *See* Appendix F (Panel Data Summary).

Panel Activities: 2018

In 2018, the Panel began reviewing investigations for the first time. As the Panel engaged in these early reviews, it recognized gaps in the Action Item and Bylaws with respect to policies and procedures concerning issues such as, (1) whether a Complaint should be reviewed; (2) how investigative reports and IAB files could be discussed during public meetings; (3) how the Panel should correspond with Complainants; and (4) how detailed review reports could be. In March of 2018,

Rhonda VanLowe took over as Chair of the Panel. Under her leadership, many of the Panel's first policy and process documents were developed. *See generally* Appendix D.2 (2018 Annual Report).

In addition to beginning to review Complaints and adopt procedures, the Panel's 2018 meetings emphasized the need for the Panel to continue its outreach efforts and expand awareness about the Panel. Every meeting in 2018 included a discussion about outreach opportunities and actions.

January

At the Panel's January 4, 2018 meeting, the Panel discussed Complaint CRP-17-01. *See* Appendix G.1. The crux of the Complaint was that a police officer had failed to respond to a subpoena to appear in court in a civil case against the Complainant's landlord. While the IAB had investigated the incident and told the Complainant that the Officer's conduct had been addressed, the Complainant was not informed by the FCPD of its reasoning. At its previous meeting in December, the Panel considered whether the complaint involved an allegation of serious misconduct by the officer determining that the failure to respond to a subpoena could constitute serious misconduct and agreeing to review the complaint.

Both the Complainant and the Chief of Police Edwin Roessler appeared at the review meeting. Also attending the meeting were several police officers who came to observe the meeting and support the Chief. In her statement to the Panel, the Complainant expressed concern that the FCPD had not offered a remedy in her civil case and that the officer had not shown up to testify in her court hearing to substantiate her allegations. Chief Roessler told the Panel that it did not have jurisdiction to review the Complaint, because the Complaint constituted an attempt to relitigate the underlying civil case and neither the Panel nor Chief Roessler could offer the Complainant the remedy that she wanted. Instead, the Panel could merely affirm or not affirm the investigation itself, and Chief Roessler stood by the investigation. With regard to the thoroughness of the Investigation Report, the Panel questioned the Chief as to why the Investigation Report did not include interview transcripts of key witnesses, including the Complainant herself. Chief Roessler noted that at the time IAB interviews were not recorded.

February

The discussion of CRP-17-01 continued during the Panel's February 1, 2018 meeting. The Panel determined that it would concur with the findings of the IAB and discussed whether the Panel should provide policy recommendations regarding how the Police Department tracks subpoenas and trains officers on responses. However, the Panel ultimately determined that it would not provide policy recommendations at that time.

The review of CRP-17-01 highlighted several issues for the Panel going forward. First, it was evident that the Panel needed a better process to determine its jurisdiction. Second, it was clear that Complainants had very little information about the reasons for the FCPD investigation findings, and this lack of transparency impacted the quality of review meetings. Finally, the Panel was advised by its Independent Counsel that it could not report on information in the Investigation Report that was not otherwise publicly disclosed. This restraint severely limited transparency of FCPD investigations and the ability of the Panel to explain its findings in its review reports. The Panel would continue to struggle with these issues going forward.

The Panel was already thinking to the future, however, as soon-to-be-chair Rhonda VanLowe circulated a proposed intake process and proposed process for determining jurisdiction. Further, the Panel, recognizing its parallel relationship with the Independent Police Auditor, invited Richard Schott to present on several recent investigation reviews.

March

At the March 1, 2018 meeting, Rhonda VanLowe became Chair and Doug Kay took over as Vice Chair. As a first order of business, the Panel completed its work with respect to CRP-17-01. The Panel adopted a review report drafted by Doug Kay. Notably, this review report, which was not released until more than three weeks after the second panel review meeting, was short in all respects. It was only a page and a half long and offered scant details of the Complaint or the investigation.

After adopting the report as drafted, the Panel reflected further on the review process. The Panel discussed a number of procedural changes to apply to future reviews including:

being more sensitive to the use of the officer's name during Review Meetings, allowing more time for Panel discussion on the case before voting on the Panel's findings (including whether the review met the standards of thoroughness, completeness, accuracy, objectivity, and impartiality), and providing greater detail in the Panel's findings report, to include Panel Members' reasoning and rationale.

See March 1, 2018 Meeting Minutes. The Panel also engaged in a discussion as to whether dissents from panel reports were appropriate. The Panel decided that dissents were appropriate when reflective of the Panel's deliberations and that "in order to dissent, a Panel Member must have a vote on the record with respect to the Panel's finding in a review matter." *Id.*

At the March meeting, the Panel also considered its scope of authority to review CRP-18-02, where the Complainant alleged that he had been falsely arrested for being drunk in public during a landlord-tenant dispute at his residence. In the context of this Complaint, the Panel addressed its procedures going forward for determining its jurisdiction to review all future Complaints. The Panel also considered whether inviting the Complainant and a FCPD representative to a review meeting was necessary and required, and whether the Panel could develop a channel of communication with the FCPD to ask questions on police policies and procedures outside of a formal "Review Meeting" where the Complainant and the FCPD appeared. Finally, the Panel considered whether it should adopt a process to use subcommittees to decide jurisdiction and then review the Complaint, including the question of whether it was necessary to hold a formal Review Meeting. The Panel was considering its procedures in light of any future in which it was overwhelmed with review requests.

The Review Liaisons for CRP-18-02, Hollye Doane and Randy Sayles, were asked by Chair VanLowe to propose a process to determine jurisdiction that followed provisions in the Action Item and Bylaws. They developed a memorandum that they shared with the Panel at the March meeting. Specifically, their method "included consideration of the timeliness of the Complaint, whether there was use of force or pending criminal or civil proceedings, and the scope of authority. In determining jurisdiction, the liaisons looked at the allegation itself and did not review the underlying record or facts of the case." *Id.* But having determined jurisdiction, the Panel also voted that it was not necessary to hold a Review Meeting where the Complainant appeared on CRP-18-02 because Panel Members believed that the record was substantially complete and that it was not clearly necessary to question the Complainant or the FCPD at a Review Meeting. However, the ultimate determination regarding the Complaint and the investigation was held over because it was not clear if the Panel could ask *any* questions of the FCPD without a Review Meeting.

April

At the April 5, 2018 meeting, the Panel continued its efforts to develop clear and defined procedures for Panel business. The Panel adopted a new policy for Remote Participation. Also, Chair

VanLowe circulated—but the Panel did not adopt—a memo regarding procedures and timelines for setting Panel Meeting Agendas.

At the same meeting, the Panel decided that it would concur with the findings of the IAB in CRP-18-02. *See* Appendix G.2. Specifically, “Panel Members agreed that the FCPD investigation met the criteria of complete, thorough, accurate, impartial, and objective” consistent with provisions of the Panel’s bylaws. *See* April 5, 2018 Meeting Minutes. The Panel also “noted that the recorded interviews and in-car camera footage in the file were extremely helpful to their review,” and were part of the reason why no review meeting was needed. *Id.* At the same time, Chair VanLowe “expressed concerns that the interviews included in the investigative file were limited to the police officers and the neighbors who had complained” but not the Complainant. *Id.*

Additional topics discussed included two additional memos: “Duty of Panel Review Liaisons” and “Request for Review Preliminary Report.” One important topic of discussion was the relationship between the Panel and the FCPD itself and whether Review Liaisons should serve as a conduit for each specific review. Panel Members, including Review Liaisons, “felt they were not getting their questions answered regarding FCPD policy, procedures, and training, beyond a referral to the FCPD General Orders on the website” and “some members said that they had felt hostility or pressure from FCPD staff while they were reviewing the investigative file.” *Id.* One suggestion was to utilize the staff of the Independent Police Auditor for certain administrative questions in interacting with the IAB. Notably, Chair VanLowe offered to have a discussion with Chief Roessler regarding perceived friction.

The Panel also addressed an on-going concern regarding the lack of detail in FCPD disposition letters to the Complainant. Typically, disposition letters informed the Complainant only of the FCPD finding with regard to an investigation and did not provide any detailed explanation. As mentioned earlier, this lack of detail in the disposition letter also affected the Panel’s ability to provide more explanation in its Review Reports. This issue would continue to be discussed in subsequent meetings.

The April meeting also included a discussion of the relationship between the Panel and the Independent Auditor. While staff of the Independent Auditor play a dual role and also handle administrative functions for the Panel, there was some concern expressed by Panel Members that the Independent Auditor is seen as a professional arm of the FCPD whereas the Panel is supposed to be an independent, civilian institution. Nevertheless, the Panel ultimately decided that it was important to maintain a strong working relationship with the Independent Auditor and share techniques and outreach information. During the meeting the Independent Auditor shared information about his methods in determining whether a use of force complaint has been properly investigated.

Following the Auditor’s presentation, a discussion ensued (that continues to this day) regarding “the difficulties in considering the accuracy component of the investigation, how the Panel has previously been criticized for asking questions that were seen as investigatory in nature, and the level of information needed by Panel Members when conducting reviews.” *Id.* As would become apparent over numerous other Panel Reviews, these are recurring core questions for the Panel.

May

The Panel met on May 3, 2018, and discussed, among other things, the Review Report for CRP-18-02. *See* Appendix G.2. Notably, the panel held a lengthy discussion on “comments” and “policy recommendations” to add to the report in a notable departure from their previous Review Report. That being said, what actually made it into the report were two very brief comments:

- “Several Panel Members noted that the audio tapes of the interviews and the video of the police transport of the complainant after his arrest were helpful in their determinations.”

- “In addition, a body-worn camera recording might have been useful in the matter to give a better view of the complainant’s behavior during the arrest.”

See Appendix G.2 (CRP-18-02 Review Report). The Panel Report was otherwise in general as Spartan as that for CRP-17-01 before it.

Building on previous meetings and the discussion of the necessity of holding Review Meetings, whether or not subcommittees could be used regarding reviews, and whether or not there could be a “summary process,” the Panel heard from a special subcommittee of Vice Chair Doug Kay and Mr. Steel regarding several key procedural questions that they had researched and reviewed with respect to the bylaws. First, they addressed the question of “Is the Panel obligated to conduct a review of an FCPD investigation if it has the authority to do so?” The subcommittee split on this topic, with Mr. Kay determining that the Bylaws “gave the Panel discretion not to conduct a review if they so choose” and Mr. Steel concluding just the opposite. See May 7, 2018 Meeting Minutes. Both agreed that it may be worth it to seek clarification from the Board of Supervisors.

Second, the special subcommittee addressed the question of “Is the Panel required to hold a Panel Review Meeting where the Complainant and the FCPD are present?” Here Mr. Kay and Mr. Steel agreed that the panel was not required to hold a Review Meeting but was “required to provide notice to the Complainant if the Panel decides to conduct a Review Meeting” and that “if the Complainant comes to a meeting and wants to speak, the Panel has to hear from [the Complainant].” *Id.* This prompted a question from Ms. Doane as to whether there would be any instances in which the Panel would *not* want to hear from the Complainant. The Panel split on this issue with certain members, such as Steve Descano, emphasizing that a full review process was central to building community trust, but other members including Ms. Doane and Mr. Aguilar expressing concern that entertaining frivolous complaints could undermine the Panel’s legitimacy. The Panel did not come to any determination as to what “summary process” could be utilized to potentially weed out frivolous complaints.

August

The Panel did not meet again until August 2, 2018. That meeting opened with Chair VanLowe distributing a document summarizing all of the Complaints that year to date and noting an uptick in the number of Initial Complaints received by the Panel over the summer.

The Panel heard from the Independent Police Auditor regarding his latest report, “Review of the Disparity in FCPD Use of Force Incidents by Race in 2015.” Among other things, Mr. Schott found that “after reviewing individual incidents, the OIPA was unable to discern a disparity in the level of force used on African Americans and Whites when considering the level of resistance or flight exhibited in individual incidents.” See August 2, 2018 Meeting Minutes. Mr. Sayles noted that this was exactly the opposite of what other independent groups reviewing the data had found. Rachele Ramirez of the Independent Police Auditor’s office “explained that the studies referenced in the report were quantitative empirical studies, where the researchers statistically controlled for different variables, such as arrest rates,” whereas this analysis only reviewed incidents where force had been used.

The bulk of the August meeting was devoted to proposed Bylaw changes. The first proposed bylaw amendment added language to Section VI.C.2(a) regarding Review Liaisons. Specifically, the Panel passed a motion to propose that Section VI.C.2(a) state in its entirety: “The Panel Shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. **The Chair may appoint, on a rotating basis, one or more Panel Members**

as review liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.” (The highlighted portion being the Amendment.)

The second amendment modified the language of Section VI.A.1(d) to clarify the Panel’s process for dealing with Complaints. Specifically, the Panel passed a motion to propose that Section VI.A.1(d) state in its entirety: “A Review Request filed more than sixty (60) days after **the date of the FCPD notice sent to the Complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint** [shall not be reviewed] (unless the Panel determines that there is good cause to extend the filing deadline).”

The third amendment modified the language of Section VI.E.1(f) to give the Panel discretion to have the Complainant appear before the Panel at a Review Meeting, similar to its discretion to request that the FCPD attend. Specifically, the Panel passed a motion to propose that Section VI.E.1(f) state in its entirety: “**At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting**, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.”

The fourth amendment added language to Section VI.E.1(a) regarding the Panel’s jurisdiction. Specifically, the Panel passed a motion to propose that Section VI.E.1(a) state in its entirety: “**If the Panel determines it has authority to review an investigation under article VI.A.1**, the Panel shall convene a Panel Meeting to review an investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.”

Having proposed substantial Bylaws changes, the Panel tabled further procedural questions until the September meeting. The Panel’s primary focus during this period was to develop consistent and clear policies and procedures for how the Panel would review Complaints.

September

When the Panel met on September 6, 2018, it focused on records retention and sharing issues and outreach. Records retention was a particularly pertinent topic because for the first time in its existence, the Panel Members were set to get County email addresses. A discussion led by County Archivist Brian Conley explained to the Panel Members their record retention obligations under Virginia’s FOIA laws, and the Panel discussed creating its own records retention policy.

Another change in the Panel ushered in with its new email addresses was that the Panel determined that all Complaints and FCPD Disposition Letters should be shared with the entire Panel and not just the Chair and Vice Chair.

As in many previous meetings, the Panel discussed its outreach efforts, including outreach at various police district stations, along with outreach to police organizations. The Panel voted that it would hold another Public Meeting in December of 2018.

Vice Chair Kay notified the Panel that he and Chair VanLowe had met with Supervisor John Cook regarding the proposed Bylaw Amendments and that they would be taken up by the Board of Supervisors as a whole at a later meeting.

At the conclusion of the meeting, Vice Chair Kay raised the subcommittee issue, noting that the Bylaws expressly provided for the possibility of conducting an “initial review” and suggesting that a subcommittee only may be best suited for such an “initial review.”

October

The Panel meeting on October 4, 2018, featured several determinations regarding procedural considerations that had been discussed by the Panel. First, the panel voted to implement section VI.C.2 (a) of the Panel's Bylaws "to establish subcommittees that will be comprised of the two Review Liaisons and either the Chair or Vice Chair, who shall alternate serving on the subcommittee." *See* October 4, 2018 Meeting Minutes. Cognizant of the potential for a 2-1 vote in the subcommittee and concerned that a legitimate Complaint could be overlooked by the process, the Panel also included in its motion a rule "that the decision made by the subcommittee be distributed to the entire Panel Membership in the form of a summary report." *Id.* Notably, the Panel did not explicitly define how the subcommittee was to perform its "initial review" or what criteria needed to be considered in the initial review.

The Panel also adopted a Records Management plan identical to that of the Independent Police Auditor. The Panel discussed, but did not adopt, a confidentiality policy that would govern what could be said during meetings and in Review Reports. The Panel was cognizant that it was under certain obligations to maintain confidentiality but also faced the need to balance confidentiality with transparency, which is a key component of the Panel's work.

The Panel decided to take up review of Complaint CRP-18-12, involving claims of police misconduct in writing up a traffic accident where the police officer had allegedly written up false statements. The IAB investigated the Complaint and notified the Complainant that "measures have been imposed to prevent a recurrence of this type of incident in the future" and, "[a]fter completion of the Investigation, the Officer amended the [police report] correcting some, but not all, of the information disputed by Complainant." *See* Appendix G.3 (CRP-18-12 Review Report). The Panel concurred with Mr. Steel, who served as a Review Liaison, that it could consider this review request. The Panel further decided that it would benefit from hearing from the Complainant and that it would invite both the Complainant and the FCPD to present at the November meeting. But the Panel made clear that it would not cancel or move the Review Meeting if the Complainant could not attend.

The Panel also devoted part of the October Meeting to preparation for the December Public Forum/Meeting. Despite consistent outreach efforts, Mr. Descano expressed his concern that the Panel's existence and business were unknown to wide swaths of the Fairfax County community. Panel Members decided that the Mount Vernon magisterial district would be the place where the Public Meeting might have the biggest impact. The Panel considered "potential topics of the public forum, such as mental health or reporting a comprehensive overview of Panel data to date, and conducting a question and answer dialogue between the Panel and the public during the public forum." *See* October 4, 2018 Meeting Minutes. The Panel also determined that buy-in from the Board of Supervisors for the Public Meeting would be beneficial. Chair VanLowe offered to speak with Chairman Bulova, Supervisor Cook, and Supervisor Dan Storck of the Mount Vernon District regarding the public forum and explained that she would "get input from Supervisor Storck related to potential dates and topics that would engage community members within his district." *Id.*

November

At the November 1, 2018 meeting, the Panel considered CRP-18-12. *See* Appendix G.3. Both the Complainant and the FCPD appeared at the meeting. The Complainant expressed his continued frustration that the Police report allegedly had the color wrong with respect to the vehicle involved in a traffic accident and had not accurately reported who had helped the Complainant out of the road. Further, the Complainant's wife explained that she was dismayed by the police officer's behavior in the aftermath of the incident and felt that he had not been attentive to the need for an accurate report.

Consistent with its mission, the Panel Members focused their questions on the IAB Investigation Report itself and whether the IAB had adequately looked into the alleged false statements in the police report. For instance, Mr. Descano asked if the Complainant believed that the IAB investigation had contacted all of the witnesses to the accident. The Complainant did not know, but said that the police had all of the proper contact information. The Complainant said that he had seen a revised report that corrected some of the inaccuracies but that the report still had the color of the other vehicle involved wrong.

Appearing on behalf of the FCPD, Major Gervais Reed “noted that the involved officer made errors, was held accountable, and corrective actions were taken to prevent future errors.” *See* November 1, 2018 Meeting Minutes. The Panel asked various questions concerning the investigation, such as if the FCPD was ultimately able to identify the driver of the other vehicle (it was not). Major Reed explained that the report had been changed but that the report regarding the color of the other vehicle had not been changed because it was consistent with the 9-1-1 call and the two witnesses who appeared at the scene.

The Panel ultimately voted to concur with the findings of the IAB by a vote of 6-1. Mr. Aguilar cast the dissenting vote and expressed his intention to file a dissent to the ultimate Review Report.

December

The Panel discussed the Review Report for CRP-18-12 at its meeting on December 6, 2018. Notably, this Review Report was about twice as long as the two Review Reports filed before it, in large part because the Panel provided a more fulsome procedural history, additional comments, and recommendations. The additional comments and recommendations were made notwithstanding the Panel’s decision to concur with the findings of the IAB. *See generally* Appendix G.3.

During deliberations, the Panel was concerned about how detailed it could be in Section III, the Procedural History, which notably provided more information than prior Review Reports. The Panel went into closed session to confer with Panel counsel to determine what was permissible. Notably, the Procedural History portion is the part of the report that actually discusses the findings of the IAB and the Investigation Report. It was evident that in order to write a report that accurately describes an investigation, the Panel needed to be able to provide clear procedural history of the Complaint.

The Panel agreed on two “Additional Comments.” First, the Panel expressed concern that it did not know what kind of training police officers received for the specific report at issue, nor did the Investigation Report fully explain how the department would teach officers to make corrections to reports if needed. Second, the Panel noted that the Investigation Report was light on information concerning the police officer’s demeanor in the interaction. Ultimately, the Panel was satisfied with Major Reed’s “assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer’s demeanor are inextricably tied to the officer’s refusal to update the [police report]” and thus “the officer’s demeanor was reviewed as part of the Investigation and that a separate investigation into the officer’s demeanor was unwarranted.” *See* Appendix G.3 (CRP-18-12 Review Report).

The Panel agreed to three policy recommendations arising out of the Complaint. First, the Panel expressed concern that there was no supervisory review of the types of police reports at issue and suggested that a new system be implemented. Second, the Panel recommended that each allegation in the Complaint be separated out and investigated in isolation, addressing the concern that the Investigation Report was light as to the officer’s demeanor. Third, the Panel recommended the “FCPD

periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.” *Id.*

Hansel Aguilar explained to the Panel that he would be filing a dissent because he did not agree that the IAB investigation was complete, given that the Investigation Report did not specifically address the question of the officer’s demeanor. As Mr. Aguilar explained, the fact that this allegation was never explicitly discussed meant that he would not agree to concur with the findings of the IAB or the Panel. The completed Review Report, including the dissent, was published on January 8, 2019.

The Panel also used its last Panel meeting of the year to adopt the Panel’s various Operating Procedures documents developed over the course of the year. Thus, the panel formally, through these various documents, “establish[ed] a process to ensure consistent treatment of all submitted complaints and requests for investigation reviews; provid[ed] future Panel Members with a roadmap for Panel operations; create[d] correspondence templates; and document[ed] the administrative tasks performed by the Independent Police Auditor Staff.” *See Appendix D.2 (2018 Annual Report) at 1; see also Appendix D.2 (2018 Annual Report, Appendix D).*

Finally, at the last Panel business meeting of the year, Mr. Aguilar brought up the difficulty of reviewing the IAB files under the protocols provided to the Panel. He asked whether the FCPD could make the Investigation Reports available electronically at district stations and/or over weekends to accommodate busy schedules. *See December 6, 2018 Meeting Minutes.*

On December 10, 2018, the Panel held its Public Forum/Meeting with public comment at the Mount Vernon Governmental Center. The Public Meeting was attended by Supervisor Storck and Chief Roessler as well. The Public Meeting was well attended by county residents who were active in questioning the Panel. Questions included, but were not limited to:

- What types of Complaints are reviewed?
- What’s the difference between a Complaint and a request for review?
- Is the legal status of a Complainant protected?
- Do you have the ability to review all citizen Complaints?
- Does the Sheriff have a similar oversight commission?
- What about anonymous Complaints?
- Can you identify trends from the Complaints? How can you if you only review a small number of complaints?
- Isn’t the FCPD still ultimately responsible for policing itself?
- Why is the panel not involved in use of force cases?
- Why no investigatory authority for the Auditor?
- Why are complaints routed through the Auditor’s office?

See December 10, 2018 Meeting Summary. In addition, the public offered a number of comments including, but not limited to:

- That the review request procedure seems too bureaucratic and requires people to share personal information at a time when they are most vulnerable;
- That there was too little information in Panel reports; and
- That the Panel meeting agendas were not good enough.

See id.

As the 2018 Annual Report explained, “Two themes surfaced [at the Public Meeting] that are also aligned with concerns Panel Members expressed during [their] meetings and deliberations: (i) FCPD accountability (the obligation of the FCPD to communicate to complainants and the public the results of its investigations), and (ii) transparency (the specific, detailed information shared with the public through FCPD communications to complainants and through Panel Reports).” *See* Appendix D.2 (2018 Annual Report) at 2. The Annual Report further asserted that “[a]ddressing these two concerns with some urgency is incumbent upon the Board of Supervisors, the FCPD, and the Panel, if the Panel is to succeed in its mission to build public trust and confidence in the FCPD through an investigation review process that bolsters FCPD accountability.” *See id.*

Recap

The year 2018 was both foundational and transitional for the Panel. On the one hand, the Panel devoted a tremendous amount of time and effort to putting into place the proper procedures and guardrails to make sure that the Panel was fulfilling its mission. The Panel further presented to 16 different community and civic groups during the year and continued to try to bolster its profile in the Fairfax County community. Moreover, the Panel started to review Complaints and write Review Reports. *See also* Appendix F (Panel Data Summary) (showing that in 2018, 24 initial Complaints were brought directly to the Panel, two of which were later requested to be reviewed by the Panel, and there were seven Review Requests of investigations not initiated through Panel Complaints). The Panel’s actual function of providing direct oversight over the IAB of the Fairfax County Police Department began to be realized.

The 2018 Annual Report⁴ outlined a number of issues for Board of Supervisors to consider. First, the Panel addressed accountability and transparency issues. The Panel explained that Complainants needed more information about the rationale behind the findings of investigations. As the Annual Report explains “Two areas noted for improvement are: (i) the FCPD letter sent to the complainant upon completion of an investigation (the “Disposition Letter”) and (ii) the Panel’s Review Report, which is issued (and made public) after completion of a Review Meeting.” *See* Appendix D.2 (2018 Annual Report) at 2.

The Panel noted that the disposition letters were often more or less pro forma, and did little to inform the Complainant what had actually occurred in the investigation. As a result, often the Complainant could not even identify in the disposition letter what complaint he or she had about the IAB investigation, which is what the Panel is supposed to review. Thus, the Panel recommended that “at a minimum” each disposition letter include:

- A description of the investigation undertaken;
- Key factual findings and supporting evidence;
- A summary of relevant evidence and witness statements;
- A statement of reasons for FCPD conclusions;
- Virginia Code and FCPD General Orders that were considered in the investigation and whether violations were found; and
- Whether disciplinary action was taken or not (without disclosing actual discipline imposed).

See id. at 3.

⁴ Note: The 2018 Annual Report was actually published in March of 2019, but most of its recommendations relate directly to discussions had during the 2018 calendar year.

The Panel further pointed out that it needed to be more forthright in its Review Reports if the Panel was going to be effective at increasing public trust. The Panel expressed some concern that the Action Item developing the Panel unduly limited what could appear in a Panel Report or what could be discussed at the Panel meetings. Thus, the Panel proposed at a minimum that “the following principles apply to the content” of Review Reports:

- Information cited in Disposition Letters, disclosed by the FCPD in Panel Review Meetings and information in the Investigation Report, other than Personnel Record Information, may be included in Panel Reports.
- “Personnel Record information” is defined as specific officer discipline (excluding the fact of a violation of a FCPD General Order or policy, law, or rule) and certain statements of police officers taken (as required under the provisions of *Garrity v. New Jersey*), unless officer consent is secured.
- Names, addresses, and other identifying information of complainants, officers, and witnesses will not be included in Panel Reports (a practice consistent with that of the Independent Police Auditor).

See id. at 4.

Second, the Panel addressed “Panel Comments and Recommendations.” The Panel noted that it had offered comments and recommendations in a number of its Review Reports, but “there is no process in place for Panel comments and recommendations to be reviewed, considered, and, where appropriate implemented.” *See id.* at 5.

Third, the Panel made a specific “Request for Action” by the Board of Supervisors. The Panel noted that it tried going directly to the FCPD with such issues but that the FCPD preferred that they be addressed by the Board. Thus, “as a result, through the submission of [the 2018 Annual R]eport, the Panel request[ed] that the Board of Supervisors establish a process to address and resolve the concerns outlined . . . and future recommendations offered by the Panel.” The Panel further explained that “[a]s a start, the Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same.” *Id.*

In sum, the Panel’s 2018 report demonstrated that the Panel had a significant amount of autonomy to create and define its procedures and jurisdiction, but ultimately it faced significant constraints in its ability to connect with the public. Notwithstanding its business meetings, which are public; its public reports; and its public meeting, the Panel still was not breaking through to the broader Fairfax County community. There was a clear need for the Panel to consider additional ways in which the Panel could provide more information to the public, and while the Panel worked to assert its independence, it became clear that it would be necessary to have more direct cooperation from and with the FCPD to enhance its effectiveness. In the end, the Panel laid the groundwork for a more collaborative relationship with the FCPD while still asserting the Panel’s need to speak clearly and independently.

Panel Activities: 2019

In 2019, the Panel hit its stride and, as the 2019 Annual Report explains, “settled into its principal role – reviewing completed Fairfax County Police Department (‘FCPD’) Investigations where a citizen complains of abuse of authority or serious misconduct by an FCPD officer.” *See* Appendix D.3 (2019 Annual Report) at 1; *see also* Appendix F (Panel Data Summary) (showing that in 2019, 20 initial Complaints were brought directly to the Panel, five of which were later requested to be reviewed by the Panel, and there were nine Review Requests of investigations not initiated through Panel Complaints). The Panel also started implementing its new policies and procedures and utilizing subcommittees to more efficiently assess Complaints. While the Panel continued to engage in outreach to the community, this was notably a smaller component of the Panel’s work and discussed less frequently at Panel meetings.

But perhaps more importantly, 2019 can probably best be characterized for ushering in more interaction, coordination, and collaboration between the Panel and the FCPD. The parties started having the regular Quarterly meetings requested by the Panel, and the Panel and FCPD worked together on the creation of and publication of a Panel Recommendations Matrix whereby Panel Recommendations and the subsequent FCPD responses were tracked and made public. Importantly for the efficacy of those recommendations themselves, the Panel, FCPD, County Attorney’s Office, and Board of Supervisors collaborated on an amendment to the Action Item that would allow the Panel to include more detail in its Review Reports, making such reports much more accessible to the public and transparent.

The Panel also focused on additional training for its members so that they were better equipped to respond to Complaints. This included a training with NACOLE, the National Association of Civilian Oversight of Law Enforcement, attended by both the Panel and members of the IAB, and a separate training in which the Panel heard from various departments of the FCPD.

Under the leadership of Doug Kay, who took over as Panel Chair in March of 2019, the Panel sought more coordination with the FCPD while remaining independent. The developing working relationship between the Panel and the FCPD gave the Panel more assurance that its recommendations were being heard and helped the Panel strengthen its oversight functions.

January

On January 3, 2019, the Panel held its first business meeting of the year. At that meeting, Hollye Doane was nominated for and moved as the upcoming Vice Chair of the Panel to take over in March.

Notably, immediately before the meeting, a subcommittee met to determine whether the Panel should take up CRP-18-27, a Complaint regarding an arrest that contained claims regarding use of force and racial profiling. The subcommittee, as opposed to the full Panel, reviewed the file in advance and determined that the Panel did have jurisdiction over the Complaint, and then the Panel as a whole voted to accept the subcommittee’s recommendation. In other words, the new process allowed the full Panel to wait until after the actions of the subcommittee to review the Investigation Report. Further, the new process allowed subcommittee members to provide other Panel Members with an estimate of how long it would take to review the entire file. *See* January 3, 2019 Meeting Minutes (“Mr. Kay told the Panel that it took himself and Col. Gadson roughly one and a half to two hours to review the completed Fairfax County Police Department (FCPD) Investigation Report and that Panel Members should plan accordingly.”).

Also, at the January meeting, Chair VanLowe announced that the Panel's website would be overhauled in an effort to make the Panel's business more transparent and clear to the public.

The bulk of the January meeting, however, was a Review Meeting regarding CRP-18-26, a Complaint that alleged racial profiling by an officer in stopping and citing a car for a window tint violation. This was the first time that the Panel had reviewed an investigation of alleged racial profiling. Further, the investigation was the first that the Panel had seen where the FCPD used police statistics in its effort to determine whether racial profiling occurred. It would not be the last Complaint concerning racial profiling that the Panel dealt with during 2019, nor would it be the last where the use of statistical analysis in the Investigation Report was discussed and scrutinized.

The Complainant did not appear at the Review Meeting, but Major Reed appeared on behalf of the FCPD. Chair VanLowe recounted the basic details of the Complaint. The Complainant alleged that "the Subject Officer racially profiled him when stopping his vehicle." He asserted that "the officer's observation that he 'could not be seen through the windows' related more to his dark complexion than the window tint." *See* Appendix G.4 (CRP-18-26 Review Report). The Complainant also asserted that "the Subject Officer's inquiry of 'Where are you headed?' was inappropriate and beyond the scope of the infraction at hand." *Id.* The IAB reviewed the Complaint and found the allegation of bias was unfounded. The Complainant asked for further review due to "dissatisfaction with the lack of details as to the results of the IAB's investigation" provided and his "belief and perception that the assigned investigator demonstrated a lack of impartiality." *Id.*

The questioning of Major Reed primarily concerned the IAB's use of arrest statistics in its Investigation Report to probe the question of whether the stop was motivated by bias. Panel Member Colonel Gregory Gadsen and Mr. Aguilar in particular wanted more information regarding how the statistics were compiled and whether the IAB had specialized training in the use of statistics to evaluate bias. Major Reed expressed his belief that the statistics used were probative but also admitted that investigators did not receive training in how to use or evaluate statistics. Typically such statistics are reviewed by crime analysts unaffiliated with the IAB. Chair VanLowe also noted that the Complaint had contained an allegation of bias against the IAB itself and asked if the IAB had investigated that assertion of bias. Major Reed replied that it had not because there was simply no evidence.

Ultimately though, as reflected in other questions and the discussion of the Investigation Report, the Panel unanimously concurred with the findings of the IAB. Colonel Gadsen and Ms. Doane referenced the in-car video and body cam footage provided as a part of the investigation and both agreed that it was very helpful in analyzing the Complaint. This was because the footage showed the Complainant's car passing by the officer's cruiser and in the footage, it was not possible to determine the race of the driver due to the tinted driver's side window, which tested as having significantly less transparency than required under the law. The tint itself, the very issue for which the Complainant was stopped, prevented the officer from determining the race of the driver, and thus the allegation that the stop was motivated by racial bias was unfounded.

Further, the body worn camera footage showed that the Subject Officer was courteous and "engaged in routine conversation as would be associated with any traffic stop with no profanity, harsh or derogatory language, and no racial slurs or other discriminatory remarks by either of them." *See* Appendix G.4 (CRP-18-26 Review Report). And in fact, "the Subject Officer also advised the Complainant that, if he were to bring evidence that he had remediated the excessive tint to the court hearing, there was a good possibility that the charge would be dismissed." *Id.*

February

On February 7, 2019, the Panel met and discussed, among other things, the Review Report for CRP-18-26. Though the Panel had concurred unanimously with the IAB Investigation Report, there were still important details to sort out.

Panel Member Bob Cluck questioned whether or not the Panel should be making certain recommendations without information from the FCPD confirming that such recommendations are practical. Nevertheless, the Panel, and with support from Mr. Cluck on several recommendations, decided to proceed.

Mr. Steel requested the opportunity to present a proposed insert to the Review Report concerning the Panel meeting that also contained facts and conclusions of the Panel. The Panel consulted with counsel as to whether this insert violated any confidentiality rules. Understanding that it did not, the Panel accepted the insert. Now the Review Report contained more factual details concerning the Panel's deliberations and conclusions than any report before it.

The Review Report made two key comments. First, the Panel commented that the body worn camera and in car video footage were very important in providing impartial documentation of what occurred, and the Panel hoped such footage would continue to be a part of Investigation Reports. Second, the Panel commented that some Panel Members were concerned about the use of statistics to study racial disparities. "Specifically, the FCPD used descriptive data and attempted to make correlations without taking into consideration the demographics of the District in comparison to the District's criminal statistics" wrote the Panel. "Major Reed confirmed that the FCPD employs crime analysts and that IAB investigators do not receive specialized training on statistics." *See* Appendix G.4 (CRP-18-26 Review Report).

The Panel made three recommendations regarding video footage. First, the Panel recommended that individual Complainants be allowed to review video footage of the incident in question. Second, the Panel recommended that it be allowed to review video and audio footage of all interviews conducted during IAB investigations. Third, the Panel asserted that body worn camera and in car video footage should be made available at Panel meetings at the request of the Panel.

Finally, the Panel adopted a fourth recommendation regarding the use of statistics that read: "During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data." The Panel, cognizant of the fact that IAB investigators have no specialized statistical training, sought to further professionalize the use of statistics.

After adopting the Review Report for CRP-18-26, the Panel's February 7, 2019 meeting turned to a Review of CRP-18-27. *See* Appendix G.5. The Complainant was not the individual who interacted with the police, but rather was a concerned community member who had later seen a video of a police takedown of a subject incident to an arrest for marijuana possession in an Aldi parking lot in the Mount Vernon District. The Complainant appeared at the Review Meeting where she explained that she submitted the Complaint "because she was concerned that the individual was a target of police abuse of authority and racial profiling." *See* February 7, 2019 Meeting Minutes. Specifically, she expressed her "belief that the involved individual was surveilled by the FCPD due to the location of the incident being designated as a 'high-crime' area and because he was an African American male." *Id.*

In questioning the Complainant, Hollye Doane noted that the original Complaint had been about how the subject individual had been arrested but had not contained an allegation of racial profiling. The Complainant subsequently asserted that she wanted to amend her Complaint to also

explicitly contain an allegation of racial profiling because she was unaware that she needed to be so specific in writing out the Complaint. The Complainant answered questions regarding the subject individual to explain that while she did not know the individual personally, she had been in contact with the individual's family and that an organization she was a part of provided financial assistance for the subject individual's court fees. Questioning also revealed that the Complainant had not received a disposition letter regarding the Complaint. Chair VanLowe informed the Panel that "the FCPD self-initiated an investigation after the incident occurred and that a disposition letter was issued and sent to the individual involved in the incident." *Id.*

Major Reed presented on behalf of the FCPD. He described the investigative steps taken by the FCPD including "conducting interviews of the involved officers, the subject, and a witness located through social media; and reviewing all available videos, dispatch records, radio traffic, and the incident reports filed by the officers." *Id.* The Panel's questioning focused on two aspects of the Investigation Report that appeared lacking. First, Vice Chair Kay and Mr. Aguilar asked if there had been any investigation of racial profiling or racial bias, but Major Reed said there had not because there was no evidence of racial bias. Second, Ms. Doane and Mr. Steel questioned Major Reed regarding the legal conclusions concerning the legality and properness of the stop and whether the IAB had consulted any attorneys to seek a formal legal analysis of what occurred. Panel Member Anna Northcutt added a question about whether the IAB had investigated further whether the subject individual's behavior constituted a potential trespass, as the Subject Officer had noted.

Following the questioning, the Panel for the first time decided not to concur with the IAB Investigation Report. Rather, the Panel determined that the Complaint was in need of further investigation and that the Panel should request such an investigation pursuant to Section VI.E.(H) of the Bylaws. Specifically, following a discussion of the lack of an investigation into allegations of racial bias and the lack of any formal independent legal analysis of the incident in question, "Mr. Kay moved that the FCPD conduct further investigation and provide the Panel with a supplemental report that details the findings of additional investigation into racial bias and racial profiling and "that that the FCPD investigate the legality of the stop and, that as part of that investigation into the legality of the stop, they seek and obtain advice from an attorney." *Id.* The Panel accepted this motion by a vote of 7-1. Chair VanLowe explained that she was voting against the motion because rather than simply sending the investigation back to the IAB, she hoped that the Panel would report the request through the Board of Supervisors.

Given that this was the first time the Panel had ever sent something back to the IAB, Vice Chair Kay, on the eve of taking over as Chair, offered to write a letter to the Board of Supervisors explaining the action taken by the Panel. This decision by the Panel represented a break with earlier Review Requests and demonstrated the Panel's willingness to disagree with the IAB and request additional investigation.

March

The Panel next met on March 7, 2019. Mr. Kay had taken over as Chair but was out of town for the particular meeting so it was Chaired by Vice Chair Hollye Doane.

The Panel discussed what training topics would benefit the Panel in preparing it to conduct its business. Ideas included a tour of Police Headquarters, media training, and training on the history of civilian oversight. Rachele Ramirez in the Office of the Independent Police Auditor reported that she had set up a call with NACOLE, the National Association of Civilian Oversight of Law Enforcement, to discuss holding a training session with the Panel and the Independent Auditor similar to that provided to the Charlottesville Police Civilian Review Board that would address such topics.

Ms. VanLowe also briefed the Panel on meetings with the FCPD related to the content of disposition letters. Ms. VanLowe and Chair Kay met with FCPD representatives but were told that the issue was ultimately up to the Board of Supervisors. Therefore, a meeting was set up with Chairman Bulova and Supervisor Cook. Mr. Aguilar again brought up the issue of electronic access to police records and was told that the FCPD had not responded to requests for such access and that that too would be brought up at the meeting.

The Panel also considered its ability to take public comments and whether it would hold another public meeting. The Panel was concerned that it might need to get Board of Supervisors approval to be able to actually take public comments. Ms. VanLowe said this issue would be added to the meeting with Chairman Bulova and Supervisor Cook. Further, the Panel discussed the possibility of hosting more Public Forums similar to those held in 2017 and 2018, but the Panel consensus was that the Public Meetings would likely be more effective if they focused on specific issues that had come up in Complaints, *i.e.* “Harassment or Discrimination/Racial Profiling/Bias, Violation of Law or Ordinance, and Unprofessional Manner.” *See* March 7, 2019 Meeting Minutes. The previous Public Meetings, which had been more introductory in nature, had not been focused in such a manner, but the Panel hoped to build on its work.

At the March meeting, the Panel also discussed and voted on the 2018 Annual Report discussed at length earlier in this Review.

At the conclusion of the March meeting, Adrian Steel, a founding Panel Member, the Panel’s first Chair, and a member of the Ad Hoc Commission that recommended the establishment of the Panel, announced that he would be stepping down from the Panel. Mr. Steel reflected on the Panel’s opening years. He shared his belief “that the two biggest challenges facing the Panel are transparency and the ability to track trends in complaints.” *See* March 7, 2019 Meeting Minutes. Toward that end, “he encouraged the Panel to include basic facts of the investigation and reasons for Panel findings in the Review Reports and to ensure that FCPD disposition letters provide substantive facts and reasons related to the determination of the investigation.” *Id.* Mr. Steel further “reminded the Panel of the three necessary components as identified by NACOLE for a successful oversight body: budget, access to information, and support of the governing body.” *Id.* Panel Members expressed their gratitude for Mr. Steel’s considerable work and contributions to the panel.

April

At the April 4, 2019 meeting, Chair Kay debriefed the Panel as to his and Ms. VanLowe’s meeting with Chairman Bulova, Supervisor Cook, Deputy County Executive Rohrer, Chief Roessler, Major Reed, and the Independent Police Auditor, where he delivered the Panel’s 2018 Annual Report and set the precedent for Panel leadership to meet with members of the Board of Supervisors at the beginning of each new Panel term. At the meeting, the parties discussed in particular enhanced transparency for the Panel and the Panel’s recommendations with respect to FCPD disposition letters. Chair Kay reported that the FCPD was conducting its own internal audit of the letters. He further reported that there did not seem to be much appetite for additional public comment meetings and suggested that the Bylaws may not support public comment meetings. *See also* FN10 *infra*. However, there was support for more public outreach where one or two Panel Members address stakeholder groups.

Mr. Kay also briefed the Panel on expected topics for the first Quarterly Meeting planned consistent with the Panel’s recommendations in the 2018 Annual Review. Specifically, Chair Kay relayed that he intended to discuss topics including:

- determining a process to address Panel recommendations and comments made in Panel Reports with the FCPD;
- revising the Panel’s authorizing action item regarding the information that can be included in review reports;
- continuing the discussion regarding the enhancement of FCPD disposition letters;
- training from the National Association of Civilian Oversight for Law Enforcement (NACOLE) and the FCPD;
- accessibility of FCPD Investigation Reports for Panel Members’ review;
- public comment at Panel Meetings; and,
- Panel Member vacancies.

See April 4, 2019 Meeting Minutes. Chair Kay requested that Panel Members email him with any other topics they wanted to see discussed.

During New Business, Chair Kay brought up a unique situation where the Panel had received a Complaint that was about an incident that was more than a year in the past and thus out-of-time under the Panel’s bylaws. But the Panel’s bylaws also provide that the Panel can waive the timing of reviewing the Complaint where good cause is found. The Panel discussed what to do in such a situation and how it might determine whether there was good cause. While no formal motion was made, the Panel agreed that in the future, a Complainant whose Complaint was out of time would be afforded the opportunity by the Panel to explain whether good cause existed. The Panel did not, however, create a procedure for a complainant to make such a showing.

May

The Panel revisited CRP-18-27 at its next meeting on May 30, 2019. Following the Panel’s actions at the February meeting, the Complaint had gone back to the IAB for additional investigation consistent with the Panel’s requests concerning racial bias and independent legal opinions regarding the stops in question. In addition, the IAB conducted additional witness interviews and reviewed additional footage as a part of the Investigation Report.

The Complainant in CRP-18-27 appeared again in person at the Panel Meeting. She primarily addressed two topics. First, she noted that the FCPD disposition letter regarding the additional investigation completed in response to the additional investigation provided little information regarding what the IAB had actually done. Second, and more importantly, attached to the FCPD disposition letter – and by extension made public – were screenshots of her LinkedIn Profile and other social media pages and a GoFundMe page she had created related to the incident in question. She expressed deep concern about having her social media information shared by the FCPD in the context of an investigation, especially given the fact that she had submitted her Complaint as a concerned citizen and was not actually a witness in the investigation. She pointed out that “the appearance of the FCPD investigating complainants will deter other complainants from coming forward.” *See May 30, 2019 Meeting Minutes.*

Major Reed appeared on behalf of the FCPD. When asked why the FCPD had included social media information on the Complainant, Major Reed said that that was a question for the Chief. (Notably, there was no corresponding social media information on the officer who was the subject of the Complaint, despite the fact that such information could have been probative with respect to bias, while the Complainant’s social media was wholly irrelevant to the Complaint.)

Mr. Aguilar addressed the arrest statistics provided in the Investigation Report, and asked Major Reed why the subject officer's arrest statistics were compared county-wide rather than to other officers in his district and patrol zone. He further noted that there was actually a twenty-point difference between this officer and other officers for stopping or arresting African Americans. As the Meeting Minutes recount, "Major Reed defined the term disparity and noted that contacts officers make with the community are not always self-initiated due to calls for service." *See* May 30, 2019 Meeting Minutes. Chair Kay asked Major Reed whether the IAB had consulted with any other agencies in the FCPD with respect to the statistical analysis. Major Reed responded that the FCPD had not.

The Panel Members expressed concern and dismay about the inclusion of the Complainant's social media information. But ultimately the Panel voted to concur with the Investigation Report and found that it was complete, thorough, accurate, objective and impartial. *See* Appendix G.5 (CRP-18-27 Review Report).

Panel Members noted that the file containing additional investigative materials was significantly more thorough than the file provided previously. The Investigation Report directly addressed the Panel's concerns regarding the legal analysis of the stop and arrest involved in the Complaint. To address this concern, the investigation sought a legal analysis from the County Attorney of the relevant state and federal Constitutional law. The analysis of the Subject Officer's actions involved the "plain smell doctrine," which permits an officer under the Fourth Amendment to stop/detain a suspect when the "plain smell" of illegal contraband is present. The Subject Officer explained that when he approached the individual who he ultimately arrested he smelled marijuana on the suspect's person. In-car video footage that had not been provided in the original Investigation Report subsequently showed that the arrested individual had been carrying a large bag of marijuana with him, which substantiated the officer's statement that he had acted on the plain smell of the marijuana on the individual. (In the video, the suspect pulled a bag of marijuana from out of his pants and proceeded to eat the marijuana.) Some Panel Members expressed concern that a legal analysis by the County Attorney's Office could be viewed by the public as conflicted, because the County Attorney represents the FCPD in court proceedings and provides the police with legal advice. However, in this instance, the Panel determined that the legal analysis regarding the stop was sufficient.

While the Panel did have some concerns about the FCPD's use of only arrest statistics to demonstrate a lack of racial bias by the officer, the majority of the Panel concurred with the investigation finding that detecting the smell of marijuana was the primary reason that the officer had reasonable suspicion to stop the individual. The investigation provided no evidence that racial bias played a role in the stop. However, some Panel Members remained concerned that reliance only on arrest data to determine racial bias is problematic in future investigations. This would remain an issue for the Panel in subsequent reviews. (Mr. Aguilar and Ms. VanLowe would later file two dissents.)

At the May meeting, the Panel confronted another new challenge. A complaint had been filed with the Panel by an anonymous community member who referred to himself as "John Doe" and provided only an email address. Chair Kay noted that the Bylaws required a Complainant to provide "identifying information" for the person filing the Complaint. Panel Member James Bierman argued that the email address itself constituted identifying information because the clear intent in the Bylaws was to allow the police to locate and correspond with the Complainant. The Panel decided that the Panel could take the Complaint where the Complainant, though acting anonymously, had provided an email address.

Also at the May meeting, Chair Kay asked the Panel to consider whether to fully empower subcommittees to decide jurisdiction of the Panel, as opposed to the practice followed by the Panel where the subcommittee could make a recommendation but would not formally decide jurisdiction. Some Panel Members noted that this might be inconsistent with the Panel Bylaws. After receiving advice from Independent Counsel in closed session, the Panel decided to table the issue.

At the conclusion of the May meeting, Chair Kay introduced Major Matt Owens who would be taking over for Major Reed as Commander of the IAB. Chair Kay also suggested that the Panel receive training from the FCPD sometime during the Fall and expressed a desire to work with Major Owens in the future on such training.

June

At the Panel meeting on June 20, 2019, the Panel undertook a review of CRP-19-05. *See* Appendix G.6. Notably, this Complaint, submitted in November of 2018, concerned incidents occurring in April and May of 2017, outside of the one-year limitation as to when Complaints could be submitted. But the Panel had determined that good cause existed to extend the limitation period in a manner consistent with the Bylaws. Specifically, the allegations of the Complaint involved claims of entrapment and that the FCPD had engaged in misconduct in its treatment of the Complainant while the Complainant was acting as a confidential informant (“CI”). The Complainant had been subjected to criminal charges and reached a plea agreement in August of 2018. As explained in the eventual review report, “[t]he Panel concluded good cause existed since it was reasonable for the Complainant to wait until after conclusion of his (1) efforts as a CI and (2) criminal prosecution since Complainant probably believed filing a complaint against the FCPD would cause the FCPD to be prejudiced against him during the pendency of either of the two circumstances.” *See* Appendix G.6 (CRP-19-05 Review Report).

The Complainant did not appear at the June meeting, but representatives from the FCPD, namely Second Lieutenant Ryan Low and Chief Roessler, appeared and presented the Investigation Report to the Panel. As an initial matter, Chief Roessler asked why the Complaint had been taken in the first place given that it was out of time and had been criminally litigated. Chief Roessler further asserted that the Panel should have consulted with the FCPD as to whether it was appropriate to take the case. The Panel reminded the Chief that the Panel determines its own jurisdiction under the Action Item and Bylaws, and that the Panel is separate from and independent of the FCPD.

Second Lieutenant Low addressed the Complaint and described the Investigation Report. The Complaint was based on an undercover operation in which FCPD officers posed on Craigslist as individuals looking for sexual encounters, waited for the Complainant to engage with their ad, and then suggested a rendezvous in which the Complainant was to bring illicit drugs. Following the sting operation, the FCPD enlisted the Complainant as a CI as a part of a deal for lighter sentence. The Complaint contained three principal claims: (1) that the officers had used improper methods and engaged in entrapment; (2) that the Complainant’s vehicle had been improperly seized and then returned to the lienholder without the Complainant’s knowledge; and (3) that the officer using the Complainant as a CI had used unacceptable language in interactions with the Complainant.

Second Lieutenant Low recounted how the IAB investigation had sought out opinions from the Commonwealth’s Attorney and the County Attorney as to the law of entrapment and determined that the officers’ behavior had been above board and that the facts easily would have allowed the government to prove that the Complainant was predisposed to commit the illegal acts before being

approached by government agents. The Complainant had willingly approached the undercover officers and the evidence showed that the Complainant freely agreed to provide illicit drugs. Second Lieutenant Low further explained that the FCPD had found that the officer in question had acted improperly and in violation of General Orders when he referred to the Complainant as a “retard.” Finally, Second Lieutenant Low explained how the police had followed asset forfeiture procedure with respect to the vehicle but acknowledged that the FCPD had subsequently adopted a revised policy with respect to liens.

Panel Members’ questions focused primarily on the facts surrounding the asset forfeiture and Chief Roessler assured the Panel that it would receive the newly created SOP with respect to assets with liens. Panel Members also probed the question of entrapment, and specifically whether the record revealed that the officers’ methods did not push the Complainant into behavior involving illegal drugs as opposed to sex, as the original Craigslist ads solicited sexual encounters. Chief Roessler asserted that such questions were off limits because (1) they went to police tactics, and (2) the matter had already been adjudicated when the Complainant pleaded guilty. The Panel reminded Chief Roessler that he does not control what questions Panel Members are allowed to ask.

The Panel voted unanimously to concur with the findings of the IAB. While the IAB Investigation Report did not contain an explanation of the consequences for the officer violating General Orders, Ms. Doane expressed her strong belief that the word used was appalling and a serious violation of community trust. Specifically, Ms. Doane explained that “the word used to describe the Complainant debases one’s human dignity and worth and is often used as a playful jab.” *See* June 2019 Meeting Minutes. However, she said the word hurts people with disabilities and their loved ones. “The FCPD should be role models in the community and the word should never be spoken by an officer.” *Id.*

The June 20, 2019 meeting next discussed the draft Review Report for CRP-18-27. In particular, the Panel focused on what it should do in light of the FCPD’s decision to include information from the Complainant’s social media accounts. The Panel concluded that at the very least its recommendations section would contain the following explanation: “The Panel expressed concern that the inclusion of the social media information about the complainant was inappropriate, unnecessary, and may have a chilling effect on future complainants.” *See* June 20, 2019 Meeting Minutes. The Panel did not, however, take a final vote on CRP-18-27 in light of Mr. Aguilar and Ms. VanLowe’s dissents, which had not yet been completed.

In considering another Complaint at the June 20, 2019 meeting, specifically CRP-19-07, where the Panel agreed that CRP-19-07 was reviewable under the Panel’s standards, the Panel again addressed the question of whether there could be a summary procedure from which to dispose of Complaints that were without merit. Mr. Aguilar, who had sat on the subcommittee, expressed his concern that without a Summary Review procedure, the Panel could be inundated with meritless review requests. Mr. Bierman and Mr. Cluck volunteered to review the Bylaws and present to the Panel their recommendations as to whether a Summary Review procedure was an option and whether a subcommittee could decide on its own and without consultation with the full Panel whether it should review a Complaint.

The Panel was next presented with a problem similar to that which it had discussed in April – a Complaint that was out of time but where the Panel could not necessarily determine if good cause existed. Mr. Aguilar proposed a procedure whereby in every case where timeliness is an issue, the

Chair would send a letter to the Complainant regarding the timeliness issue and ask the Complainant to explain whether good cause exists. The Panel agreed on this general procedure going forward.

Chair Kay then debriefed the Panel on the Second Quarterly Meeting. Specifically, he explained that one of the Panel's recommendations that the FCPD was considering at the moment was to circulate "officer discipline department wide so that officers are aware of offenses and the consequences." *See* June 20, 2019 Meeting Minutes. Also discussed was the Panel's request to show video at certain Panel meetings, with the FCPD agreeing to allow video to be shown on a case-by-case basis. Chair Kay also reported that he had submitted language to the Board of Supervisors requesting a change to the Action Item to allow the Panel to provide more detailed reports.

Finally, the June 20, 2019 meeting closed with Mr. Bierman asking, as Mr. Aguilar had done before him, whether the Investigation Reports could be provided to Panel Members online so that they could review the files outside of normal working hours. Chair Kay explained that the FCPD continued to refuse to allow such access but had stated that it would be possible with sufficient notice to review the Investigation Reports at the Public Safety Headquarters outside normal business hours.

On June 22, 2019, the Panel met for an all-day training session with Brian Corr and Camme McElhiney, President and Director of Training and Education, respectively, for NACOLE, the National Association for Civilian Oversight of Law Enforcement. The day featured a mix of presentations, discussions, and questions and was attended by the Panel, members of the Independent Police Auditor's Office, Lindsay Smith, Chief of Staff to Supervisor John Cook, and Dana Ferreira of the IAB.

The first session of the morning provided the history of civilian oversight and a discussion of the country's first civilian oversight boards. It also concerned the different types of civilian oversight employed across the country, including the auditor model and a review-focused model.

The second session of the morning addressed effective practices in conducting and reviewing investigations. It aimed to provide Panel Members with information on how police investigations are conducted and best practices from around the country in reviewing such investigations. NACOLE representatives offered, for instance, to provide an investigation checklist to the Panel, and Panel Members suggested that such a checklist should be shared with the FCPD itself for comment so that Panel Members know what to look for in investigations.

The third session addressed effective community outreach and engagement. The Panel entertained discussions of how to increase its footprint in the Fairfax County community in a way that would enhance trust between the community and the FCPD. The Panel discussed outreach opportunities and strategies, which has been a consistent theme of inquiry for the Panel. Ms. McElhiney of NACOLE made the important point that in addition to hosting its own events, often the best way to reach into important communities is to meet them where they are, attending the already existent meetings of community stakeholders to raise awareness.

The fourth session concerned recommended reporting practices for civilian oversight agencies. Again, this discussion was not unique to the Panel's training session as the Panel had spent many meetings discussing and trying to determine how to make its reports more clear and more transparent while also respecting the Panel's confidentiality obligations.

The fifth and final session provided an overview of minimal training standards for civilian oversight panels and suggested what other training opportunities might be needed to ensure that the Panel had all the right tools to conduct its business.

Throughout the day, one recurring theme was how to measure the relative success of the Panel. Specifically, how does the Panel determine whether it is improving police legitimacy and community trust of police? There was no easy answer. Rather, the participants discussed the need to continue engaging the community with the dual function of both introducing the community to the work of the Panel and trying to determine the effectiveness of the Panel based on community responses.

July

On July 11, 2019, the Panel meeting focused primarily on finalizing the CRP-18-27 Review Report, commenting on the CRP-19-07 Review Report, and various other administrative and procedural matters. By a vote of 5 to 2 (with two Panel Members being absent), the Panel agreed to accept the final version of CRP-18-27. *See Appendix G.6.*

Notably, Mr. Aguilar and Ms. VanLowe filed separate dissents. Mr. Aguilar asserted that “[i]n failing to provide a proper statistical analysis concerning the reported racial disparities in the enforcement activities of the subject officer, it is not clear that the Department accurately, completely and thoroughly, reviewed and considered the allegation of racial bias.” *See Appendix G.6 (CRP-18-27 Review Report (Aguilar dissent)).*

Ms. VanLowe dissented along the same lines. Specifically, Ms. VanLowe argued that the statistical analysis simply could not prove either way whether the officer had acted with racial bias, and the Investigation Report did not provide a coherent roadmap for how it probed the issue of racial bias. In the most pertinent part of her dissent, Ms. VanLowe explained:

What we have on the issue as an initial input is the Officer’s arrest statistics. These statistics indicate that the officer has an unfavorable margin of at least 20% in the number of arrests of African Americans compared to his District level peers’ arrests of African Americans. The FCPD concluded that the officer’s arrest statistics reflect his patrol assignment to an area heavily populated by African Americans. While this conclusion may be plausible, no other evidenced-based information is provided to support the conclusion. For example, the investigation file does not contain any information about the existence of other community complaints or compliments about the officer that might be related to the question of bias. Nor does the investigation reflect any social media scrutiny similar to that provided on the complainant (which, as indicated to the Panel, was offered to show the complainant’s bias). Mr. Aguilar notes the need for a more comprehensive statistical analysis (the Panel has recommended the same in the past). Further, and regrettably, we do not have any body worn camera footage or corroboration from another officer at the scene of the initial encounter to see and understand how the police stop began and developed.

See Appendix G.6 (CRP-18-27 Review Report (VanLowe dissent)). Ms. VanLowe further commented that given that a number of Complaints received by the Panel concerned racial bias, she believed it would be useful and appropriate for the FCPD to provide the Panel with more information concerning the steps it had taken to eradicate racial bias.

The Panel made few changes to the drafted Review Report for CRP-19-05 and decided to vote on a final report at the August meeting.

Chair Kay recounted several administrative and procedural developments. First, he informed the Panel that Deputy County Executive David Rohrer was working with the County Attorney to prepare an Action Item revision that would allow the Panel to provide more details about the Investigation Report in its Review Reports and better inform Complainants of the rationale for the panel's findings. Second, Chair Kay explained that he was working with the FCPD on a special matrix where the Panel could track its recommendations and the FCPD's responses to each recommendation. Mr. Aguilar suggested that the matrix also include a column in which the Panel could decide whether or not it was satisfied with the FCPD's response.

The Panel also used the July 11 meeting to engage in a lengthy discussion of potential action items from NACOLE Training. These included, among other things:

- Creating a more comprehensive outreach strategy.
- Devising a "Know your rights training" for Fairfax youth.
- Conducting a Community Survey.
- Setting up meetings with Supervisors after the Board turned over in January 2020
- Defining appropriate interactions with Complainants.
- Asking the FCPD to address certain topics at various panel meetings.
- Adding the status of recommendations to the website.

See July 11, 2019 Meeting Minutes.

The Panel also used part of the July 11 meeting to continue its discussion of the possibility for the taking of public comments under the Panel's Bylaws, but did not arrive at a resolution.

August

The Panel reviewed CRP-19-07 at its August 1, 2019 meeting. Notably, this was the Complaint that had generated a discussion of the potential need for summary judgment procedures at the June 20, 2019 meeting.

In CRP-19-07, the Complainant asserted that an FCPD officer had failed to properly investigate his charge against individuals in the Office of the Clerk to the Fairfax County Circuit Court. Specifically, the Complainant alleged that an original affidavit necessary to his court case had been removed from his file. When the police officer was able to locate the affidavit in the file, the Complainant alleged that the affidavit found was not the original affidavit. The Complaint alleged malfeasance on the part of the officer for clearing the Office of the Clerk of wrongdoing, and further alleged that because he was Black and the officer was not that the officer had engaged in bias-based policing. *See Appendix G.7 (CRP-19-07 Review Report).*

The Complainant appeared at the August meeting and answered questions from the Panel and Major Owens appeared on behalf of the FCPD. It was evident that the officer had been able to locate the allegedly missing file. The claim that it was not the "original," if even founded, was irrelevant as the "new" affidavit was identical to the "original" and the Complainant was in no way prejudiced by the alleged "destruction" (and there was no evidence of such destruction). There was no probable cause to make any arrest or investigate further, and there was no evidence of racial bias. The Panel voted 8-0 to concur with the findings of the IAB Investigation Report.

The Panel then reviewed and ultimately approved the Review Report for CRP-19-05. *See Appendix G.6.* Mr. Cluck expressed some reservation about the amount of detail in the Review Report

and whether it ran counter to the “Intake and Processing of Review Requests” procedural document. Chair Kay reminded the Panel that the Board of Supervisors was still considering an amended Action Item and that after such amendment, the procedural document would be revisited. The Panel approved the Review Report as written.

Chair Kay next explained to the Panel that it had received a Complaint alleging that the Chief of Police was engaging in “sonic warfare” and that rather than investigate the Complaint the FCPD had referred the Complainant to the appropriate mental health services. This was the first instance where a Complaint simply was not investigated, but the Panel agreed that the FCPD response seemed appropriate under the circumstances.

Chair Kay also informed the Panel of the agenda for the upcoming August 9, 2019 Quarterly Meeting. Specifically, he intended to discuss “the FCPD’s response to Panel comments and recommendations, the issue of the use of statistics including Mr. Aguilar’s memo, public comment, and the revisions to the Panel’s authorizing Action Item.” *See* August 1, 2019 Meeting Minutes. Mr. Aguilar’s memo, which Chair Kay planned to circulate to the Panel, argued that the FCPD needed to exercise more care in using arrest statistics to try to explore allegations of bias and explained the pitfalls of such statistical analyses. Vice Chair Doane also informed the Panel that she had been a part of a working group to try to develop a more effective template for FCPD disposition letters, another topic for discussion at the Quarterly meeting.

The August 1, 2019 meeting continued with a discussion of applicable training standards for the Panel. In planning for a fall training session with the FCPD, “Panel Members specifically requested training on . . . topics such as: FCPD recruiting and criminal justice academy, implicit bias and racial profile training, and Diversion First.” *See* August 1, 2019 Meeting Minutes.

Following the August Panel meeting, the Panel did not have any Review Meetings until December of 2019. This was not necessarily due to a drop off in Complaints, but rather because several pending investigations were taking longer to complete. However, between August and December of 2019, the Panel continued to meet regularly, refine its policies and procedures, and prepare for and help develop a November training with the FCPD.

During July and August of 2019, Chair Kay and Vice-Chair Doane discussed the drafting of a revised Action Item with the County Attorney’s Office, the Deputy County Executive, the Panel’s Independent Legal Counsel and Supervisor John Cook. The purpose of the Action Item was to provide the Panel with authority to report on information in Investigation Reports to provide more accountability and transparency to the public. There were many on-going conversations and drafts that were circulated during this time to reach consensus on what parts of the Investigation Reports could remain privileged. Supervisor Cook’s involvement in the process was crucial in reaching agreement between the parties. The Action Item provided that most information in the Investigation Report may be reported publicly except for an officer’s personnel record and those portions of the investigative file concerning officer discipline, other officers, confidential informants, victims and witnesses. The Panel also shall not disclose names and other specific identifiable information. Also, portions of records that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law enforcement personnel or the general public, could not be disclosed by the Panel.

September

On September 16, 2019, the Panel met and Chair Kay and Vice Chair Doane presented a debrief from the August Quarterly Meeting.

First, Chair Kay had provided the FCPD with Mr. Aguilar's memo on statistical analysis requesting that the IAB change the way in which it conducts its statistical analyses. The FCPD agreed to create a policy on the use of crime statistics in IAB reports and provide it to the Panel in advance of implementation.

Second, Chair Kay explained that he was working with Major Owens on the proper way to publish FCPD's responses to Panel recommendations on the Panel's website. The Panel discussed how often the responses should be updated and agreed that quarterly would be appropriate.

Third, Vice Chair Doane explained that she had expressed the Panel's disagreement with the FCPD's decision to include a complainant's social media profile in a disposition letter. She said she told those at the meeting that such disclosure of personal information was a deterrent to community members filing complaints. However, the Chief had stood by his decision and had said the information was public information included on her social media profile. The Panel decided that its recommendation that such information should not be included in future reports would be included in the Recommendations Matrix.

Chair Kay also explained the proposed revised Action Item pending before the Board of Supervisors. There was discussion as to how the Panel would determine what details constituted "information related to tactical plans or investigative procedures." See September 16, 2019 Panel Meeting Minutes. The Panel agreed that such a decision was ultimately up to the Panel but discussed using good judgment, consulting counsel whenever necessary, maintaining a dialogue with the FCPD, and flagging during investigation reviews any potentially sensitive information for the Chair to consider.

Next, Chair Kay asked the Panel to consider the proper procedure for Complaints with pending litigation present. Under the Panel Bylaws, the Panel cannot review a Complaint concurrent with pending litigation. Since that determination can be easily made without a full review, the Panel decided that rather than convening subcommittees for review requests with potential pending litigation, the Chair would review and make a determination to be voted on by the full panel.

October

At the October 7, 2019 Panel meeting, Chair Kay informed the Panel that the Board of Supervisors had adopted revisions to the Panel Action Item at the September 24, 2019 meeting.

First, the Board of Supervisors amended the Action Item to make it less restrictive with respect to what information could be disclosed publicly with respect to the Panel's review. Specifically, the Board removed restrictive language that with respect to Investigation Reports the "case record is deemed a personnel record and shall not be disclosed," which could be read to prevent the Panel from referring publicly to *anything* in the Investigation. The Amendment changed that section of the Action Item, Part c regarding "Timing and Meetings (Recommendation 20) to read in full:

Each Panel Member who is provided the opportunity to review an officer's personnel record or an investigative case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record shall not be disclosed nor shall copies be provided to the public or disseminated, unless the information has been disclosed by the FCPD in a

disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

In addition, portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

See September 24, 2019 Board of Supervisors Meeting – Agenda/Package – Fairfax County, VA at 460–61.

Second, the Board of Supervisors approved an Amendment to the portion of the Action Item, Part b regarding “Jurisdiction and Process (recommendation 19)” to make clear that the Panel could not review Complaints made by County personnel where the Complaint would otherwise be handled under the County’s personnel regulations and through the County’s personnel grievance system.

Given the changes to the Action Item, counsel to the Panel, Julia Judkins, presented two proposed Amendments to the Bylaws. First, Article IV.A.1.e regarding the scope of the Panel’s authority and jurisdiction was amended to include language from the Action Item that the Panel was not able to respond to “any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.” Second, Article IV.E.2.d was revised to include the exact language from the Action Item quoted above regarding disclosure and split into Parts d and e. The Panel approved the proposed Bylaw Amendments unanimously.

Also in light of the Action Item change and the discussion of requests concerning pending litigation, two changes were approved unanimously to the Panel’s procedures. First, the Chair of the Panel was empowered “to analyze Review Requests with pending litigation to ensure that the pending litigation is associated with the allegations made within the complaint and to make a recommendation to the full Panel, rather than forming a Subcommittee.” *See* October 7, 2019 Meeting Minutes. Second, the procedures were changed to reflect the amendments to the Action Item and Bylaws.

Chair Kay reported that he would use the October Quarterly Meeting to discuss “Panel recommendations and the FCPD’s response, FCPD disposition letters, and public comment.”

The October meeting closed with a report from Gentry Anderson and Rachelle Ramirez of the Office of the Independent Police Auditor and Richard Schott, the Independent Police Auditor, regarding NACOLE’s 25th Anniversary Conference which they all had attended. They discussed outreach strategies used around the country for various civilian oversight boards and emphasized the conference’s focus on how oversight boards can connect with communities. Further, Ms. Ramirez explained that at the conference “she found that there was an emphasis on collecting and analyzing data related to racial disparity and how some data driven policies can result in disparate treatment across different groups, particularly those in targeted enforcement areas,” echoing some of the concerns expressed by Panel Members previously. *See* October 7, 2019 Meeting Minutes.

November

On November 16, 2019, the Panel participated in a half-day training with various groups and speakers from the FCPD to learn more about the workings of, goals, and objectives of the FCPD.

The first session concerned FCPD recruiting tactics and what happens at the basic training academy. Among other things, the Panel heard from FCPD personnel who handle the FCPD's efforts to recruit a diverse police force which is reflective of the community. Basic training academy instructors explained how the training academy functions somewhat as a "gate-keeping process" where officers must meet certain standards before moving on. While the FCPD invests significant resources in training any potential recruit, the FCPD tries to weed out ineffective/problematic recruits in part through the academy.

The second session concerned Intrinsic Bias training and juvenile procedures. FCPD representatives explained that every FCPD officer is put through intrinsic/implicit bias training in an effort to reduce such biases. Further, FCPD representatives discussed their "Diversion First" emphasis for juvenile offenders.

Several members of the Panel, especially in light of previous discussions, asked questions regarding the monitoring of recruits and officers' social media accounts for the purpose of assessing bias. Major Owens explained that to the degree that social media accounts are public, they may be used in such a manner but that the ability of the FCPD to review social media accounts of even its own officers is somewhat limited.

The third session concerned Use of Force and Crisis Intervention training and walked the Panel through the kind of training that FCPD officers receive. Use of Force training includes weapons training but also training with respect to any kind of force, including training regarding police cruisers. Crisis Intervention training is designed to help police officers to respond during mental health incidents. The Panel heard from a member of the FCPD crisis intervention team about her experiences and training.

The final session walked the Panel through an Administrative Investigation and the IAB Review process. Vice Chair Doane reminded Major Owens of the 60-day limit for IAB investigations and asked that future extension requests include the reasoning behind such a request.

In total, the training was designed to share with the Panel important background into how the FCPD conducts its business and how it attempts to produce an effective and accountable police force. Panel Members asked numerous questions about the programs discussed and the kinds of training received. The FCPD in no way argued that such training *always* is effective and acknowledged that the IAB exists for a reason, but the point of the session was not necessarily to scrutinize FCPD procedures but rather to increase the Panel's familiarity with the FCPD. The impetus for the training was a desire of the Panel to be better prepared to understand and analyze the Investigation Reports put before them in Complaints/Review Requests.

The next Panel meeting was on November 19, 2019. The Panel discussed and provided updates on several administrative changes designed to increase Panel transparency and FCPD accountability.

First, Chair Kay presented a near-final version of the Recommendation Matrix. The matrix contained four columns: "Report," "Panel Recommendation," "FCPD Action," and "Status (as determined by the Panel)." Vice Chair Doane "explained that the two audiences for this document are the public and the Board of Supervisors" and that "the purpose is to promote transparency and progress made as a result of the Panel's work." *See* November 19, 2019 Meeting Minutes. Vice Chair Doane further explained that the "Panel Recommendation" column will generally include the exact language from Review Reports. And she suggested that the Panel frequently discuss/vote on language for the "Status" column. The Panel Matrix was to be published on the website in December, so Chair Kay

solicited any suggested changes from Panel Members before the December meeting. *See also* Appendix E (Panel Recommendations Matrix).

Second, Chair Kay reported that the Panel had seen more requests for investigation extensions in 2019 than in prior years and discussed the 60-day investigation limit provided in the Panel Bylaws and Action Item. Chair Kay explained that requests for extensions must contain explanations of good cause, and then the Panel informs both the Complainant and the Board of Supervisors of the extension requests. The Panel discussed how best to notify Complainants of such extension requests and made plans to circulate the Panel's typical letter to Complainants regarding such requests.

Third, the Panel engaged in a discussion of whether meeting materials should be provided to the public via the website in advance of and after Panel meetings. At the time, the public could access the Panel materials in person by visiting the Office of the Independent Police Auditor, but such materials were not widely disseminated. Some discussion ensued regarding concern about drafts of Review Reports that were not yet final being shared with the public. Nevertheless, by a vote of 7-1 the Panel agreed to provide meeting materials online in advance of every meeting.

Finally, Chair Kay informed the Panel that the primary discussion at the October Quarterly meeting centered on the Recommendation Matrix and disposition letters, the same topics discussed during the Panel meeting.

December

On December 16, 2019, the Panel held its last meeting of 2019. Consistent with the vote at the prior meeting, the Meeting Materials for this meeting were published online.

The primary focus of the meeting was a review of CRP-19-11. *See* Appendix G.8. Mr. Gallagher, a newer member of the Panel, asked whether the Complaint, which discussed an incident that had taken place on December 27, 2017, was timely. Chair Kay explained how the Panel could be reviewing a Complaint regarding something that had taken place so long ago. Chair Kay pointed to the limitations in the Panel Bylaws "that the Panel cannot undertake a review of *Initial* Complaints submitted to the Panel more than one year after the incident." *See* December 16, 2019 Meeting Minutes. But here, "the complaint was [actually] filed with the FCPD exactly one year after the incident rather than to the Panel." *Id.* The Complainant then filed a Review Request Complaint with the Panel within 60 days of the FCPD disposition letter. Thus, Panel review was in fact timely under the Panel Bylaws.

The Complaint concerned a stop and arrest that had occurred in an extended-stay hotel parking lot. The Complainant, who did not have a drivers' license, was stopped by an officer when he illegally parked in a handicap spot and then exited his vehicle, leaving behind two passengers: a friend in the passenger seat and the Complainant's wife in the backseat. The Complainant told the Subject Officer that he believed that the person who had rented the car, a family friend upstairs at the hotel, did have a handicapped sticker and called her to bring it down. When the family friend arrived, she informed the Subject Officer that she did not have the requisite handicapped sticker but also that she had left the stove on in the room along with the Complainant's seven months and three-year-old children. The Subject Officer claimed that he smelled marijuana and would be calling for backup. (According to the Subject Officer, the Complainant admitted to smoking marijuana earlier that day.) While the Subject Officer did not immediately detain the Complainant, the two passengers in the car, and the family friend who had arrived and entered the car, he did prevent the Complainant from opening his door and exiting the car before backup arrived. When backup did arrive, the Subject Officer initiated a search, and found both a small bag of marijuana and a gun with a filed off serial number in the glove compartment. The Complainant was charged with simple possession of marijuana, which was

eventually *nolle prosequi* (which is why it took so long for the Complainant to file his Complaint—he waited until the case was over), and the Complainant was never charged with illegal possession of the firearm. *See* Appendix G.8 (CRP-19-07 Review Report) at 1–3.

According to the Complaint, backup took something like 45 minutes to arrive with his minor children being left alone in a room the entire time, which the Complainant asserted was entirely improper. The Complainant further asserted as his list of complaints (1) that the Subject Officer claimed to find marijuana in the vehicle (when he did not), (2) that he was charged with possession of marijuana, (3) that he had been subjected to racial profiling (the Complainant is Black), (4) that he had been assaulted by the Subject Officer, and (5) that records stated that he had a weapon in his possession but he was never charged with respect to the gun. The Complaint also contained statements from the Complainant’s wife, who was a passenger in the back seat, and from the family friend. Both complained that they had been subjected to pat-downs by male officers rather than by a female officer. *Id.*

The Complainant appeared at the December 17 Review Meeting. The Complainant explained that he had filed the Review Request Complaint because he did not understand the outcome of the IAB investigation and believed that the police had not listened to his complaints. Questioning from the Panel established several other things with respect to the Complaint. The Complainant explained that his claim to having been assaulted resulted from the Subject Officer closing the Complainant’s door as he tried to exit the vehicle, striking the Complainant’s knee. The Complainant admitted that the “strike” had been incidental and that he was uninjured. The Complainant further maintained that there had been neither marijuana nor a firearm found in the vehicle. The Complainant admitted that he had parked in the handicap spot and exited the vehicle when he saw the police officer because he did not have a license and was concerned about getting another ticket. The Panel asked the Complainant why he had directed the family friend to come downstairs and leave the children unattended and he responded that the children were asleep at the time. *See* December 17, 2019 Meeting Minutes.

Major Owens appeared on behalf of the IAB to explain and recount the IAB’s Investigation Report and take questions from the Panel. The procedural history of the case was also of note. Part of the reason that the investigation took so long is that the IAB had actually reopened it. The Complaint was first investigated by the Springfield District Station. But the IAB did not sign off on the investigation, believing that there was additional investigation needed, particularly where a Complainant made a claim of racial bias. *See id.*

Major Owens pointed out that the amount of time between the investigation and the incident created certain challenges for the IAB. For instance, there was no in car video evidence because the FCPD is only required to retain such evidence for one year and purges the video after a year. But the investigation did involve interviewing the Complainant and his wife; the family friend; the Subject Officer; and two other officers on the scene. The IAB also reviewed available records from the patrol cars in question, evidence logs, and contemporaneous police reports. *See id.*

Major Owens recounted certain findings of the Investigation Report. For instance, the Investigation Report included a review of the patrol cars involved and specifically their CAD (“Computer Aided Dispatch”) systems. When a police officer exits his or her vehicle, he or she will activate the CAD system, keeping track of time spent outside of the vehicle. The CAD records showed that 7.5 minutes passed between the Subject Officer exiting his vehicle and backup arriving. The Complainant’s alleged 45-minute timeline was not backed by evidence. The IAB found that waiting for back up in such a situation, even knowing that the children were unattended, was neither against policy nor inherently unreasonable. *See id.*

Interviews called into question some of the other alleged claims. For example, while the Complainant denied telling the Subject Officer that he had smoked marijuana earlier that day, the Complainant's wife asserted that he had. Also while the Complainant claimed that the Subject Officer had locked onto him and made contact before any illegal activity, the wife's interview and written complaint submission confirmed that the Police Officer only made contact *after* the Complainant illegally pulled into the handicapped spot. *See id.*

Moreover, the claim that neither marijuana nor a gun had been found in the car was contradicted by the contemporary evidence logs that showed that these items had been found because they were immediately logged after the incident. *See id.*

Major Owens also explained that the issue of racial bias had been considered specifically in the IAB investigation including in interviews and with consideration of the Subject Officer's arrest record. The Complainant could offer no reason for his belief that he had been racially targeted, nor could he explain why he, the driver of the car, had been the only person arrested and not his passenger, who also is Black. And, again, the Complainant's claim that he was targeted before engaging in illegal activity was directly contrary to the claims of the Complainant's wife and the Subject Officer. *See id.*

Major Owens addressed the cross-gender search issue by saying that it simply was not against protocol. *See id.*

The Panel's questioning of Major Owens had certain focus areas. First, Mr. Bierman and Mr. Aguilar were particularly interested in understanding the patrol car information used in the Investigation Report. Mr. Bierman asked about how the CAD system worked and its reliability. Major Owens admitted that the CAD system is not automatic but explained that officers are trained to hit the CAD button when leaving their vehicles, and there was no reason to think that did not occur here. Mr. Aguilar probed the question of why there was no video evidence, and Major Owens replied that it simply did not exist because videos are all purged after a year. In other words, the CAD system data was the only non-testimonial evidence related to the timing of backup arriving, and the CAD system clearly pointed in favor of the Subject Officer and his colleagues' recollection of the event. *See id.*

Second, Vice Chair Doane asked a number of questions concerning the children having been left unattended. Major Owens explained that there was no specific policy for such a situation and that the IAB found it to be reasonable to wait for backup when smelling illegal drugs from a car of four people. Major Owens also said that when backup did arrive, officers immediately went upstairs to retrieve the children. *See id.*

Third, Mr. Aguilar wanted to know why there had been no investigation into the use of force. Major Owens explained that the striking of the subject with the car door had been inadvertent and not a use of force under department guidelines, and the Independent Police Auditor charged with investigating use of force incidents came to the same conclusion. *See id.*

Fourth, Mr. Bierman wanted to know why certain witnesses were not interviewed. Specifically, the front seat passenger and a civilian ride-along in the car of one of the backup officers had not been interviewed. Major Owens blamed the passage of time and admitted that the IAB could not determine who the ride-along individual was. *See id.*

Fifth, Mr. Aguilar expressed concern that the District Station investigation was significantly less thorough than the IAB investigation and asked how the FCPD handled such situations. Major Owens explained that any investigation into racial bias is supposed to be handled by the IAB and not the District Station. *See id.*

Sixth, Mr. Aguilar wanted to know more about the cross-gender pat downs and why the IAB had not investigated further. Major Owens replied that they are simply not against policy. *See id.*

By a vote of 6-1, the Panel voted to concur with the findings of the IAB. The Panel also decided that the Review Report should include several recommendations/admonitions: (1) that the identity of all ride-alongs should be tracked, (2) that the IAB explain whenever it fails to interview an obvious suspect why the failure occurred, and (3) that the FCPD should consider policies that would apply when children are involved. Mr. Aguilar, the dissenting vote, also asked that he be able to draft a recommendation for consideration regarding cross-gender pat downs, and the Panel agreed.

Following the Review vote, the Panel discussed the Panel Recommendations Matrix and voted unanimously to adopt the version discussed in prior meetings.

Chair Kay then debriefed the Panel regarding the December 13 Quarterly Meeting where the participants discussed extension requests, training, and the Panel Recommendations Matrix. Of note with respect to extension requests from the IAB was the realization that the Action Item did not in fact empower the Panel to reject extension requests, but Chair Kay reaffirmed that the Panel would keep the Board of Supervisors in the loop as to such requests.

Also of particular interest regarding the Panel Recommendations Matrix was “that the FCPD asked for clarity on the Panel recommendation from the review report CRP-18-12, which states: ‘The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.’” *See* December 16, 2019 Meeting Minutes. Specifically, the FCPD wanted to know if this document would be an external document for public consumption or an internal document to be shared across the FCPD. Chair Kay had explained that the Panel was referring to an internal document to be shared across the FCPD to remind officers of their obligations. Chair Kay reported that such a document was under consideration by the FCPD in consultation with the County Attorney.

Lastly, the Panel considered a change to the Complaint form and the website language. The amendments would make clear to potential Complainants that any Complaint *must* be forwarded to the IAB for investigation. The Panel unanimously agreed to these changes.

Recap

As the 2019 Annual Report explained:

In year one, the Panel focused on establishing Bylaws and receiving necessary training to carry out its mission. In year two, the Panel carried out its mission, and in the process, identified several critical impediments to its success and reported them to the Board of Supervisors in the 2018 Annual Report. The Panel is pleased to report that in 2019 the Panel addressed each of the obstacles identified in last year’s annual report with the cooperation of key stakeholders including the Board of Supervisors and the FCPD.

See Appendix D.3 (2019 Annual Report). In addition to reviewing more Complaints – the Panel’s core function – in 2019 than in years before, the Panel’s 2019 can best be described as a time when the Panel focused intently on cooperation and collaboration with the FCPD in order to improve its oversight, accountability, and transparency functions. Part of the collaboration included an effort to add to the Panel’s training so that it could better understand the Investigation Reports before it.

Toward that end, the Panel Chair and Vice-Chair held five “Quarterly Meetings” with the chiefs of staff for the Chairman of the Board of Supervisors and the Chair of the Board of Supervisors’ Public Safety Committee, FCPD representatives, including Chief Roessler, Deputy County Executive

Dave Rohrer, and representatives from the Office of the County Attorney. During these meetings, Panel representatives were able to resolve or move forward on a number of outstanding issues related to transparency and accountability including, (1) improving FCPD disposition letters so that Complainants could better understand the IAB's decisions; (2) amending the Action Item to give the Panel authority to disclose more information concerning its reviews, which ushered in a sea change in how the Panel interacts with the public and provides transparency; (3) the creation of a public Panel Recommendations Matrix to track Panel activities and FCPD responses; and, as discussed in that very matrix, (4) the IAB's use of crime statistics in its Investigation Reports and the need for the FCPD to ensure that analysts with proficiency and training in the use of such statistics work with the IAB.

It should be noted that despite the spirit of collaboration and cooperation, the Panel also guarded its independence and its role in transparency and accountability. Indeed, the Panel Recommendations Matrix, which the FCPD agreed to, is designed to disclose recommendations from the Panel and the FCPD responses to them. Further, the matrix shows which Panel recommendations have been accepted and implemented by the FCPD and which ones have not *as determined by the Panel itself*, making clear that the Panel is wholly independent of the FCPD.

Consistent with its independence, as a part of the 2019 Annual Report, the Panel offered two specific issues for consideration by the Board of Supervisors. First, the Panel noted that of the 20 Initial Complaints made to the Panel, the IAB averaged 32 days past the 60-day timeframe for investigations, and the Panel extended the time period more often than not. While the Panel did not explicitly ask for Board of Supervisors action, the Panel did suggest that possibly changing the Action Item to ensure a 90-day timeline might be prudent.

The Panel also addressed racial bias-related investigations in particular. The Panel noted that while some investigations are clear cut—such as where, for instance, in car video showed that the Subject Officer could not have known the race of the Complainant in advance of the stop—other cases contained plausible but not definitive race-neutral explanations that were much harder to determine. As such, The Panel specifically recommended that in racial bias investigations, the IAB should seek “some explanation for the officers conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-based explanation such as examining the officer's social media accounts and/or interviewing witnesses.” *See Appendix D.3 (2019 Annual Report) at 7.*

During 2019, the Panel was able to make great strides in its ability to work with the IAB and improve public oversight. Development of the matrix provided the public with an opportunity to see that the FCPD had implemented many of the recommendations of the Panel. Additionally, as the Panel reviewed more complaints with racial bias allegations, it began to notice that these types of investigations should include more thorough data analysis and inquiry into the accused officer's social media history.

Panel Activities: 2020

In 2020, the Panel faced unprecedented challenges due to the COVID-19 pandemic. Simultaneously the Panel's work took on more significance – and became more voluminous – in light of the national conversation about racial bias in policing following the murder of George Floyd by police officers in Minneapolis. The new year also ushered in a new Board of Supervisors, with Supervisor Jeffrey McKay assuming the Chair following the retirement of Chair Sharon Bulova, and newly-elected Supervisor Rodney Lusk becoming the Chair of the Public Safety Committee after the retirement of Supervisor Cook. Furthermore, the economic downturn triggered by the pandemic has forced the county to revise its budget and reorder its priorities.

At the same time, a change in leadership Virginia State Assembly resulted in the passage of a number of criminal justice reforms, including enabling legislation to grant local governments, including Fairfax County, the authority to expand the role of civilian oversight of police.

These 2020 developments forced the Panel to grapple with certain institutional concerns. Perhaps more than in years before, where the Panel's aim was to achieve and implement procedures and practices necessary for *functionality*, i.e. the ability to review Complaints and make recommendations, in 2020 the Panel leaned more toward concerns about *efficacy*, i.e. the ability to impact meaningfully the relationship between the Fairfax County community and the FCPD.

As part of that process, this Four-Year Review was undertaken to better understand the successes, failures, and continuing challenges of the Panel. While Panel Members have different views of how the Panel should change, they agree that the Panel must remain fiercely independent and evolve in order to fulfill its core mission of ensuring transparency and accountability in the FCPD and building trust between community members and police officers.

January

At its January 9, 2020, meeting, the Panel considered the draft report on CRP-19-11. *See* Appendix G.8. This was the first Review Report drafted by the Panel since the revised Action allowed the Panel to include details of the investigation from the Investigation Report. The more detailed report allowed the Panel to explain the facts and findings more fully, thereby increasing transparency of police investigations of complaints.

During its discussion of the report, the Panel also addressed a procedural issue of how to treat a Complaint where there are multiple complainants. In CRP-19-11, the initial Complaint was filed at the district police station along with two other Complaints by witnesses to the incident. The IAB consolidated these complaints for the purpose of the investigation and wrote one disposition letter at the conclusion of the investigation. Only one of the Complainants sought review by the Panel, even though the incident involved three complaints. At the Review Meeting, the Panel had heard from only the Complainant who requested the review.

Panel Member Sris Sriskandarajah, who had been absent from the Review Meeting but had reviewed the audio tape, asked why one of the other potential Complainants, who had come to the review meeting but had not requested a review, had not been allowed to speak. Chair Kay noted that the Bylaws make clear that the Panel can only hear from the person who submitted the Complaint and requested the review. Vice Chair Doane further noted that the Panel is "unable to take testimony, hear from witnesses, or conduct its own investigation," and that the only individual allowed to address the Panel are Complainants who request review and representatives from the FCPD. *See* January 9, 2020 Meeting Minutes. The Complainant may explain the reasons for filing the Complaint and FCPD representatives explain the findings of the Investigation Report. Panel Member Frank Gallagher expressed concern that this could be a problem in future where a Complainant submitted something on behalf of others. Chair Kay asked that Vice Chair Doane and Mr. Sriskandarajah draft a procedural document for the Panel's consideration whereby the Panel in such a situation would notify the Complainant and the other affected individuals that only the Complainant would be allowed to participate in the Review Meeting and ask whether the other affected individuals wished to file their own separate Complaints.

After the Panel made several line edits and voted to accept the body of the Review Report, the Panel voted individually on the recommendations proposed in the drafted Review Report.⁵

The Panel discussed and accepted by votes of 8-0 (with Ms. VanLowe abstaining) three recommendations to be added to the Review Report consistent with the discussion at the Review Meeting. First, the Panel recommended that “[w]ith respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.” *See* Appendix G.8 (CRP-19-11 Review Report) at 8. Second, the Panel recommended that “FCPD civilian ride-along individuals should be tracked and recorded in all instances. A police ride-along individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.” *Id.* Third, the panel recommended that the FCPD “implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.” *Id.*

The Panel declined to approve a fourth proposed recommendation that would have reinforced the already existent FCPD policy that cross-gender pat downs should be avoided when practicable (but are not prohibited) as unnecessary and duplicative.

Mr. Aguilar approved the recommendations in the Review Report but chose to file a separate dissent. Mr. Aguilar had four primary disagreements with the Investigation Report. First, he disagreed with the interpretation of the Independent Police Auditor that the incident had not involved a use of force and believed that the use of force should have been investigated. Second, he believed that a thorough and complete investigation required more investigation of issues with the potential car video. He felt that the investigation simply ruled out the existence of in car video without making clear that the IAB had tried to track down such video. Third, Mr. Aguilar refused to concur with the findings of the IAB based on the fact that not every pertinent witness had been interviewed. Fourth, Mr. Aguilar did not believe that the IAB had adequately investigated whether it was not practicable to have a same-gender patdown performed. *See* Appendix G.8 (CRP-19-11 Review Report (Aguilar Dissent)).

After considering the report, the Panel turned to its leadership election. Vice Chair Doane, pursuant to the Bylaws, was set to take over as Panel Chair in March of 2020. Sris Sriskandarajah was nominated for and unanimously approved to take over as Vice Chair concurrently.

At the conclusion of the January meeting, Vice Chair Doane proposed a change to the Subcommittee timeline designed to speed up the reviewing of Complaints.⁶ Specifically, she suggested that rather than setting consideration of the Initial Review Report for the next month’s Panel meeting, the Subcommittee should meet immediately prior to Panel Meetings and the Panel should vote on the Subcommittee’s recommendation that same night. The Panel agreed to this change in procedure.

⁵ Ms. VanLowe, who had been absent from the Review Meeting, took no part in the decision-making process concerning this Complaint.

⁶ In addition, also notable at this meeting was that Chair Kay prefaced a discussion of an initial subcommittee review by “remind[ing] the Panel that the purpose of the Subcommittee meeting is to conduct the initial review of the review request and make a recommendation to the full Panel on whether to undertake or reject the review request.” *See* January 9, 2020 Meeting Minutes. This articulation of the Subcommittee process reflected in the meeting minutes represents a subtle shift: rather than simply reviewing for jurisdictional purposes, the Subcommittee’s review could include a substantive component. In truth, this appears to have been an aspect of Subcommittee review from the start given the fact that the Subcommittee reviewed the entire file as opposed to simply the Complaint during meetings. Still, the approved meeting minutes from the January meeting cemented this practice.

February

The primary purpose of the February 10, 2020 meeting was to discuss the 2019 Annual Report discussed above. The Panel largely accepted the drafted report and affirmed the recommendations already discussed.

The Panel also considered a proposed amendment to the Intake Procedures to address the situation discussed at the prior meeting concerning multiple Complainants. The proposed procedure stated that in situations where a Review Request is made by a one of several Complainants the Panel shall inform the Complainant and the other potential Complainants that only the Complainant making the Review Request can be heard in the Review Meeting.

Ms. VanLowe and Mr. Aguilar expressed concern that the process was still not clear enough, and that IAB should have sent disposition letters to all individuals. Major Owens confirmed at the meeting that the practice going forward would be to send a disposition letter to all individuals whose complaints are investigated. Given the concerns of Ms. VanLowe that the change needed to be clearer and concrete, and given the point made by Chair Kay that the situation being remedied was unique and might not occur again with the change in police procedure, the Panel decided to table the issue. *See* February 10, 2020 Meeting Minutes.

March

At the March 3, 2020 meeting, the Panel reviewed Complaint CRP-19-29. *See* Appendix G.10. The Complaint concerned an interaction between a White FCPD officer and a Black Fairfax resident. As the Review Report explained regarding the incident in question:

The incident began when the officer, while driving his patrol car, observed the Complainant as the officer drove past him. The officer [made a u-turn and then] followed the Complainant into the parking lot of the Complainant's apartment building and questioned the Complainant. The officer's questions focused on whether the Complainant lived in the apartment complex. The complaint alleges that racial profiling was the impetus for this conversation, and that the Complainant had done nothing wrong. The Complainant maintained that he should have never been approached by the officer.

See Appendix G.10 (CRP-19-29 Review Report) at 1.⁷

According to the Complainant, he was minding his own business before he made eye-contact with a police officer and the result was a u-turn, being followed, and a stop, which did not seem fair or warranted. After the stop, the following conversation, caught on videotape, took place between the Complainant and the Subject Officer in the parking lot of the Complainant's apartment complex:

Complainant: Hey
Officer: Hey sir, how you doing?
Complainant: Doing well, how are you?
Officer: Hey good. Hey, do you live here?
Complainant: I do, yes.
Officer: Okay, where do you live at?

⁷ Notably, the final CRP-19-29 Review Report, published October 22, 2020, was 20 pages long and the most detailed Review Report yet for the Panel. *See* Appendix G.10. It included long discussions regarding the incident, the procedural posture, the Panel meetings, the questioning of the Complainant and the FCPD representatives, and the Panel's deliberations. Indeed, the Review Report addresses the subject in much the way that this "Four-year Review" document has done, and as such, we will quote heavily from the CRP-19-29 Review Report where appropriate.

Complainant: In this apartment, right here.
Officer: Oh, okay. You got ID on you?
Complainant: No, I don't.
Officer: You don't have an ID?
Complainant: Well, I do have an ID, but do I have to show it to you?
Officer: You don't have an ID on you?
Complainant: I do have an ID.
Officer: Okay.
Complainant: Do I have to show it to you?
Officer: You don't have to. Is this your car?
Complainant: Yes, it is.
Officer: Okay.
Complainant: Is there a problem?
Officer: What building do you live in?
Complainant: This building right here.
Officer: What's the address?
Complainant: I don't have to tell. I don't have to tell, I don't have to tell you the address.
Officer: What's that?
Complainant: Do I need to tell you the address?
Officer: Yeah, what's the address?
Complainant: Why do I need to tell you my address?
Officer: I'm asking you what the address is.
Complainant: But why do I need to tell you that?
Officer: 'Cause I'm asking you.
Complainant: But is there a reason why you're asking me?
Officer: Because I want to know if you live here. Because if you don't live here...
Complainant: But I just told you, I do live here.
Officer: Right, but if you don't know the address, it doesn't look like, to me, like you live here, okay?
Complainant: But I do, and why is that?
Officer: To be honest with you...
Complainant: Why is that?
Officer: Whose vehicle is this?
Complainant: This is my vehicle.
Officer: Is it in your name?
Complainant: It's in my Mom's name, and it's in my name also.
Officer: Okay. How long have you lived in this area?
Complainant: Do I have to tell you that?
Officer: I'm just asking you the question.
Complainant: Okay, but why are you asking me these questions?
Officer: Do you live here or not, sir?
Complainant: I already told you. I live here.
Officer: Okay, 'cause if you don't live here, you're trespassing.
Complainant: I know that, and I told you. I live here.
Officer: Okay, what's the address that you live at?
Complainant: Why do I have to tell you that?
Officer: 'Cause I don't believe you live here, sir.
Complainant: And why don't you believe me? Why don't you believe I live here?
Officer: 'Cause you don't know the address.

Complainant: I already told you, I do know the address.
Officer: Okay, what's the address that you live?
Complainant: I don't have to tell you that. I live here. Why are you harassing me?
Officer: Okay, I'm not harassing you.
Complainant: You're in my neighborhood, coming up to me asking me what my address is, 'cause you say I don't live here. Why don't you believe I live here?
Officer: Sir, I'm not harassing you.
Complainant: Can I have your name and badge number?
Officer: You can. Ah [redacted] and my badge number is [redacted]
Complainant: Okay, thank you.
Officer: So do you have an ID on you or not?
Complainant: I do. I already told you. I do have an ID.
Officer: Okay, what's your name?
Complainant: I don't have to tell you that. Am I being detained or am I free to go?
Officer: You're free to go, sir.
Complainant: Thank you, you have a good day.
Officer: You, too.
Complainant: Thank you.

See id. at 3–5.⁸

As Chair Doane explained to the Panel, following the investigation, the Complainant requested additional review by the panel because:

- (1) the investigation did not determine why he was followed; (2) it is not clear whether the investigation checked the Officer's previous encounters and arrests; (3) it is not clear why the officer stayed at the scene for an extra 15 minutes instead of leaving after the encounter; (4) the conclusion that there was no bias based policing does not address the original allegation of racial profiling; and (5) the IAB investigator was not objective and had an unconscious bias for law enforcement.

See March 3, 2020 Panel Meeting Audiotape 5:00–5:44.

The Complainant appeared at the March meeting. In his opening presentation, he reiterated that he still wanted to know why he was followed by the officer in the first place. He also felt that the investigation of racial profiling was inadequate. And he specifically questioned the impartiality and objectiveness of the investigation given that it had been performed entirely by a police investigator.

The Review Report recaps the Complainant's appearance at the March meeting as follows:

Responding to questions from Panel Members, the Complainant explained why he was fearful and nervous when he was followed and questioned. He said that he didn't want to tell the officer where he lived, because he was aware of an incident in Texas where an officer went into an apartment and fatally shot an individual. He said he also did not go to his apartment after the encounter because he didn't want the officer to follow him. He further explained that he had two other encounters with Fairfax County police that were not positive. He recalled one incident where he was pulled for a broken taillight. He said that the officer introduced himself

⁸ Because it has been discussed repeatedly in prior portions of this Four-Year Review, it is worth noting that when Chair Doane wrote up the Review Report she had to transcribe this entire conversation from a paper copy at Police Headquarters. With no access to electronic records, she had to manually rewrite the entire conversation.

and told him why he was being stopped. The Complainant was given a warning. The second incident occurred at a bar in Reston, where he was approached by a FCPD officer because the officer said he smelled marijuana in the area. The officer asked him for his ID, and he felt harassed. The Complainant said his friends have also had negative encounters with the FCPD.

One Panel Member asked the Complainant if he had previous training on his rights. The Complainant responded that in his first encounter with the FCPD he had not known his rights, so he educated himself and learned the importance of recording encounters with police.

When asked whether this incident would have been different if the officer had explained why he had wanted to talk to him, the Complainant answered that it would have been different, because he would have known why the officer followed him. However, he still might not have answered any questions, because he had not done anything wrong. He emphasized that he had not committed a crime and did not think he would have been followed if he were not Black.

When asked what remedy he was seeking from the Panel, the Complainant responded that he would like the Panel to recommend that FCPD officers receive additional education and training on implicit bias. He said that he knew that officer discipline could not be disclosed publicly, but he would also like to know which FCPD regulations were violated.

See Appendix G.10 (CRP-19-29 Review Report) at 12.

Chief Roessler appeared on behalf of the FCPD. Above all else, he made clear to the Panel and the Complainant that the Subject Officer had no reason to initiate the stop and that the Subject Officer's actions were unacceptable. However, Chief Roessler also expressed his belief that the incident was not racially motivated. The Review Report recaps the Chief's appearance at the March meeting as follows:

In his presentation to the Panel, the Chief stated that the officer had made a series of poor, cascading assumptions and judgments that were wrongly based on his training. However, in his view, there was no evidence that race was a factor in the incident. He recognized that issues concerning racial bias are a concern in the community. He said that he has formed a human relations committee to address the racial and procedural justice policing issues in the county, and he is also reviewing officer training. Admitting that the FCPD has work to do, he said, "This is something we have to train-away. We can't just keep going to proactive patrol training." He concluded his presentation by telling the Complainant, "I pray that you understand that as your Chief I don't want this to happen to anyone else."

During questioning of the Chief, one Panel Member asked why there was minimal information and analysis in the investigative file on the allegation of racial bias. The Chief replied that he thoroughly reviewed the investigation, reviewed the officer's training history, and spoke at length with the officer. He said that the officer had not indicated to him that any of his actions were based on race. Rather, he reiterated that the officer's actions were based on several assumptions and poor decisions that started with a glance and ended with "badgering" the Complainant with questions. The Chief added that there was no reason to believe that the officer was not telling the truth when he denied that race was a factor in his decisions.

The Chief was asked whether he had explored how implicit bias may have played a role in the officer's decision to follow the Complainant. He was asked whether the incident would have happened had the Complainant been a white older man. The Chief said that "everyone has implicit bias," but added that he did not want to engage in hypotheticals. "This case is a problem without regard to race," he said. He concluded by saying, "This young man

was treated wrong.” He said that the complaint was “going to create a lot of change, I assure you.”

See id. at 12–13.

A main theme of Panel deliberations was that the IAB had not investigated the complaint of racial bias systematically and that the IAB still did not have a clear system in place for investigating such complaints. On the other hand, some members of the Panel expressed their belief that the Investigation Report had been thorough and accurate and had resulted in remedial actions, and that the Panel was not best positioned to dictate to the IAB how it should do its job. Additionally, the Complainant himself had expressed his wish that the officer receive additional implicit bias training, and it appeared that the officer was already set to get such training. The Review Report recaps the Panel’s deliberations as follows:

Several members of the Panel were concerned that IAB does not have a standard for investigating allegations of racial bias and racial profiling in complaints, which can differ in unique ways from other types of investigations. Panel Members appreciated the work the Chief had done on the complaint, and they agreed with the finding that the officer had not performed in a professional manner and violated Regulation 201.13. However, they were concerned that the issue of racial profiling was not adequately analyzed using objective criteria. One Panel Member acknowledged that racial profiling is difficult to prove, but investigators should do more than just ask the officer whether he was racially motivated. It was pointed out that the only evidence in the investigative record that related to the racial profiling allegation was the officer’s denial and his arrest statistics.

Further, the Panel had recommended in its 2019 Annual Report that “where the evidence gathered during an investigation into a complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer’s conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer’s social media accounts and/or interviewing witnesses.” While the FCPD did sustain a violation for unprofessional conduct which was race-neutral, this violation focused primarily on the officer’s conduct after his first glance at the Complainant. The investigative record was virtually silent as to why the officer decided to follow the Complainant in the first place, and Panel Members questioned whether a similarly situated white driver would ever have been followed in such a manner. One Panel Member asserted that the officer’s decision to follow the Complainant based on a mere “glance” hardly constituted a justification so clearly race-neutral as to vitiate the need for additional investigation. Moreover, investigation into whether the officer had demonstrated any bias in conversations with co-workers or on social media would have helped to corroborate the race-neutral explanation in the FCPD’s findings.

Moreover, the Complainant had expressly asked the Panel to review whether the investigation was thorough, complete, accurate, and objective specifically with regard to his racial profiling allegation. Panel Members concluded that based on their reviews of the file, the investigation as it related to the racial profiling allegation was not complete. In accordance with Article VI(E)(1)(h) of the Panel’s Bylaws, the Panel voted by 6-3 to request further investigation by the FCPD and provide a supplemental report that details the findings of the additional investigation.

See id. at 13–14.

The Panel made four requests with respect to additional investigation into the allegation of racial profiling. First, the Panel requested that the IAB conduct a search of the officer's publicly available social media profiles to ensure an absence of racial bias. Second, the Panel requested that the IAB interview the officer's coworkers for evidence of racial bias. Third, the Panel requested that the IAB review data related to the officer's community contacts and stops in the same manner the FCPD reviewed arrest statistics. Fourth, the Panel requested that the IAB compare the circumstances and claims of the current complaint to any prior complaints against the officer. *See* March 3, 2020 Meeting Minutes.

Following the review portion of the meeting, Mr. Kay informed the Panel that he would be presenting the Panel's 2019 Annual Report at the March 17, 2020 Public Safety Committee meeting.

The Panel was unaware that it would not meet again until June.

March – June

In March of 2020, the global COVID-19 pandemic, which has taken the lives of hundreds of thousands of Americans, reached the Washington Metropolitan Area. Most businesses and governments shut down and moved to remote work starting Friday, March 13, 2020. Many industries remain exclusively in work-from-home mode to this day. Americans were encouraged to engage in "social distancing" and avoid congregating in public. The Panel, authorized only to meet in person and in public, was unable to meet until the state and county could adopt emergency procedures under FOIA for public meetings. The Panel did not meet again until June.

On May 25, 2020, George Floyd, a forty-six-year-old Black man, was murdered by police officers in Minneapolis, Minnesota during an arrest for the use of an allegedly counterfeit twenty-dollar bill. The entire incident was caught on videotape, and the nation watched in horror as an officer knelt on Mr. Floyd's neck for nearly nine and a half minutes while Mr. Floyd said that he could not breathe. Mr. Floyd received no medical attention from the officers on the scene.

Public outcry was swift and vociferous. Protests popped up across the country in favor of racial justice and police accountability, with some of the largest and most sustained protests occurring in the District of Columbia and throughout the Metro region. On June 1, 2020, peaceful protests in Lafayette Square across from the White House were broken up without warning well before a DC-imposed curfew by federal agents deploying tear gas, rubber bullets, and batons, making national and international news, and furthering the cause of such protests.

Two days later on June 3, 2020, roughly 3,000 people showed up at the Fairfax County Governmental Center parking lot for a "Car Rally for Justice" organized by the Fairfax County NAACP in response to the George Floyd homicide. Chief Roessler appeared at the protest and addressed the crowd. He condemned the actions of the officers in Minneapolis and told the crowd that the FCPD values the sanctity of human life and has policies that attempt to de-escalate situations like the one in Minneapolis. He pointed out that Fairfax County had set up an Independent Police Auditor and Police Civilian Review Panel to review investigations of officer misconduct and that he and others in the FCPD work to develop ways to address public safety concerns by meeting with and listening to a variety of stakeholder groups in the community. In other words, directly in response to protests over George Floyd, Chief Roessler reassured the community that things are and would be different in Fairfax in part due to our oversight entities, including the Panel. Sean Perryman, then President of the Fairfax County NAACP, thanked Chief Roessler for his participation in the event and urged the crowd to peacefully advocate for positive change.

The Car Rally for Justice was the first of many marches and meetings across Fairfax County over the summer. Just three days later, on June 5, 2020, the FCPD had to deal with its own use-of-force incident with allegations of racial bias. In the Gum Springs neighborhood of the Mount Vernon District, one of the oldest predominantly African American neighborhoods in Fairfax County, paramedics and FCPD officers responded to an incident involving an unarmed Black man who was apparently experiencing a mental health crisis. While paramedics and FCPD officers encouraged the man to get into the ambulance, an officer arrived on the scene and tased him repeatedly as he put him under arrest. The incident was videotaped. The officer was charged with three counts of assault and battery by the Commonwealth's Attorney, and the officer was placed on administrative leave pending administrative due process. The Independent Police Auditor is monitoring the police investigation and will conduct a review.

The incident resulted in public outcry throughout Fairfax County and was condemned by Chief of Police Roessler and several members of the Board of Supervisors. Chief Roessler viewed the tape and held a press conference that Saturday, June 6, 2020 in which he explained that the use of force at issue simply was unacceptable.

This incident and the broader national debate on racial bias in police departments impacted the work of the Panel significantly. Although Panel Members could not meet in person with members of the community because of COVID restrictions, they reached out to community groups virtually to listen to their concerns. Numerous meetings with community groups were held during the spring and summer to listen to the concerns of community members and explain the work of the Panel. In addition, the Independent Police Auditor participated in many of these meetings and held meetings of his own. Moreover, Chief Roessler and individual members of the Board of Supervisors held listening sessions in the community to hear concerns and began to take steps to further increase transparency in the FCPD.⁹

Again, the very existence of the Panel was explicitly referred to by Chief Roessler and members of the Board of Supervisors as being critical to police oversight. In other words, when the community asked what was being done to ensure accountability from the FCPD, the FCPD and the Board of Supervisors invoked the Panel, which increased the spotlight on the Panel's work.

Finally, the events of the summer directly impacted the Panel in another way when Governor Northam called a special session of the General Assembly to address racial justice and police reform. That special session would yield, among other things, SB5035 and HB5055, a bill to take effect on July 1, 2021, that empowers local jurisdictions like Fairfax County to create civilian review boards with investigatory power, the ability to subpoena witnesses, and the ability to impose discipline. Debate over that bill put civilian oversight front and center across the Commonwealth.

June

By the time the Panel met again on June 25, 2020, virtually over a WebEx platform per emergency rules, Fairfax County was facing the profound health and economic effects of the pandemic and an outcry of support for more accountability in the police department. Community stakeholder groups renewed their requests for more racial and ethnic data on county arrests and stops. They also

⁹ While many community groups praised Chief Roessler's swift action, notably the Fairfax Fraternal Order of Police, Lodge 77 did not. In a public statement sent to the Board of Supervisors, President of the Fraternal Order, Brad Carruthers, accused Chief Roessler of a dereliction of his duty and violating the due process rights of the subject officer. Mr. Carruthers further claimed that 98.42% of survey respondents within the Fraternal Order supported calling for Chief Roessler's immediate resignation.

asked for changes in state laws to authorize and improve civilian oversight and adopt criminal justice reforms.

The FCPD moved swiftly to take steps to build more trust in the community. On June 23, 2020, the IAB released a 2019 Use of Force Report that documented use of force incidents across the FCPD's 15 divisions and district stations. The document was an impressive and comprehensive display of data concerning the FCPD that far too few police departments across the country do not share with their communities.

The Panel continued its outreach to the community and invited Chairman Jeff McKay of the Fairfax Board of Supervisors to address the Panel at June 25, 2020 meeting to discuss policing, community trust, the Panel's role in promoting the County's One Fairfax policy, and the recent formation of a task force on equity and opportunity. As the meeting minutes recount, "Chairman McKay explained that the country and county are facing multiple challenges and are navigating unprecedented times due to the COVID-19 pandemic and disparities and trust building within law enforcement." *See* June 23, 2020 Meeting Minutes. Chairman McKay spoke specifically about the Gum Springs incident, which he called "not only an assault on the individual involved, but also an assault on the profession of law enforcement." *Id.*

Chairman McKay discussed the "One Fairfax" policy, which acknowledges that there are too many inequities within Fairfax and seeks to reduce, ameliorate, and eradicate such inequities. Chairman McKay discussed the Panel's role in One Fairfax in that "it serves people who have been disproportionately treated by police and communities that have been left behind" and aims "to rebuild trust in the police within those communities." *Id.* He expressed his support for the Panel and his hope that the Panel could conduct further outreach in the community.

Chairman McKay took questions from the Panel. Recounting the disparities in arrest statistics provided by the FCPD, Mr. Bierman asked Chairman McKay if he is supportive of increasing the Panel's jurisdiction and if he is willing to advocate in the General Assembly for such changes that would provide the Panel with additional oversight powers. Chairman McKay noted that the FCPD, having released such statistics, is one of the most transparent police departments in the country. Chairman McKay expressed that he was open to expanding the powers of the Panel but that certain limitations could only be approved by the General Assembly, and that he expected to see change soon.

Ms. VanLowe asked Chairman McKay if he would support the Panel holding a public forum over the summer, and Chairman McKay expressed his support for such an idea, especially because "[h]e is under the impression that many people in the county are unaware of the Panel." *See id.*

Mr. Aguilar expressed his belief that the Panel needed more resources, especially because it is composed entirely of volunteers. Chairman McKay "asked for the Panel to indicate their needs and said he would be happy to address any deficiencies," adding that "it is most important for the Panel to maintain its independence as that is an important component to building trust with the community." *See id.*

Chair Doane explained to Chairman McKay that the Panel had hosted three public forums in the past but that the former Chairman and Chair of the Board of Supervisors' Public Safety Committee had indicated that they did not support additional public forums. Furthermore, "the Panel also received [prior] legal advice that hosting future public forums would be problematic." *See id.* Chairman McKay responded that he was "fully supportive of the Panel hosting public forums and that there should not be a legal issue that cannot be overcome to allow for the Panel to meet with the community that it represents." *See id.* Chair Doane also brought up the question of the Panel having

the ability to hire a consultant with investigative experience to help the Panel review investigations, as recommended by the Ad Hoc Police Practices Review Commission. Chairman McKay said that if the Panel was able to document such a need, he would be potentially supportive but that any such budgetary change would have to go through the entire Board of Supervisors. *See id.*

Following the Q & A with Chairman McKay, the Panel turned to a memo written by Gentry Anderson of the Independent Police Auditor's Office regarding One Fairfax and how the Panel fits into the policy. *See* Appendix K. Ms. Anderson explained that the Panel promotes One Fairfax by providing public access to the Panel's business and review process, promoting accountability, and engaging with stakeholders and the community. Specifically, the Panel's mission is directly related to Focus Area 6 of the policy which calls for responsive public safety services to be delivered to all residents of Fairfax County. Ms. Anderson noted that the memo contained three recommendations for Panel consideration: bolstering community outreach efforts, advocating for the Board of Supervisors to appoint diverse candidates to the Panel, and continuing to participate in training opportunities. The Panel thanked Ms. Anderson for her work on the memo and requested that she work with Vice Chair Sriskandarajah on a version for the Panel's website.

Next, Chair Doane requested that the Panel approve a plan for the writing of a "Four-Year Review" – the very Four-Year Review that is this document – to review the Panel's progress since its inception. Chair Doane explained that the purpose of the review is to examine the Panel's work, identify trends in the cases it has reviewed, point out issues that remain unresolved and make recommendations for the future. The Panel assented and Mr. Bierman and Mr. Aguilar were asked to conduct the Four-Year Review and write a draft report.

The Panel then turned to the Independent Police Auditor for an update on his work. Mr. Schott reported that the OIPA, with support of the Board of Supervisors, commissioned a study for publication in early 2021 by researchers from the University of Texas San Antonio to review use of force disparities in Fairfax and consider what could be done to reduce disparities. Mr. Schott also "informed the Panel that the Virginia General Assembly passed legislation requiring all law enforcement agencies in the state to provide data on investigative and motor vehicle stops on an annual basis to the Governor and noted that he is confident that this report and any recommendations will be made public." *See* June 25, 2020 Meeting Minutes.

Chair Doane asked Mr. Schott questions concerning the Gum Springs incident. Although Chief Roessler had requested that Mr. Schott review the incident, Chair Doane and others wanted to know if he could automatically review such incidents. Mr. Schott said that in general he only reviews investigations that involve serious injury or death, unless a formal complaint is made. However, he said that because of the seriousness of the Gum Springs incident, he was confident that had the Chief not requested him to monitor and review the police investigation, the Board of Supervisors would have. Therefore, he felt that no change to his mandate was necessary.

Panel Member Shirley Norman-Taylor asked Mr. Schott about an officer's duty to intervene in such a situation, wondering whether other officers involved in the Gum Springs incident should have stopped the subject officer. Mr. Schott explained that while he could not specifically comment on the on-going Gum Springs incident investigation, the FCPD's use of force policy demands that "any officer present and observing another officer using force that is clearly beyond what is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to end and prevent the further use of such excessive force." *See* June 25, 2020 Meeting Minutes. Mr. Schott further explained to the Panel that under FCPD General Orders "officers have the duty to intervene in all other situations where an officer is acting in violation of laws, orders, policies, or ethical conduct, and

immediately notify an on-duty supervisor or commander.” *See id.* He added that the conversations occurring nationally related to the duty to intervene reflect what the FCPD already has implemented.

At the conclusion of the presentation by the Independent Police Auditor, the Panel turned to Complaint CRP-19-29. Chair Doane updated the Panel on the IAB’s progress on the additional investigation requested by the Panel. Importantly, Chair Doane informed the Panel that the IAB would not be conducting two of the investigative requests of the Panel. First, the IAB would not interview coworkers of the Subject Officer, with Chief Roessler contending that it would violate the accused officer’s procedural rights and would be overly burdensome. Second, the IAB would not compare the circumstances and claims of the complaint to prior complaints because the IAB already had done so when the department was determining the proper discipline and found no evidence of prior infractions requiring progressive discipline.

The Panel discussed Chief Roessler’s refusal to undertake the additional investigation requested. Mr. Kay complemented Chief Roessler for his presentation at the March meeting, but he took issue with the IAB’s “decision to not interview the officer’s coworkers as it is a reasonable request to speak with people in his squad to determine if evidence of explicit bias exists.” *See* June 25, 2020 Meeting Minutes. Mr. Kay expressed surprise that there would be any legal impediment to such interviews and emphasized that the Panel’s request only extended to relevant coworkers. Mr. Aguilar added that he was troubled by the inconsistency of additional investigation into the background of certain Complainants but the refusal to engage in additional investigation here. Mr. Aguilar added “that there is reasonable suspicion that the subject officer potentially violated the complainant’s constitutional rights due to racial bias and that it would appropriate to contact the officer’s coworkers through the investigation process.” *Id.*

Major Owens attended the meeting on behalf of the FCPD. He informed the Panel that part of the problem was that it can be difficult to define “coworker” in law enforcement and expressed concern that they would have to “interview a random selection of employees because it is impossible to interview every officer that worked with the subject officer of every complaint.” *Id.* Major Owens also explained that FCPD officers do not have assigned partners for patrol shifts.

Ms. VanLowe stated that she was bothered by the fact that “the report does not lay out a process to determine whether bias existed in the incident” and “asked Major Owens what the current process is for investigating complaints that contain allegations of bias and how they will be handled in the future.” *Id.* Major Owens responded by going over the typical investigative steps taken in an IAB investigation, but Ms. VanLowe reiterated that she wanted to know specifically about bias investigations.

Chair Doane brought up the fact that the Chief’s letter expressed “concern that the Panel did not properly vote to request additional investigation related to ‘comparing the circumstances and claims of the current complaint to any prior complaints against this officer.’” *See* June 25, 2020 Meeting Minutes. The Panel revoted as to that recommendation to make clear that it did request such investigation. Major Owens explained that the IAB in its commitment to transparency already had taken the request at face value as a part of the additional investigation.

Following administrative updates, the Panel addressed the replacement of its independent legal counsel, who was set to retire at the end of the year. Chair Doane noted that the Panel has had on-going concerns regarding the institutional separation between the Panel and the County Attorney’s office, who hires and retains authority over the Panel’s counsel. She said the independence of the panel’s legal counsel from the Office of the County Attorney (OCA) had been called into question several times over the past few years and that the Board of Supervisors Action Item establishing the Panel “did not

provide guidance as to the duties, responsibilities, and supervision of the independent legal counsel for the Panel.” See June 25, 2020 Meeting Minutes.

It was pointed out that the budget for the Panel’s legal counsel comes directly from the OCA, which may be problematic because it appears to involve an appearance of a conflict of interest where the County Attorney often defends the FCPD. Chair Doane reported that she and Mr. Kay had met with Chairman McKay and his staff earlier in the year to request that the money budgeted for the Panel’s independent legal counsel be transferred to the budget of the OIPA, but that had not occurred. Rather, “the County Attorney has taken the position that she is responsible for all legal advice and that retainers ultimately rest with her, but she is willing to allow for the Panel and Independent Police Auditor to provide input on the selection of the next independent legal counsel...” *Id.*

Panel Members discussed their concern that not having truly independent counsel could create a perception in the community that the Panel was not independent, thereby undermining trust in its ability to promote transparency and accountability. The Panel further discussed the best process for choosing the next counsel for the Panel and decided that it would be best to go thorough and transparent RFI Process. Ms. VanLowe and Mr. Aguilar further requested that Chair Doane obtain a full explanation of the County Attorney’s reasoning that only she could pick the legal counsel for the Panel.

July

Before the Panel’s July meeting, Chair Doane and Mr. Bierman met with Supervisor Lusk, Chair of the Public Safety Committee of the Board of Supervisors, to discuss recent concerns in the community. Supervisor Lusk expressed his desire to hold “Listening Sessions” with the Panel and members of the community so that the Panel could better understand community sentiment and community members learn more about how the Panel functions. Supervisor Lusk set a preliminary date of July 29, 2020 for the first listening session.

Supervisor Lusk also asked the Panel to add its comments and recommendations to a Police Policy Recommendations Matrix that he and his team were compiling in the wake of the summer’s incidents. The Matrix included recommendations from various community stakeholders, including but not limited to, members of the Ad Hoc Commission, the Fairfax NAACP, ACLU People Power Fairfax, School Board Member Abrar Omeish, the South County Taskforce, and various other community groups.

Because the Panel was not set to meet until the end of the month, after Supervisor Lusk wished to publish his Matrix, Chair Doane spoke to Panel Members individually asking for recommendations to send Supervisor Lusk in a preliminary document. On July 10, 2020, Chair Doane submitted a recommendations document, and in the body of her email made clear that the recommendations had not been voted on by the entire Panel. Rather, it reflected recommendations made by individual Panel Members. Further, Chair Doane let Supervisor Lusk know that the Panel would be reconsidering potential recommendations as a part of its Four-Year Review.

The preliminary document contained seven areas of potential change for the Panel. See Appendix L (Preliminary Recommendations Memo).

First, the preliminary document recommended full support from the Board of Supervisors for the body-worn camera program. It requested that all officers be fitted with body worn cameras and that the County Attorney’s office or some other independent body be tasked with periodic review of all body worn camera footage.

Second, it recommended ways to improve civilian oversight. These included (1) supporting state legislation to allow jurisdictions in Virginia to choose the model of civilian oversight that would best meet the needs of their communities with the options of authorizing panels to investigate, interview witnesses, hear and receive sworn testimony and evidence, and issue subpoenas; (2) supporting state legislation to allow independent auditors or review panels to hire their own counsel; (3) authorizing the Police Civilian Review Panel to hire an experienced criminal investigative staff person to assist with the fulfillment of the panel's responsibilities; (4) expressly authorizing the Police Civilian Review Panel to review anonymous complaints; (5) allowing Panel Members to access investigatory records electronically; (6) expressly authorizing the Police Civilian Review Panel to hold regular public forums; and (7) expressly authorizing the Independent Police Auditor to review all use of force incidents.

Third, the preliminary document recommended better training and recruitment reform, including requiring implicit bias training and additional bias-related investigation into new recruits such as monitoring social media.

Fourth, the preliminary document recommended that the Chief be given explicit authority to suspend officer pay during investigations.

Fifth, the preliminary document "recommended that the FCPD develop a social media usage policy and mandate that all public social media accounts and postings by members of the police department are subject to inspection by the department, whether or not it is done in relation to any specific allegation or investigation." *See Appendix L.*

Sixth, the preliminary document offered a number of recommendations relating to police transparency, including publishing data related to all police-resident interactions rather than just arrest statistics. Further, the preliminary document suggested that the FCPD implement specific guidelines and processes to help it address complaints related to bias.

Seventh, the preliminary document recommended that oral reprimands be made part of an officer's personnel record and that they be considered with respect to promotions.

The Panel reconvened for its July meeting on July 23, 2020. This was the first meeting for new interim Panel counsel Anita McFadden, who had been retained following the resignation of the Panel's previous counsel. Also present was IAB's new Commander, Major Tonny Kim. The Panel thanked Major Owens, the outgoing IAB Commander, for his work to improve cooperation between the Panel and the IAB.

The Panel discussed the subcommittee meeting for CRP-20-15 and accepted the recommendation of the subcommittee that the Panel review the Complaint. Chair Doane informed the Panel that the Complainant had also filed an ethics complaint against the Panel, alleging that the subcommittee's review was unethical. Chair Doane noted that the Panel had no procedure for handling ethics complaints and suggested that the Panel work with counsel to create a process.

The Panel then turned to the Lusk Recommendations Document. Chair Doane again made clear that these preliminary recommendations had been submitted to Supervisor Lusk prefaced with the fact that not every recommendation represented the full assent of the Panel. Mr. Kay asked that the consideration of such recommendations be tabled in general until the Four-Year Review. Mr. Gallagher and Mr. Bierman agreed. Chair Doane requested that Mr. Bierman and Mr. Aguilar address the recommendations as a part of the Four-Year Review.

The Panel then formally learned of its invitation to participate in Supervisor Lusk's listening session that was to occur on July 29, 2020. All members of the Panel were invited to participate, as was Mr. Schott, the Independent Police Auditor.

During the Panel's new business, Mr. Bierman asked whether the requirement that Panel Members review investigative files at police headquarters could be changed due to health safety concerns during the pandemic. Mr. Aguilar specifically asked whether Panel Members could review investigative files electronically. Major Kim and Major Owens both explained that Panel Members would still have to appear in person to review the files but that extra precautions were being made to ensure safety, including wiping down all surfaces prior to each review.

The issue of electronic access to investigative files has been raised several times by Panel Members since the Panel's creation. Various Panel Members have noted the time it takes to review paper files at the office of the IAB, and how much more efficient it would be for them to review the files electronically. Additionally, most members of the Panel work during the day, and it is difficult for them to schedule time off from work to travel to the offices of the IAB and spend several hours there. The pandemic raised additional issues of safety, with some Panel Members expressing concern that spending hours in a public building could expose them and their families unnecessarily to the Covid-19 virus.

The IAB has resisted electronic access to files, arguing that the Chief is the custodian of records, and that allowing electronic access could compromise confidential personnel records and other information that must not be publicly disclosed. Even though Panel Members sign a confidentiality agreement prohibiting them from disclosing confidential information included in investigative files, the FCPD remains opposed to allowing Panel Members to review files off site through electronic means. This remains an issue for the Panel in the future.

After the conclusion of the July 23, 2020 meeting, Panel Members expected to next see each other at Supervisor Lusk's July 29, 2020 virtual listening session. However, on the eve of the listening session, the County Attorney's Office informed Panel Counsel, Supervisor Lusk and the Chair Doane that the full Panel was not permitted, in the opinion of the County Attorney, under its Action Item and Bylaws to hold meetings for the purpose of public comment. The Panel was advised that under FOIA regulations two members of the Panel could participate in the Listening Session, but the entire Panel could not. With insufficient time to settle the issue, the Panel relented and Chair Doane, Mr. Bierman and Mr. Schott, the Independent Police Auditor, joined Supervisor Lusk in the well-attended virtual Listening Session.

Many questions from the audience were similar to questions posed at prior public comment meetings. These questions included:

- Do you support legislation to give CRP and IPA investigatory authority, the ability to recommend discipline an officer, independent legal counsel, subpoena power, and/or needed staff and funding?
- What are the qualifications for the Independent Police Auditor?
- Are you at all concerned by retaliation or workplace harassment by the police department in the event that your reviews to the Board of Supervisors reflect poorly on the police? How independent can you really be if reviewing the work of people who have the monopoly of use of force in your neighborhood and workplace?
- Why was the only body camera footage shown to the public from the Gum Springs incident from an officer other than the one who deployed force?

- Do you think the Civilian Review Panel should include the Sheriff department? Does VA law allow for a civilian review panel of the Sheriff's department?
- In looking at the official Annual Reports for the FCPD and the Auditor, we can see the racial demographics of the department as a whole, but not by position occupied. Why not?
- How can the police review themselves as Internal Affairs does now?
- Why is it that the Independent Police Auditor has never found a use of force excessive?
- What type of background makes a member of the Panel effective? Do you think being a former law enforcement officer or lawyer is important to be an effective civilian review Panel Member or can someone without that background be a successful Panel Member?
- What changes do the Panel recommend to improve their ability to oversee police action? Should you have subpoena power along with more investigative authority? Should complaints be filed with the Panel as well as the police?
- Do officers have the opportunity to quit rather than be fired like in the federal government? Are there ways to prohibit those people from taking jobs in other divisions/other states/federal law enforcement?
- Acknowledging that the power of the Panel is limited, how can you have always found the investigations of racial profiling etc. to be "accurate, complete, objective and thorough"?
- If you're having at least one person with a law enforcement background on the Panel, would it make sense to also have one person with negative run-ins with law enforcement?
- How can you ensure that Fairfax County Police will not re-victimize an individual for reporting a domestic violence crime and hold perpetrators accountable?
- Do you have staff? How many and what are their general qualifications working for the Auditor?
- Is Fairfax County able to implement the legislature's new Community Policing Act's data collection requirements on police interactions that took effect July 1?

See Supervisor Lusk's Public Listening Session with Ms. Doane, Mr. Bierman, and Mr. Schott, Event Summary, July 29, 2020. Mr. Bierman having made light of the County Attorney's eleventh-hour interpretation preventing all Panel Members from appearing at the listening session, several questions also asked for a formal explanation of why the Panel could not be there in full.

Careful to answer only for themselves, Chair Doane and Mr. Bierman agreed that expanding the powers of the Police Civilian Review Panel, if accompanied by adequate staffing, could greatly increase transparency and accountability. For instance, both offered that they would like the Panel to have some level of investigatory power and the ability to hire the staff needed to conduct such investigations independent of the FCPD IAB. (Supervisor Lusk also expressed some support for such legislation.) Both Chair Doane and Mr. Bierman also discussed the importance of having a diverse array of voices on the Panel representing all geographic areas of the county and racial and ethnic groups. Mr. Bierman discussed several investigative reviews that have come before the Panel and how the Panel reached its decisions, especially in cases alleging racial bias. He noted that CRP-19-29 was still open.

As can be seen by the questions, several of the attendees of the listening session drew attention to the fact that the FCPD conducts investigations of complaints, and the Panel can only review the FCPD findings. There were concerns that the Panel could not be completely independent from the FCPD if it could not question witnesses or subpoena documents. Others were unclear about the distinctions between the Panel and the Independent Auditor, and why the county had created two separate oversight bodies. As in previous public comment meetings, some attendees were confused about why the Panel and IPA could not find for the Complainant and against the officer. It was

explained that the Panel and the IPA can only determine whether an investigation of a complaint or incident was thorough, complete, accurate, objective and impartial. When one attendee asked the IPA why he had always “cleared” use of force complaints. Mr. Schott emphasized that all he was in fact clearing was *the investigation of* use of force complaints.

One topic of the Listening Session was the how the Virginia General Assembly would address oversight and other police and criminal justice reform issues during the Special Session scheduled in August. There were questions about what specific legislation would be helpful to the Panel and the Independent Auditor. Chair Doane, Mr. Bierman and Independent Police Auditor Schott agreed that legislation should provide localities the flexibility to structure oversight of their police departments in the manner that best suits their communities, and that the most important aspect of civilian oversight is its independence.

August

On August 1, 2020, Chair Doane, Mr. Bierman, Ms. McFadden, counsel to the Panel, and Supervisor Lusk held a virtual meeting with the County Attorney to discuss the issue of whether the full Panel could hold meetings for public comment. Chair Doane and Mr. Bierman argued that it was important for the full Panel to hear the concerns of the community so that it could consider those concerns in its recommendations on law enforcement policies, procedures and practices. The County Attorney shared her interpretation of the Action Item and Bylaws, which she said prohibited such meetings for comment. However, she said that she would have no quarrel with amending the Action Item and Bylaws to allow the Panel to hold meetings for public comment. She offered to draft proposed amendments.¹⁰

¹⁰ ¹⁰ It should be noted that several members of the Panel thought that the Bylaws *explicitly permitted* the full Panel to hold meetings for the purpose of receiving public comment. Article VII.A.2 of the Bylaws explains that “[t]he Panel may conduct Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Board of Supervisors.” See Appendix B.1 (Pre-revision Bylaws). This mirrors the language in the Action Item under Recommendation 22 that “The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors.” See Appendix A. Exhibit A to the Bylaws define “Public Meetings” as a “Panel Meeting open to the public conducted on issues within the Panel’s jurisdiction and on law enforcement policies and practices *where the public is invited to comment on such issues and policies and practices.*” See Appendix B.1 (Pre-revision Bylaws). Notably, the “Public Meeting” as defined by the Bylaws is quite clearly distinct from and different than a “Panel Review Meeting,” where the Panel reviews an investigation and “[t]he Panel shall not take testimony or receive evidence.” See *id.* Article IV.E.1.e. Thus, the “Public Meeting” quite clearly allowed the Panel to “invite public comment.”

On the other hand, the County Attorney pointed to Virginia FOIA law distinguishing “public meetings” and meetings where “public comment” could be taken. Specifically, the County Attorney argued that under FOIA rules, while “a ‘public meeting’ is defined as ‘a meeting at which the public may be present,’” this definition explicitly does not include “public comment.” And the County Attorney pointed to legal precedent that “[w]hen the General Assembly uses different terms, such as ‘public meeting’ and ‘public comment,’ in the same act, ‘those terms are presumed to have distinct and different meanings’” (citing *Indus. Dev. Auth. of City of Roanoke v. Bd. of Sup’rs, Montgomery Cty.*, 559 S.E.2d 621, 623 (2002)). Moreover, the County Attorney pointed out that in advance of the adoption of the Bylaws by the Board of Supervisors, the Board had struck from a previous draft “comment” from “public comment meetings” in both places where “public meeting” appeared in the Bylaws. (The Bylaws explicitly defined “public meeting” as a meeting “*where the public is invited to comment.*”) Later the County Attorney revised her opinion to suggest that Panel appearance at a listening session like the one convened by Supervisor Lusk was improper because of a different change to the Bylaws. Specifically, the County Attorney pointed to Article II.C defining a purpose of the Panel, with a late Amendment, to “[m]ake recommendations on law enforcement policies and practices *as they pertain to case reviews* to assist the FCPD Chief of Police (‘Chief’) and Board of Supervisors in policy reviews.” The

The Panel held its next regular monthly meeting on August 27, 2020. Because of the backlog of cases due in part to the COVID-19 shutdown and also due in part to an increase in Complaints, starting August 20, 2020, the panel would hold five business meetings, four of which were review meetings, and four subcommittee meetings over ten weeks, and would write and approve two Review Reports. Each review of an Investigation Report required every Panel Member to schedule time to review the investigative file at IAB. Each draft report was written by a Panel Member, and the drafting could take several hours or days, depending on the complexity of the investigation. With the workload of the Panel and the Chair increasing, Chair Doane recommended that the Panel consider asking the Board of Supervisors to create a new full-time employee position of Executive Director to help the Panel with reviews of Investigation Reports and to draft Review Reports. She raised the issue at the August meeting, and Panel Members agreed that an Executive Director was needed to meet the increasing demands on the Panel. Chair Doane discussed this with Supervisor Lusk and agreed to write a job description for the position. Supervisor Lusk later raised the issue at the Board's Public Safety Committee Meeting, and the matter is under consideration pending budget review.

The main order of business during the August meeting was a review of CRP-20-15, a Complaint concerning an interaction with the FCPD at the I-66 Transfer Station. The Review Report explains the incident in question as follows:

County Attorney argued that this language also prevented a public meeting inviting comment like the Supervisor Lusk's listening session.

There are a number of reasons why Panel members still believed the County Attorney's analysis was incorrect. First, from a purely textualist standpoint, the text of the plain language of the Bylaws provides for public meetings inviting comment from the public like Supervisor Lusk's listening session; to read this ability out of the Bylaws violates the fundamental canon of construction that language should not be read out of a statute so as to render it meaningless. And the interpretation that such a listening session is permissible *does not* read out of the statute that the Panel make recommendations "as they pertain to case reviews." As the listening session would demonstrate, the work of the Panel and specifically its work engaging in case reviews is a subject of any meeting about the Panel's business. Finally, the County Attorney's position is not supported by the definition of "Public Meetings" being "conducted on issues within the Panel's jurisdiction" because the Panel's jurisdiction quite clearly provides for its ability to engage in case reviews/review Investigation Reports *and* make recommendations "to the Chief and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed." *See* Appendix B.1 (Pre-revision Bylaws) Article VII.A.1.

Second, the legislative history did not support the County Attorney's position. While the County Attorney pointed to certain language that had been subtracted or added at the time of the adoption of the Bylaws in July of 2017, these additions and subtractions do not suggest that the Panel may not engage in a public meeting like Supervisor Lusk's listening session. As an initial matter, the fact that "comment" was removed from "public comment meeting" does not show that such meetings with public comments were impermissible, rather it reflects the deletion of surplusage. While the Board struck "comment" from "Public Meeting" as a definition, it then went on to define Public Meeting explicitly as an occasion to invite public comment. Furthermore, the decision to add to the purposes that the Panel make recommendations based on case reviews does not vitiate the ability to have a public meeting on Panel business, which constitutes the review of cases. In addition, the Board approved amendments to the Bylaws in October of 2018 and November of 2019 without any change to the plain language.

Finally, the County Attorney's interpretation on the eve of the listening session ran contrary to the history and past practice of the Panel, again suggesting that such an interpretation, at odds with the plain language of the Bylaws, was incorrect. In 2017, *before* the Panel had engaged in any case reviews, the Panel participated in two such public meetings in November and December of 2017 with Chairman Bulova and Supervisor Catherine Hudgins, respectively. And the Panel engaged in a third public meeting in December 2018 with Supervisor Storck. It is difficult to reconcile the County Attorney's interpretation of the Bylaws with the Panel's actual actions and activities that have never been challenged

On March 23, 2020, the Complainant drove a truck loaded with trash to Fairfax County's I-66 Transfer Station. At the entrance, he told employees that he wanted to be allowed to dump the trash without paying the standard fee of \$13.00. He requested a waiver of the fee because of the state of emergency declared by Fairfax County and the Commonwealth of Virginia in response to the Covid-19 epidemic.

The Complainant was informed by site employees that free dumping had not been authorized. When he continued to refuse to pay the fee, an assistant manager offered him the options of receiving a bill, using a payment plan, or paying a reduced fee. The Complainant declined these offers. During the conversation, he was told several times by the assistant manager that if he did not want to pay, he would have to leave the property.

A call was made to the FCPD after the Complainant refused to comply with the requests to leave. Two uniformed officers arrived at the scene. They talked initially with the facility employees, who described the failed negotiations with the Complainant. The officers initiated a discussion with the Complainant, who remained in his truck during the conversation that followed. Both officers told him several times that he would have to pay or leave. He asked the officers for their names, which they provided. According to the officers, on multiple occasions he rolled up his truck window when one of the officers attempted to talk with him.

While the officers continued their effort to persuade him to comply with their request, the Complainant talked by cell phone to an official at the Department of Public Works and Environmental Services. He described the situation to the official and repeated his demand for a waiver of the dumping fee. The official advised him to leave the property and offered to meet with him at a nearby gasoline station. The discussions with the police officers ended when the Complainant drove his truck to the meeting place. He met with the official and agreed to pay a reduced fee.

See Appendix G.11 (CRP-20-15 Review Report) at 1–2.¹¹

In his Complaint requesting additional review by the Panel, the Complainant alleged the following:

(1) The officers issued an unlawful order by demanding that the Complainant immediately leave the Transfer Station because of a civil dispute; (2) The Complainant's First Amendment right to peacefully assemble and petition the government for a redress of grievances was violated; (3) The number of officers on the scene was excessive because it was not proportionate to the nature of the incident; (4) The names of the officers printed on their badges were not visible to the Complainant and had been covered up; (5) The officers yelled at the Complainant and were "talking over him;" and (6) The police record of the incident was not sufficient, because inaccurate and incomplete comments were recorded on the CAD system by one of the officers, and a written report of the incident should have been submitted.

See id. at 2.

¹¹ The final CRP-20-15 Review Report, *see* Appendix G.11, published October 8, 2020, included discussions regarding the incident, the procedural posture, the Panel meetings, the questioning of the Complainant and the FCPD representatives, and the Panel's deliberations. As such, we will quote heavily from the CRP-20-15 Review Report where appropriate.

The IAB investigated the allegations and found that they were unfounded and that the two officers involved had behaved properly. The IAB Investigation Report included interviews with the subject police officers, the Complainant, and the manager at the Transfer Station.

At the August 27, 2020 meeting, the Complainant appeared. As the Review Report recounts:

In his statement to the Panel, the Complainant said that his civil rights were violated and that the officers violated FCPD General Order 301, which governs internal investigations. Also, the Complainant stated that he never refused to pay the fee. Rather, he wanted a waiver and was questioning the policy when the police arrived. He also expressed his view that the FCPD cannot demand that he leave public property when he is not breaking the law. He reiterated that he felt intimidated and threatened during the interaction with the FCPD, and that he believed the investigation was inaccurate and incomplete.

See id. at 3.

Chief Edwin Roessler and Major Tonny Kim represented the FCPD at the Review Meeting. During questioning of the FCPD, several Panel Members noted that although the manager was interviewed, there were other employees of the transfer station who were not interviewed. Moreover, the Panel had itself previously “made a recommendation to the FCPD, published on January 9, 2019, stating, ‘The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report’” and had later made a recommendation to the FCPD published on January, 15, 2020 that “[w]ith respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.” *See id.* at 4. (Notably, Major Kim subsequently informed the Panel that the IAB had interviewed the additional witness discussed, and that he confirmed the findings of the investigation.)

Panel Members also questioned the FCPD regarding the disposition letter provided to the Complainant, noting the Panel’s previous recommendation that disposition letters “must contain sufficient, specific detail to provide Complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.” *Id.*

Panel Members also probed the FCPD with respect to whether or not investigators followed a “standardized investigative plan” and expressed concern that the quality of Investigation Reports was not the same at the district level and IAB level. Chief Roessler and Major Kim responded that all of their officers get investigative training from the beginning. *See id.*

Finally, Panel Members probed the FCPD regarding training for dealing with potential trespass cases. He indicated that FCPD officers receive extensive training on trespass situations and de-escalation training. Major Kim further responded that “in this incident, the officers asked the Complainant a number of times to move along before demanding that he leave the site” using “due diligence to resolve the matter and ultimately there was a positive outcome.” *Id.*

The Panel deliberated, and while most Panel Members agreed that the FCPD should have interviewed more witnesses, there was simply no evidence to suggest malfeasance on the part of the officers. Furthermore, the Complainant’s assertions about what the officers were allowed to do in the first place were simply wrong as a matter of law (including his alleged First Amendment claims). There had been nothing improper – and certainly no Constitutional violation – in asking the Complainant to leave the transfer station after he had spent a long time holding up traffic. The Panel voted 8-1 that the weight of the evidence and the substantial completeness of the investigation allowed the Panel to concur with the findings of the FCPD. *Id.*

Mr. Aguilar was the lone dissenter. He explained that he could not find that the IAB investigation had been complete or thorough. Specifically, he took issue with the IAB failing to interview a known witness. In addition, Mr. Aguilar viewed the IAB investigation as insufficient with respect to probing the legality of the “move along order” and the appropriateness of such an order here where the Complainant alleged that he was engaging in a constitutionally protected activity. *See* Appendix G.11 (CRP-20-15 Review Report (Aguilar Dissent)).

Following the discussion of CRP-20-15, Chair Doane shared with the Panel the results of the subcommittee meeting on CRP-19-19, which presented a unique situation for the Panel. The Complaint alleged a history of harassment and abuse by the FCPD. Some of the incidents referenced in the Complaint, however, were untimely because they had occurred prior to the date allowed in the Bylaws for the filing of complaints. Further, many of the issues in the complaint already had been litigated in Court where they were dismissed with prejudice. The subcommittee had recommended that the Panel only review the aspects of the Complaint where the allegations were timely. This recommendation passed by a vote of 6-2 with Ms. VanLowe and Mr. Gallagher both voting against taking the Complaint because of its litigation history.¹²

The August 27, 2020 meeting also included a debrief of Supervisor Lusk’s listening session, which has been discussed at length above. Chair Doane informed the Panel that the County Attorney would provide to the panel draft language to change the Action Item and Bylaws to allow for meetings for public comment. Ms. VanLowe asked if there was a sense of the scope of the revised language and if there would be any restrictions to the public meetings. Ms. Doane explained that it was her understanding that there would be no restrictions to the Panel’s ability to hold these types of meetings, and that she would share the proposed language with the Panel when it is received.” *See* August 27, 2020 Meeting Minutes.

Chair Doane also recommended that the Panel begin a comprehensive review of its procedures and definitions. Specifically, she said that the Panel needed to resolve the procedural issues associated with determining jurisdiction by subcommittees. She nominated and the Panel unanimously accepted Vice Chair Sriskandarajah and Ms. VanLowe to serve on a subcommittee to review and make recommendations regarding the Panel’s procedures. The Panel also discussed the usefulness of hearing from the Independent Police Auditor regularly and Mr. Gallagher suggested that a quarterly update may be useful.

¹² At the Subcommittee Meeting on August 20, 2020, the subcommittee, comprised of Chair Doane, Ms. VanLowe and Mr. Aguilar, did not reach consensus on whether to recommend that the Panel review the Investigation Report. At issue was whether the complaint met the threshold requirements for review by the Panel. Article VI, Section A(1) of the Bylaws state that the Panel shall review investigations where the subject matter of the investigation is an allegation of abuse of authority or serious misconduct by an FCPD officer. Although the subcommittee agreed that the Complainant alleged serious misconduct, Ms. VanLowe said that she did not see anything within the investigation file that substantiated the allegations. Additionally, she argued that some of the allegations involved matters that had been previously adjudicated by a magistrate and judge, and that the Panel should not second guess a court’s decision. Chair Doane and Mr. Aguilar disagreed, arguing that legal determinations by a court of criminal misconduct are different from the Panel’s review standards for abuse of authority and serious misconduct. The subcommittee voted 2-1 to recommend that the full Panel review the allegations that were timely filed. *See* August 20, 2020 Subcommittee Meeting Minutes. The subcommittee discussion revealed the differences of opinion among Panel members on how to determine jurisdictional issues. Issues concerning prior litigation and whether evidence in the investigation supported the allegation have yet to be completely resolved.

The Panel considered what to do about the ethics complaint filed by the Complainant in CRP-20-15. Ultimately the Panel decided to appoint Mr. Kay and Mr. Gallagher to a subcommittee to recommend procedures for dealing with ethics complaints.

Mr. Aguilar also brought up the recurring issue of an electronic review of records. Chair Doane explained that Chief Roessler had asserted that he had received legal advice that he needed to keep the records on site and that he would provide the legal justification. However, Chair Doane reported that there had been some conversation surrounding whether Investigation Reports could be viewed at district stations or the Office of the Independent Auditor, but no decision had yet been made.

The Panel finally planned to meet just two weeks later, on September 10, 2020, in part to consider CRP-19-19 and in part to consider the additional investigation in CRP-19-29. The Panel recognized a substantial influx of complaints after the summer.

September

The Panel's September 10, 2020 meeting was primarily a discussion of the IAB's additional investigation into CRP-19-29. At its meeting on March 3, 2020, the Panel had requested further investigation into the complaint alleging racial profiling by a FCPD officer. The IAB completed its additional investigation, and now the Panel met to consider its additional findings.

As already discussed, the IAB did not agree to conduct all the additional investigation requested by the Panel. For example, the FCPD did not interview coworkers of the subject officer. "The mere curiosity seeking, through interviews of random employees, absent any reasonable suspicion and/or probable cause, would violate the procedural rights of employees as established by prevailing laws and personnel regulations," wrote Chief Roessler in a letter to the Panel. "Any officer who is aware of racial bias exhibited by a coworker not only has a duty to report such bias, but is required by policy to report it." *See* Appendix G.10 (CRP-19-29 Review Report) at 14.

However, the IAB did attempt to do a data analysis of the officer's community contacts for two years in the Reston District. The Review Report describes exactly what the Investigation Report provided (and notes the shortcomings of the attempt to use community contact data to investigate bias).

A manual search and analysis of the officer's field contacts and stops was conducted, but it was unsuccessful. Investigators conducted a narrow search of consensual encounters that matched the exact circumstances of the complaint – i.e., a consensual encounter not based on reasonable suspicion or probable cause, where no reasonable suspicion or probable cause was ever developed and where the community member was never detained. Based on that criteria, the officer had no other similar contacts.

The investigation noted that there were three instances with four individuals (including the Complainant) where it was unclear if the officer made a consensual contact without reasonable suspicion or probable cause and where none was ever generated. "Due to lack of clear information," the investigation concluded, "these stops were not included in this analysis."

The investigation did not analyze the officer's traffic stops by breaking them down by race and ethnicity. Investigators also did not analyze by race and ethnicity the officer's non-consensual contacts that began as voluntary contacts, but eventually led to a detention based upon reasonable suspicion or probable cause. Investigators attempted to compare the officer's consensual contacts with those of all officers in the Reston District. However, the data for consensual contacts in the Reston District was incomplete and inconsistent. The investigation

revealed that documentation of community contacts is insufficient to identify the true nature of the contact. The FCPD is taking steps to address this.

See Appendix G.10 (CRP-19-29 Review Report) at 15–16.

At the start of the Panel’s Review meeting, several Panel Members expressed their disappointment that the IAB had not interviewed the Subject Officer’s coworkers. Mr. Bierman expressed dismay with the assertion that there was no probable cause related to the allegation of racial bias, especially taking issue with the claim that there was “not a nexus” between the Subject Officer’s actions and racial bias. He further took issue with the claim that such an investigation was unnecessary due to obligation to report bias. Mr. Bierman noted “that coworkers have an affirmative duty to report biases based on sex [under FCPD General Orders], but that any investigation into alleged sexual harassment in the workplace would certainly involve interviewing other coworkers.” *See id.* at 16.

Mr. Kay asked whether criminal investigative detectives, which was the full-time job of the Subject Officer who just happened to be on patrol that day, were organized into squads and was told that it is likely the investigative section of the Reston District Station had at least five officers.

Mr. Aguilar and Ms. Norman-Taylor expressed concern about the lack of actual statistical analysis in the additional investigation. Major Kim acknowledged that the FCPD’s tracking systems did not necessarily contain the information needed. Mr. Aguilar asked why the additional investigation did not include traffic stops broken down by the race and ethnicity of the person stopped. He further wanted to know “whether the FCPD had established a threshold that would prompt additional review if the data indicated an officer’s arrests, stops or community contacts were excessive for a particular racial or ethnic group.” *See id.* Chief Roessler responded that the FCPD did not have such a threshold but was working on creating one.

Chair Doane and Ms. VanLowe questioned the narrowness of the analysis of community contacts, including the effort to only analyze the exact same situation: a consensual encounter in which no probable cause was ever found.

The Panel deliberated, and it became clear that a majority of the Panel was not satisfied with the FCPD’s response to the request for additional investigation. As the Review Report explains:

They did not think that the Panel’s request for investigators to interview the officer’s squad was unreasonable, since a squad is comprised of at most five officers. Passive reliance on officers to come forward with evidence of an officer’s racial bias in response to a complaint does not meet best practice standards for investigations. Interviewing possible witnesses is standard procedure for any investigation, regardless of the reporting obligations of potential witnesses. Additionally, the statement that there was no “probable cause” to engage in such further investigation was met with skepticism by some members of the Panel, who pointed out that the “probable cause” included a witness alleging racial bias – the Complainant himself – and there was evidence that encounter was based on a “glance” that had not been adequately demonstrated by investigators to be wholly unbiased.

See Appendix G.10 (CRP-19-29 Review Report) at 17.

It was also clear that a majority of the Panel did not believe that the data analysis had been adequate. The Review Report explains:

While the Panel understood that the current records management system needs updating, the data analysis that was carried out was incomplete. All traffic stop data should have been

analyzed, as well as consensual contacts and stops (where there was reasonable suspicion and probable cause before, during or after the encounter). Even if, for instance, the statistics had shown that a high percentage of the officer's consensual contacts had turned into non-consensual stops due to reasonable suspicion or probable cause, a high disparity in the race of the subjects could have been indicative of treating potential suspects of one race differently from potential suspects of another. Although the Panel did not ask for it, the FCPD should have broadened the data analysis to include the officer's contacts and stops for the past five years. The data analysis also should have been broken down by race and ethnicity. The FCPD should not wait for the results of the commissioned study to analyze use-of-force incidents, which may not be available until mid-2021. The FCPD must expedite its update of the data management system and change how it analyzes data so that it can improve early warning systems and investigations of complaints.

See Appendix G.10 (CRP-19-29 Review Report) at 17-18.

Panel deliberations also focused on the question of *how* to investigate bias. Several Panel Members suggested that the FCPD is in a better position to evaluate its investigative procedures and noted that Panel Members are not experts on police practices and procedures. But other Panel Members pushed back, noting that this was not the first Complaint related to racial bias and that the Panel had requested repeatedly that the FCPD devise certain standard plans for such investigations and it hadn't done so.

But the Panel deliberations did not simply involve questions about investigative methods. As explained in the Review Report:

Several members also stated that they did not want the Panel to focus merely on the specifics of how the investigation was conducted. They thought it was important not to lose sight of the broader issue of implicit bias and how it impacts policing. The Report on 21st Century Policing states that the unconscious nature of implicit bias demands that police departments look for new evidence-based strategies to mitigate the impact of implicit bias in policing. The FCPD should consider implementing new, objective, evidence-based procedural justice practices that could prevent an officer from making decisions based upon his implicit bias. For example, what if, before making community contacts, officers were required to ask themselves whether they had prior information that tied a particular person to a specific crime? Would that have prevented the questioning of the Complainant in this case? After the first glance, would the officer have checked himself before making assumptions based on how the Complainant looked? Would he have completed the license plate check, noted that there was no posted trespassing sign, and checked to see if the Complainant had a parking sticker on his car? Other police departments have required officers to go through a short checklist before making community contacts, and this practice has been demonstrated to significantly reduce unnecessary questioning of community members by police. The FCPD should consider doing the same.

See Appendix G.10 (CRP-19-29 Review Report) at 18.

At the end of deliberations, the Panel voted by a count of 7-2 to that the investigation was not complete with respect to the question of racial profiling. Thus, for the first time in the history of the Panel, the Panel invoked Article VI(F)(2)(iii) of its Bylaws to inform the Board of Supervisors that, "in the Panel's judgment, the investigation is incomplete and recommends additional investigation into the allegation of racial profiling by interviewing the officer's coworkers at the Reston criminal investigation section for evidence of racial bias and reviewing data related to the officer's community

contacts and stops in the same manner the FCPD reviewed arrest statistics.” *See* Appendix G.10 (CRP 19-29 Review Report) and 18–19.

The Panel’s finding in CRP-19-29 is significant, not only because it was the first time the Panel had informed the Board of Supervisors that an investigation it had reviewed was not complete, even after sending it back to the FCPD for additional investigation, but also because the Panel had identified what it believed is a systemic failing within the IAB to fully review investigations involving allegations of racial bias and profiling. Further, the Panel’s discussion of this investigation revealed that the FCPD could do more to prevent the kind of consensual encounters like the one that occurred in CRP-19-29.

The Panel’s questions and deliberations at the September 10, 2020 meeting took the better part of two hours, so the Panel decided to table its scheduled review of CRP-19-19. The Panel postponed that review until its October meeting.

Before the September 10, 2020 meeting came to a close, Chair Doane shared with the Panel drafted changes to the Action Item and the Bylaws from the County Attorney’s office. While the County Attorney had previously given no indication that the proposed amendments would be limiting, the proposed amendments limited the Panel to six public meetings throughout the course of the year. Three of the six meetings were restricted to listening sessions held by others and three could be held by the Panel. Chair Doane asked for comments and thoughts before the next Panel meeting.

The Panel reconvened on September 24, 2020. This was a Review Meeting for CRP-20-20 and CRP-20-21, two Complaints submitted by sisters regarding the same incident involving police officers appearing at their home very early in the morning. The Meeting Minutes provide a summary of the incident:

A community member called 911 indicating that there were loud fighting noises coming from a neighbor’s home. Officers were dispatched to the complainants’ address around 4:00 a.m. and knocked several times at the door and did not receive a response. The two complainants were awakened by the knocking and were frightened. The complainants called 911 to report the knocking at the door and the operator informed the complainants that police officers were knocking at the door responding to a call reporting domestic violence. The police officers left after receiving no response but then returned as a result of the complainants call to 911 and due to a second call from the community member to 911 reporting further domestic violence. The officers returned to the complainants’ door and began to knock. The complainants were unable to clearly identify the officers and asked the officers for identification upon opening the door.

See September 24, 2020 Meeting Minutes.

Both Complainants attended the meeting and addressed the Panel. In their opening statements, the Complainants explained that they had asked for additional review because the disposition letter provided by the FCPD was inaccurate, suggesting that the officers at their door had immediately identified themselves, and because they wanted to know what protocols the FCPD has in place for situations involving approaching houses in the middle of the night based on suspicion. Both Complainants further expressed their belief that understanding what occurred would increase trust between the Fairfax community and the police especially insofar as it reinforced that police officers should announce themselves clearly.

Panel questioning of the Complainants focused on additional details relating to the incident. First, the Panel wished to know what about the incident had scared the Complainants and whether the subject officers had acted rudely. The Complainants both affirmed that the subject officers had not acted in a rude or threatening manner but suggested that in some ways what had happened was worse:

because the officers did not announce themselves and were coy with their self-identifications, the sisters were left more confused by the incident and worried that the excessive banging on the door was threatening.

Second, Panel Members, including Mr. Aguilar in particular, wished to know why the Complainants believed that the incident had violated police standards of conduct. Mr. Aguilar noted that the FCPD is one of very few police departments in the entire country to publish its general orders online. He asked whether the Complainants had reviewed the general orders and could point to improper action by the officers. The Complainants expressed surprise that the general orders were available.

Third, Panel Members, including Chair Doane in particular, asked questions about the setting and neighborhood where the incident had occurred. For instance, she asked about the lighting in the neighborhood, whether it was a quiet neighborhood, and whether the Complainants had seen or heard any commotion on the night of the incident. The Complainants explained that it was a very quiet neighborhood and that it had been so on the night of the incident. The Complainants further explained that they weren't able to see the subject officers banging on their door which was part of why they called 9-11.

Captain Hanson introduced Second Lieutenant Dehler to present a summary of the facts of the case. He explained "that the results of the investigation found that the officers made a reasonable attempt to make contact with the individuals in the residence, that they were identified by dispatchers of the Department of Public Safety Communications (DPSC) and by the officers themselves, and that both officers were in uniform with badges of authority." *See* September 24, 2020 Meeting Minutes.

Panel questioning of the FCPD began with Panel Members asking if the subject officers had immediately identified themselves when they knocked on the door, and if they hadn't, how that complied with General Order 601.4. Specifically, General Order 601.4 Section VI.C explains that in responding to a potential domestic incident: "The responding officers shall identify themselves as police officers, explain the reason for their presence, and request entry into the home." *See* FCPD General Orders 601.4. While Second Lieutenant Dehler admitted that the subject officers had not immediately identified themselves, he also said that the subject officers had later identified themselves.

In addition, Panel Members wanted to know about the training that officers receive related to General Order 601.4, especially given that the subject officers justified their decision not to immediately identify themselves because a domestic incident can be a volatile situation and they did not wish to immediately say that they were police. Captain Hanson and Second Lieutenant Dehler further noted that the Complaint had been analyzed as regarding a basic service call but that the investigation had not specifically focused on General Order 601.4.

Also, Panel Members wanted to know why the IAB had failed to interview any neighbors or potential witnesses. The IAB also did not investigate the scene and consider such factors as the lighting at the location of the incident and the absence of any activity at the house or the surrounding area that could suggest that the address was incorrect or that the report of violence may have been inaccurate. Second Lieutenant Dehler said that he had not thought that such additional interviews and analysis were necessary.

Finally, Panel Members asked about what additional steps are taken by officers responding to domestic violence related calls and whether or not the subject officers should have done more to assess the situation, such as looking up any history of domestic violence at the location.

During deliberations, a majority of Panel Members concluded that the Investigation Report was not complete. Mr. Bierman moved that the Panel send the Complaint back and request that the FCPD, “analyze the gulf between the plain language of the General Order and the actions taken,” “interview the relevant witness named in the complaint,” and “analyze the scene” of the incident in the Complaint. *See* September 24, 2020 Meeting Minutes. Chair Doane offered a “friendly amendment” that the FCPD should also conduct other such investigation as warranted. Chair Doane also explained that this was a request for additional investigation per Article VI.E.1.h of the Bylaws. The motion, with the amendment, passed by a vote of six to three.

Following the deliberations on CRP-20-20 and CRP 20-21, Chair Doane informed the Panel of her meeting with Supervisor Lusk regarding the proposed amended language to the Action Item and Bylaws. She noted that, after receiving feedback from other Panel Members, she had expressed her concern about the limitations on public meetings. She also informed the Panel that the next quarterly meeting would be on September 25, 2020.

October

At the October 8, 2020 meeting, the Panel reviewed CRP-19-19. This Complaint alleged police harassment consisting of incidents spanning back several years. Many of these allegations were untimely. For instance, four concerned incidents that occurred before December 6, 2016, and under the Panel’s Bylaws, the Panel cannot review investigations of such incidents.¹³ Six other allegations fell outside the one-year statute of limitations for review.¹⁴ What remained timely – and what the Panel reviewed – were two allegations relating to an incident in June of 2018 involving police responses to a fight outside the Complainant’s residence. The incident included the Complainant’s daughter and resulted in the Complainant being charged with malicious wounding and delinquency of a minor. The Complainant alleged that the subject officer had improperly arrested and charged her and that the subject officer had harassed the Complainant.

The background facts relating to the allegations are as follows: On June 27, 2018, a community member called the Mount Vernon District Station and reported a physical fight that had occurred in the neighborhood earlier that day. A Mount Vernon police officer was assigned to investigate. The altercation outside the Complainant’s residence involved the Complainant’s daughter. The Complainant admitted that she had witnessed the physical fight and that she had ensured that only her minor daughter and her daughter’s minor opponent were involved in the fight. She did not let anyone else step in. She further admitted that she had a small thin pole with her, but she asserted that she never brandished that pole against anyone. She further asserted that no one was injured. *See* Appendix G.9 (CRP-19-19 Review Report) at 2.

The subject officer received a complaint from a witness at the scene. He interviewed other witnesses and viewed a cellphone video that showed some of the altercation. These witnesses alleged that the Complainant had appeared with a metal rod over her head at the scene that she used to threaten

¹³ These allegations were that: “(1) FCPD officers falsely accused the Complainant of robbery at gunpoint; (2) FCPD officers improperly searched the Complainant’s car; (3) FCPD officers issued a defective search warrant pertaining to the Complainant; and (4) FCPD officers falsely accused the Complainant of distributing cocaine and marijuana.” *See* Appendix G.9 (CRP-19-19 Review Report) at 3.

¹⁴ These allegations were that: “(1) a FCPD officer intimidated the Complainant in a text message; (2) a FCPD officer extorted the Complainant by charging her with felony distribution of marijuana; (3) a FCPD officer lied to the housing authority that the Complainant was selling drugs from her home; (4) FCPD officers unlawfully searched the Complainant’s car; (5) a FCPD officer lied under oath during the Complainant’s trial; and (6) The Complainant was falsely incarcerated and harassed while in jail.” *See* Appendix G.9 (CRP-19-19 Review Report) at 4.

and keep others out of the fight. The witness who complained to the subject officer reported that the Complainant struck him on the head with the metal rod and that he had suffered headaches as a result. The subject officer reported that while the video did not show the Complainant hitting anyone, it did show her wielding the rod as a weapon to keep others out of the fight. Based on the video and the witness interviews, the officer presented probable cause testimony to a magistrate and obtained warrants for the arrest of the Complainant for malicious wounding and contributing to the delinquency of a minor. *Id.*

As discussed earlier, *see* FN12 *supra*, at the subcommittee meeting prior to the Review Meeting, Ms. VanLowe expressed her opposition to taking the Complaint in the first place on two grounds. First, she had reviewed the Investigation Report and found no evidence that the subject officer had acted improperly. Second, she expressed her belief that the Panel should not be second guessing the acts of a magistrate or a judge. She further noted that the Complainant had brought a federal civil case against the FCPD which had been dismissed with prejudice. She did not believe that it was within the purview of the Panel to review the Complaint in such a scenario. The two other members of the subcommittee, Chair Doane and Mr. Aguilar, disagreed. They took the position that the Panel's Bylaws specifically allowed for the Panel to review an investigation *after* litigation. Ms. VanLowe ultimately abstained from voting in the Review Meeting given her prior position.

The Complainant appeared at the Review Meeting on October 8, 2020. As the Review Report recounts:

In her statement to the Panel, the Complainant stressed that no one was hurt, and that everyone had willingly participated. "I could not stop it," she said. "It was out of my control, but I was there to protect my daughter who was in the fight, and I told her that it wasn't a good idea, but that's what they chose to do." She said parents of children who participated in the fight lied when they said she struck others with the pole. She said that the charge of malicious wounding was excessive, reckless and false, and that it was later dropped. She added that she lost her job and her housing as a result of the charges, and she had experienced financial pain, loss and distress. She said that she felt like she was a "target" of the police.

See Appendix G.9 (CRP-19-19 Review Report) at 5. During questioning, Panel Members asked the Complainant whether she thought that all of the pertinent witnesses had been interviewed and whether she believed the IAB had seen the video. She responded that she believed that the right people had been interviewed and that she didn't doubt that the IAB had viewed the cell phone video.

Chief Roessler, Captain Hanson, and Second Lieutenant Bowman appeared on behalf of the FCPD. Second Lieutenant Bowman presented the conclusions of the Investigation Report. The IAB had found that the officer, responding to witness statements and the video, had simply engaged in evidence-based policing before approaching the magistrate. The FCPD also pointed out that independent of the investigation one witness had sought and obtained a protective order against the Complainant.

Mr. Bierman questioned Second Lieutenant Bowman regarding the fact that the cellphone video was not in the file. Second Lieutenant Bowman did not know why it wasn't in the file. Captain Hanson requested that in the future, when there appears to be something missing from the file, that the Panel inform him, and he will make sure it is properly in the file.

The Panel deliberated and decided by a vote of 7-1, with Ms. VanLowe abstaining, to concur with the findings of the IAB. Although the video was not in the file, Panel Members noted that the officer's own notes on the video did not say that it showed the Complainant hitting anyone but did

show her threatening others (and she had admitted to making sure that no one else stepped in), so he had not acted only on the video but also on the basis of witness statements. In addition, as explained in the Review Report:

Members of the Panel pointed out that the officer was thorough in his interviews of witnesses and that he considered all the evidence provided to him from community members. Also, he could not have harassed the Complainant because he did not know her previously. Finally, a magistrate also considered the evidence, concurred with the testimony of the officer, and issued the warrants.

See Appendix G.9 (CRP-19-19 Review Report) at 6.

Following the Panel's completion of the review of CRP-19-19, the Panel turned to the drafted review report for CRP-20-15. The Panel had no changes to the report and decided that it did not have any recommendations to add to the report.

During New Business at the October 8, 2020 meeting, Mr. Aguilar asked that the Panel discuss its role and consider what criteria it should use to assess whether "an investigation is accurate, complete, thorough, objective and impartial." Chair Doane reminded the Panel that Ms. VanLowe and Mr. Sriskandarajah were in the process of reviewing Panel procedures, including the subcommittee process. Ms. VanLowe agreed that further review is needed and explained her belief that the Panel must be as objective as possible while acknowledging there is some subjectivity in the way Panel Members make decisions as to whether investigations are accurate, complete, thorough, objective, and impartial. Ms. VanLowe also expressed "her belief that it is problematic that the Panel is confined to three choices for Panel findings as outlined in the Panel's Action Item and Bylaws and wondered if it would be appropriate for the Panel to have more flexibility in this area." *See* October 8, 2020 Meeting Minutes. Chair Doane stated that although the Panel only has three formal responses, the Panel can respond in a number of other ways, including making recommendations, advocating at quarterly meetings, and writing detailed reports. Mr. Bierman suggested the Panel consider whether complete means "finalized" or "total" to further standardize the Panel's review processes.

The Panel's second October meeting occurred on October 22, 2020. This meeting primarily focused on the adoption of the Review Report for CRP-19-29 and a discussion of the Recommendations that would go along with the report. As Chair Doane explained, the Panel already had voted to send the approved Review Report to the Board of Supervisors with a finding that the investigation is incomplete. Although the Action Item and Bylaws do not address the process after that, she said that it would be up to the Board to decide whether to ask for further investigation. *See* October 22, 2020 Meeting Minutes. Chair Doane further explained that in addition to the Panel's finding, a majority of the Panel had agreed that the FCPD should consider new ways to investigate racial bias and profiling allegations and also adopt mitigation strategies to prevent implicit bias in future policing. *See id.*

While one Panel Member expressed some concern that the Review Report had not done enough to credit the FCPD for the additional investigatory steps that the IAB had taken in response to the Panel's requests, ultimately the Panel appeared convinced that the parts of the Review Report detailing additional investigation were sufficient.

The Panel voted on each recommendation individually. The Panel decided to adopt seven recommendations and table two proposed recommendations. The seven recommendations adopted were as follows:

- 1) The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer's public social media profiles; (2) interviewing coworkers in the officer's unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints. Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer's actions under each of the criteria listed above.
- 2) All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer's community contacts, stops, searches and arrests should be broken down by the race and ethnicity of community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.
- 3) Data analysis of an officer's community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district station where the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.
- 4) For the purposes of investigations into allegations of bias or profiling, data analysis of the officer's community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has worked in different districts within the county, the review and analysis of the officer's community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period.
- 5) Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer's community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group.
- 6) The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing.
- 7) Officers should receive implicit bias training on an annual basis.

See Appendix G.10 (CRP-19-29 Review Report) at 19–20.

Two other potential recommendations were tabled for later consideration. First, the Panel considered a recommendation that “[t]he FCPD should consider developing a checklist for officers to use before making a community contact.” *See* October 22, 2020 Meeting Materials. Ms. Norman-Taylor expressed concern that the recommendation did not go far enough and that merely considering the development of a checklist was not enough. On the other hand, Vice Chair Sriskandarajah felt that

if the Panel told the FCPD exactly what it “should” do, that went too far. Chair Doane explained that she felt strongly about the recommendation because other police departments around the country have developed standardized checklists for officers to use in community contacts, and they have seen improvements in unnecessary encounters. Mr. Kay suggested that because the Panel could not agree on exactly what to say in the recommendation and how strong it should be, the Panel table it for future consideration, which passed unanimously. Second, the Panel considered a recommendation that “The FCPD should undertake a review of officer training, policies and practices relating to pro-active policing to make sure that officers do not engage in hypervigilant practices that undermine other professional training.” *See* October 22, 2020 Meeting Materials. Again, the Panel could not agree on the proper language for the recommendation, and there was some concern about the use of the term “hyper-vigilant.” The Panel also decided to table this recommendation.

Ultimately the Panel voted to adopt the CRP-19-29 Review Report and its seven recommendations by a vote of 8 to 1.

The Panel then turned to a discussion of the proposed ethics review procedure in light of the ethics complaint brought against the Panel by the Complainant in CRP-20-15. Mr. Kay and Mr. Gallagher discussed options considered for handling such complaints. For instance, Mr. Kay and Mr. Gallagher considered sending all ethics complaints to the Independent Police Auditor, but the Action Item establishing the OIPA did not provide for the Auditor to handle such complaints. Mr. Gallagher further reported that he had consulted with NACOLE, but that the organization was unaware of another civilian review panel that had encountered an ethics complaint. Instead, Mr. Kay and Mr. Gallagher decided on a procedure, whereby a subcommittee of the Panel would handle ethics complaints through an internal review, and then the Panel would make a finding and recommendation to the Board of Supervisors. Ms. VanLowe moved that the Panel adopt the procedure for the next two years but revisit after that time, if necessary. The motion passed unanimously.

During new business, Chair Doane asked Rachelle Ramirez from the Office of the Independent Police Auditor to present the newly released FCPD data Dashboard. *See* <https://policedata-fcpdgis.hub.arcgis.com/>. Ms. Ramirez described how the public data dashboard “includes data related to arrests, traffic warnings, and traffic citations that individuals can filter by year, police district, magisterial district, gender, race, residency status, and location.” *See* October 22, 2020 Meeting Minutes. Ms. Ramirez further informed the Panel that the FCPD created a working group including the Independent Police Auditor and representatives from ACLU People Power, the Anti-Defamation League, Justice Forward Virginia, and the Fairfax NAACP to help design the dashboard, which remains a work in progress. Chair Doane “recognized that the data dashboard as a great step forward and encouraged members of the public to utilize it.” *See id.*

November

The Panel met next on November 12, 2020. The Panel first considered the Subcommittee recommendation on whether to review CRP-20-29. The subcommittee recommendation would raise, yet again, the need to re-examine and further standardize the Subcommittee process for determining jurisdiction.

The Complaint alleged malicious prosecution by an FCPD officer, and specifically that the officer provided false testimony to a magistrate, failed to document properly the investigation, and failed to fully investigate a felonious assault with a knife in a conspiracy between the FCPD officer and the Complainant’s ex-girlfriend. The Complainant further charged that a warrant for his arrest had been executed improperly. The Subcommittee considered these allegations and determined that they constituted allegations of serious misconduct and abuse of authority. However, the Subcommittee also

determined that upon a review of the Investigation Report, there was no evidence to substantiate any of the allegations. The interviews and documentation supported the actions of the subject officer. Moreover, the Complainant alleged specious claims that the officer had engaged a conspiracy with the Complainant's ex-girlfriend and that the officer had been derelict in her duty because she had not sufficiently questioned why the ex-girlfriend had waited several days before reporting the Complainant's threatening actions.

Following the Subcommittee meeting, the Complainant had sent a letter to Chair Doane alleging that the Subcommittee had acted improperly in dismissing serious allegations. As Mr. Bierman explained at the November Panel meeting, however, the Complainant's letter mischaracterized what had in fact been said and decided. The Subcommittee had expressly determined that the Complaint *did* include allegations that rose to the level of serious misconduct, but that there was simply no substantiation at all for such allegations in the Investigation Report. Thus, the Subcommittee recommended against taking the Complaint.

Mr. Sriskandarajah noted that this was exactly the type of situation that the Panel should address in its upcoming procedures review. The Panel voted unanimously to adopt the recommendation of the Subcommittee and declined to review the investigation.

The remainder of the meeting was devoted to hearing a presentation from the Independent Police Auditor. He reviewed his work over the last four years, highlighting his findings and recommendations in several prominent use of force incidents that he had reviewed.

He also addressed the standards that he uses in assessing investigations of use of force incidents and how he conducts his reviews. Mr. Schott also provided data and charts and took questions from the Panel, which are discussed in the Meeting Minutes:

- Mr. Aguilar asked Mr. Schott what areas of training he recommends the Panel Members receive. Mr. Schott recommended training on the 4th Amendment, particularly for new Panel Members without law enforcement experience, and training on the 14th Amendment because of its relevance to racial profiling and bias investigations.
- Mr. Kay asked about the recommendation to the Board of Supervisors on the FCPD's social media usage policy. Mr. Schott stated that the FCPD has not yet adopted an individualized social media policy for its employees but should adopt one unique to their mission.
- Mr. Bierman noted that three incidents reviewed by the Police Auditor involved choking and asked if the new legislation in Virginia that bans chokeholds would change the consideration of objective reasonableness of officers' actions in the future. Mr. Schott clarified that two of the three incidents he reviewed included allegations of choking, but there was no contact made with the individual's neck. He stated that under current FCPD policy, the use of a chokehold would be a violation, however, it could still be considered reasonable under *Graham v. Connor*.
- Ms. Norman-Taylor commented that the general public may not know that there is no requirement that officers use the "least intrusive alternative" and referred to the common question of why officers do not aim to shoot a suspect in the leg, rather they aim for the heart. Mr. Schott expressed his agreement and stated that officers can use a less intrusive force alternative but are not required to.
- Ms. Doane referred to the Auditor's recommendation that the Chief should have the authority to immediately suspend officers, with or without pay, pending an internal investigation. She asked about the rationale for that recommendation and where it stood in the process. Mr. Schott replied that it is included in Supervisor Lusk's matrix and may be considered in a future Public

Safety Committee meeting or by the Personnel 5 Committee. He said that it can be troubling to see an officer suspended with pay when later that officer is terminated.

- Ms. Doane stated that she remains concerned about the use of force on individuals with disabilities, specifically when officers place a person face down with hands hand-cuffed behind the back. People with Down Syndrome may be at risk for asphyxiation and death when this maneuver is used, she said. Mr. Schott said that he was not aware of a policy specifically addressing this population, but he has recommended that with use of the Ripp Hobble technique, officers should place the person in an upright and seated position as soon as possible. Ms. Doane stated that she wants to ensure that officers are trained on how to safely interact with individuals with Down Syndrome.

See November 12, 2020 Meeting Minutes.

Following Mr. Schott's presentation, Chair Doane informed the Panel that the Board of Supervisors would be considering a change to the Action Item at its next meeting to allow the Panel to conduct or participate in six Public Meetings per year, including with public comment. She said the amendment had been changed to allow the Panel to conduct six public meetings for comment a year, with no restrictions as to who sponsors the meetings. Chair Doane also recognized Major Dean Lay as the new commander of the IAB. And Ms. Doane acknowledged and thanked Gentry Anderson, who provided impeccable support to the Panel, for her service before Ms. Anderson moved on to a job in the private sector.

December

Before discussing the Panel's December Meeting, it is worth reviewing the standards set forth in the December 2, 2020 Subcommittee meeting. This is because in that meeting Chair Doane clearly enunciated a standard for Subcommittee reviews going beyond just reviewing the allegations of the Complaint. Specifically, Chair Doane outlined a two-step process: (1) Does the Complainant allege serious misconduct or abuse of authority? (2) If the answer is yes, are the allegations supported by the evidence in the investigative file? *See December 2, 2020 Subcommittee Meeting.* In that instance, Chair Doane found that while the Complainant did allege serious misconduct, there was simply no substantiation in the record. While this two-step process was consistent with how the Panel has operated in practice, it is worth noting that it still represented a departure from the process whereby the Subcommittee would only consider the allegations of the Complaint.

On December 10, 2020, the Panel held its last business meeting of 2020. This meeting was primarily a Review Meeting for CRP-20-19 and CRP-20-27, two Complaints filed by an individual Complainant regarding his treatment by the FCPD in two marijuana arrests. The lengthy discussion and the FCPD's extensive investigation leading to real policy changes represented the best of the Panel, and the Panel was very satisfied that the experience highlighted how the Panel has been making change in the community. The Complainant and representatives appeared at the meeting.

The first Complaint, CRP-20-19, alleged that the Complainant had been assaulted while in custody in the interview room at the Franconia District Station and that the Subject Officer had also engaged in further abusive behavior throughout the Complainant's time in custody. The use of force allegations will be addressed by the Independent Police Auditor, but the Panel reviewed the additional allegations of "abusive language, threats, illegal detention, unethical behavior and violations of police procedures, regulations, and laws," including, at one point, brandishing a knife. *See December 10, 2020 Meeting Minutes.* The investigation in fact found numerous violations with respect to the interaction with the Complainant, including that the Subject Officer "did not ensure his body and cruiser microphones were working properly, [did] not secur[e] the complainant in the cruiser properly,

misplac[ed] evidence, fail[ed] to update and amend the incident report, fail[ed] to provide the Commonwealth Attorney information about his communication with the complainant prior to the encounter, [did] not informing his supervisor about using an app which violated stakeout and surveillance procedures, fail[ed] to document actions in an incident report, [and] fail[ed] to cooperate and coordinate with the Street Crimes Unit.” *See id.*

The second Complaint, CRP-20-27, involved a separate an unrelated arrest of the complainant by the Street Crimes Unit (SCU) for the distribution of narcotics to an undercover officer. “The complainant alleged that the detective did not provide sufficient discovery, he was not arrested in a proper manner, his vehicle was seized improperly, and the detective was unprofessional in the interview.” *Id.* The IAB found no violations with respect to this second Complaint.

Chief Edwin Roessler, Colonel Gun Lee, Major Dean Lay, Captain Alan Hanson, and Second Lieutenant Dana Ferreira, and Second Lieutenant David Giaccio appeared on behalf of the FCPD. Second Lieutenant Ferreira, who had written up the lengthy investigative report for CRP-20-19, explained that the IAB had found over 30 policy violations by the Subject Officer, who’s employment with the FCPD had been terminated.

What was notable about this investigation was that it revealed misconduct *that the Complainant was not even aware of* and led to specific policy changes by the FCPD. Indeed, the investigation went beyond the IAB and also included the Major Crimes Bureau (MCB) and Street Crimes Unit. While the officer identified the stop of the Complainant as consensual, “the investigation revealed that the officer communicated with the complainant using a [cell phone] app [on his personal cell phone] in an undercover capacity to arrange the purchase of narcotics.” *Id.* The IAB learned that the Subject Officer had been using this undercover method while out on patrol and never disclosing that he had set up the mini-stings. Rather, typically, he would set up the potential buy, approach the prospective seller while in uniform, and then use the plain smell doctrine as a pretext for a search to find narcotics and an arrest. These facts would then never be disclosed to the arrestee or the Commonwealth’s Attorney, and indeed this investigation led to a dismissal of charges and overturned convictions in several cases. In addition, the investigation of the Complaint led to a new General Order 501.2 making clear that no patrol officer is to engage in such undercover tactics without the approval of a superior (and the subsequent steps taken by undercover officers, such as disclosing such tactics during discovery).

Second Lieutenant Giaccio presented a summary of the findings in the investigation into CRP-20-27. In doing so, he “reviewed the routine tactics used by the Street Crimes Unit [involved in the arrest] and said they are approved by the Commonwealth’s Attorney to maintain a high level of control and reduce confrontation.” *Id.* He also walked through how the vehicle seizure had complied with state code and General Orders 520.4 and 520.10. He also explained how the arrest had complied with protocol.

Following the presentations by the FCPD, the Complainant appeared. He explained that he was satisfied with the investigation and that he had learned a lot from the presentations. His only further wish was that he had been provided more information in the disposition letters. Indeed, the Complainant admitted that had he known the outcome of the investigation in question, he would not have made a review request, showing that there are still opportunities to improve disposition letters, which has been a goal of the Panel.

The Panel questioned the FCPD representatives at some length. These questions concerned primarily two aspects of the investigation: (1) the officer’s improper use of the cell phone app and who knew about it, and (2) the fact that the officer’s interview of the Complainant had not been videotaped.

First, as Mr. Kay, Mr. Sriskandajarah, Mr. Aguilar, Ms. Norman-Taylor, and Mr. Bierman pointed out, it appeared that the investigation uncovered a number of other officers with knowledge of the Subject Officer's use of the cell phone app. (Indeed, it was even revealed during the investigation that at one point the subject officer appears to have used the cell phone app to set up a buy with an undercover officer of the Street Crimes Unit.) Mr. Kay, Mr. Sriskandajarah, and Mr. Bierman in particular focused on the fundamental misunderstanding of discovery rules exhibited by the Subject Officer and the potential Constitutional violations that the subject officer may have engaged in given the obligation of the police and Commonwealth's Attorney to provide potentially exculpatory evidence to defendants (such as if there is a potential for an entrapment defense due to an undercover operation). In fact, the failure to inform the Commonwealth's Attorney of these tactics resulted in overturning convictions and dismissing charges in certain cases. Questioning also focused in on the reporting obligations of the officers who knew that the Subject Officer was engaging in such improper acts.

The IAB representatives explained that officers are trained on their discovery obligations and that officers in the Street Crimes Unit using such tactics very much know that they must disclose their actions and always do so. The IAB representatives further explained that officers do have a reporting obligation when they see or know of other officers engaging in improper behavior. In this instance, there was no IAB General Order explicitly prohibiting the use of cell phone apps by patrol officers. When questioned as to whether the other officers should have reported the Subject Officer for Constitutional violations, the IAB officers explained that while the investigation revealed that some of the Subject Officer's colleagues had an inkling that the Subject Officer was using the app, they did not have direct knowledge that he had used the app on his personal cell phone and then failed to disclose that fact to the Commonwealth's Attorney's office. While that act had been improper, there was no blanket prohibition on using a cell phone act as an investigative tactic, so the IAB did not feel that the other officers violated their reporting obligations in not reporting the Subject Officer. But, cognizant of the obvious problems with his behavior, the FCPD had written a new General Order specifically prohibiting such behavior so that any officer put in the same situation at a later date *would* be obligated to report. This order had also been communicated by the superiors at the Franconia District Station where the Subject Officer worked.

Second, Panel Members were concerned about the fact that the Complainant's interview had not been videotaped, which could have helped clear up allegations surrounding the interview. The IAB representatives explained that there is not a rule that all interviews must be videotaped, but there is a rule that all interviews must be observed by at least one other officer. Panel Members explained that they would be recommending that all interviews be taped in the future.

The Panel deliberated and expressed its satisfaction with the depth and breadth of the IAB's investigation and the FCPD's commitment to positive change, noting that the IAB had gone well beyond the four corners of the Complaint. The Panel voted 9-0 to concur with the findings of CRP-20-19. The Panel voted 8-1 to concur with the finding so CRP-20-27, with Mr. Aguilar in dissent due to his belief that the IAB could have further investigated comments made by a police officer during the arrest.

The general tenor of the Panel discussion was to note that on this one the system had worked. A Complainant had brought attention to a potentially bad officer. The investigation had revealed additional misconduct. The IAB had not only dismissed the officer but taken further corrective action and changed its policies. The Panel had had the opportunity to review the investigation, make policy recommendations, and consider whether the IAB's actions had been appropriate (*i.e.* considering whether the IAB should have found reporting violations). The Panel was quite satisfied with the outcome.

The December meeting moved on to consider the Ethics Complaint lodged in CRP-20-15 against members of that subcommittee. Mr. Gallagher, who had reviewed the Ethics charge as a part of an Ethics Subcommittee as agreed upon at the prior meeting, explained that he had listened to the subcommittee meeting and could not find any violation of the Panel's Code of Ethics. *See* Appendix C. Mr. Kay explained that the Complainant had lodged a second Ethics Complaint against the entire Panel, but that no member of the Panel could be unbiased in reviewing that Ethics Complaint, therefore the Ethics Subcommittee recommended informing the Board of Supervisors as to that Ethics Complaint. The Panel voted 6-0 to agree with the recommendations of the Ethics Subcommittee, with the members of the CRP-20-15 subcommittee abstaining. *See* December 10, 2020 Meeting Minutes.

The Panel moved on to a discussion on the retention of outside counsel for the Panel. Chair Doane explained that the Panel would have to decide whether it wished to retain Ms. McFadden, who had stepped into the role some months prior, or choose to open up the competitive bidding process. The County Attorney, Beth Teare, explained that a competitive bidding process was not required for the position. The Panel had earlier voted, however, that it would like to see a competitive bidding process before the installation of Ms. McFadden as interim counsel. Very satisfied with Ms. McFadden's experience, credentials, and abilities, it was moved that the Panel would rescind its earlier commitment to a competitive process and retain Ms. McFadden as permanent outside counsel. That motion passed 6-2 with Ms. VanLowe abstaining. Ms. VanLowe also expressed her satisfaction with Ms. McFadden (as did Mr. Bierman who cast a dissenting vote) but explained that she thought that the Panel's commitment to openness and transparency required the Panel to consider other candidates.

The December meeting, and the Panel's busy 2020,¹⁵ closed with Chair Doane and other members of the Panel expressing their deep gratitude to Chief Roessler, who had announced his retirement, for his support of the Panel over the years. The Panel would be lucky to have a future police chief who responds to oversight as Chief Roessler has.

¹⁵ *See also* Appendix F (Panel Data Summary) (showing that in 2020, 21 initial Complaints were brought directly to the Panel, eight of which were later requested to be reviewed by the Panel, and there were fourteen Review Requests of investigations not initiated through Panel Complaints).

ANALYSIS

The Panel's mission is "to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigation." Over the years the Panel has endeavored to increase transparency and accountability through its review of investigations. The Panel has been very encouraged by the incremental advances in quality of the Investigation Reports that it sees on a regular basis. Also, the amendment to the Action Item by the Board of Supervisors to allow the Panel to include in its reports a full explanation of the facts and findings in Investigation Reports has substantially increased transparency.

However, the Panel continues to experience some of the same challenges that it faced from the beginning. For example, the Panel continues to struggle with the process by which it determines authority to review investigations, and Panel Members sometimes differ on when to send an investigation back to the FCPD for additional investigation. One Panel Member's view on thoroughness (*i.e.* were all potential witnesses interviewed) may differ from another member's view that the investigation was substantially complete, even though some potential witnesses were not interviewed. Additionally, the Panel encountered the difficulties of ensuring balance while being diligent in the reviews. Some panelists expressed that the body must ensure that it does not indirectly cause any given officer to "take the fall" for the symptoms of the deep-seated systemic issues within the larger "policing culture."

Moreover, the Panel's very mission statement may need to be revised, because it is not clear that community members believe that the Panel's review of a FCPD investigation is truly independent. Some community members assert that, because the FCPD performs the investigation, and the Panel can only send an investigation back to the FCPD for additional investigation or inform the Board of Supervisors that the investigation is not complete, the Panel lacks independence from the FCPD. Hence, the review-only model is ineffective in enhancing police legitimacy and building and maintaining trust between the community and the FCPD.

When the Board of Supervisors established the Panel, it had the clear goal of increasing transparency in the FCPD. Authorizing the Panel to conduct investigations of complaints against police officers was not an option at that time, because state law did not allow for investigatory oversight. In fact, there was substantial opposition even to adopting a review model for oversight. No other local jurisdiction in the state had successfully established an independent civilian review panel like the one adopted by the Fairfax County Board of Supervisors. As such, the initial Panel had little guidance on how to structure its review process other than the broad parameters prescribed in the Action Item. The Panel wrote its own Bylaws establishing its process and procedures. As the Panel gained experience, it necessarily found it necessary to modify some of its procedures and to request amendments to the Action Item in order to better fulfill its mission and maintain its critical independence.

One thing has not changed, however. The Panel has never been empowered to reverse a finding of a FCPD Investigation Report or to direct the FCPD to implement a policy recommendation. Additionally, the Panel lacks authority to comment on or make any recommendation regarding the discipline of officers.

Panel Successes

Although the Panel's authority is restricted in essential ways, the Panel has managed to positively impact FCPD policies. The Panel has watched approvingly as the FCPD has cemented itself as one of the most transparent police departments in the country. But this was not preordained, and several changes have contributed to FCPD's progress.

First, the Panel recognized that FCPD disposition letters provided insufficient information to Complainants to allow them to assess how the FCPD had responded to their Complaints. Complainants were informed of the findings of the investigation but not the rationale behind them. This made it virtually impossible for Complainants to determine whether they wanted to request a review of the investigation by the Panel. The Panel, along with other stakeholder groups in the community, worked with the FCPD to design a template for disposition letters that provided more information to the Complainant, but also continued to respect police officers' procedural rights in reviews of their employment performance. The Panel must continue to monitor the disposition letters for consistent adherence to the new template; however, most of the disposition letters issued by the FCPD today are far better than those earlier in the Panel's existence and before the Panel's existence. The Panel very much commends the FCPD on this improvement.¹⁶

Second, the Panel recognized that it needed to be able to write detailed reports that explained the facts found uncovered and the conclusions reached by the investigation. The Panel concluded its reports were inadequate if they merely (as mandated by the original Bylaws) reported the limited information disclosed in disposition letters to the Complainant or revealed by the FCPD at review meetings. Because the Panel speaks mainly through its reports, it was imperative that those reports be complete, clear and factual. The Panel had to push for changes so that it could meaningfully balance the needs of public disclosure with the need to protect certain confidential information. After the passage of the revised Action Item in September of 2019, Panel reports went from being short summaries to meaningful and detailed descriptions of the investigation, the findings of the FCPD, and the Panel's deliberations and findings. This was important for the Panel, the public, and the FCPD. The Panel can now elucidate its reasons for concurring or not concurring with FCPD findings by referencing evidence in the investigative file. The Complainant and the community benefit from understanding the reasons for the FCPD and Panel findings. The FCPD benefitted from increased transparency and trust in the community – especially where the Panel (as it frequently does) concurs with the findings of the FCPD.

Indeed, the Panel believes that its more detailed reviews and reports have had a positive impact on the quality of IAB investigations. Panel Members have witnessed the improved quality of Investigation Reports since the Panel's inception. Witness interviews and interviews with officers and Complainants are recorded, in-car and body-worn camera video is made available, and more detailed and improved arrest data analysis is provided. IAB Investigation Reports generally are well documented and organized, providing Panel Members with a comprehensive understanding of the investigation. While the Panel has pointed out what it contends are short-comings in the investigative processes relating to allegations of racial bias and profiling, generally the Panel has seen complete and extensive investigations in other types of complaints.

¹⁶ Because there are still times when Complainants come before the Panel without much understanding of the investigation that they have requested be reviewed, *see* CRP-20-19 and CRP-2027, the Panel will continue to monitor disposition letters and make recommendations where necessary for ways to improve such letters.

Third, the Panel recognized that to be effective, it needed a more constructive dialogue with the FCPD, the Board of Supervisors and other important county officials. The establishment of Quarterly Meetings between the Chair and Vice-Chair of the Panel, staff representatives of the Board Chairman and Chair of the Public Safety Committee, members of the FCPD, and representatives of the County Attorney's Office and the County Executive's Office, has proved to be beneficial to all stakeholders. The Quarterly Meetings raise and often resolve important issues. Through this process, the Panel keeps the Chairman of the Public Safety Committee apprised of the activities of the Panel and issues that need to be addressed. This dialogue has helped the Board of Supervisors better understand the complaint process and issues that confront the Panel.

Fourth, the Panel recognized that the public needed a way to track and understand the Panel's recommendations to the FCPD, and it needed a way to react to FCPD actions (or the lack thereof). Simply making recommendations at the end of Review Reports was not a recipe for effective oversight. Moreover, just as importantly in terms of increasing community trust in the police, the FCPD needed an opportunity to describe the changes it made in response to the Panel. The Quarterly Meetings served as a forum for Panel leaders to collaborate with the FCPD to devise a recommendations matrix that could be shared publicly. The matrix enables the Panel to comment on FCPD implementation of Panel recommendations and allows the FCPD to explain its reasoning when it disagrees with recommendations or believes that a recommendation is duplicative of a policy that the FCPD already has in place. *See Appendix E (Recommendations Matrix).*

The FCPD has responded favorably to many of the Panel's recommendations. In the last four years, the Panel has made 22 recommendations, and the FCPD has concurred with or adopted 12 recommendations and has adopted one recommendation with modifications. The FCPD has rejected only one of the Panel's recommendations, and eight recommendations were still under review by the FCPD as of this printing, seven of which were made in late October of 2020.¹⁷ *See Appendix E (Recommendations Matrix).*

Fifth, the Panel fought to make sure that meetings for public comment will be a part of the Panel's future. In the first two years of the Panel's existence, the Panel held three meetings for public comment to introduce the community to the Panel, to explain its work and to receive public input into the Panel's work. The Panel was subsequently advised of concerns that the Panel lacked the authority to conduct more public meetings for comment. Moreover, the public meetings were lightly attended, and the Panel pursued other priorities. Thus, no more such meetings were held, but several Panel Members continued to point out the need for public input regarding policy recommendations. Community outreach by the Panel became increasingly important following the homicide of George Floyd and local demonstrations supporting criminal justice reform. These circumstances spurred changes in the Action Item and Bylaws to permit public meetings for comment by the Panel up to six times annually.

Concurrent with these changes, the FCPD also has taken unprecedented and highly commendable steps to increase transparency. These steps are the result of the long-standing dialogue between the FCPD and important community stakeholders in accordance with the FCPD's co-production model of policing that emphasizes the importance of community engagement in bringing about change. The Panel is also a part of that co-production model. One of the most impactful changes

¹⁷ The goal of this Four-Year Review was to cover the first four years of the Panel's existence. In mid-January 2021, the FCPD provided responses to certain Panel Recommendations that had been under review. Because the Panel has not had an opportunity to speak with one voice in response to these recommendations, this document makes no comment on the FCPD's responses. But, notably, as explained, ultimately it will be up to the Panel to determine whether the FCPD's responses are sufficient and on point.

that has resulted from the FCPD's efforts at community engagement has been its release in October of 2020 of GIS-based data dashboards. This provided the public with a wealth of information related to arrests, citations, and traffic stops, broken out by race, gender, district station, location, and other criteria. The FCPD now provides the community with many of the tools it needs to evaluate the performance of the FCPD. Indeed, the FCPD is one of the most transparent police departments in the nation.

Finally, as 2020 came to a close, the Review Meeting for CRP-20-19 and CRP-20-27 reinforced the Panel's belief that a strong IAB within the FCPD and competent civilian review and oversight can work together to achieve positive and effective results for the community. The investigation of CRP-20-19 and CRP-20-27 went well beyond the four corners of the Complaint and rooted out improper police behavior that was not known to the Complainant or within the FCPD generally. In its findings, the FCPD not only sustained violations by the officer and disciplined him, it also adopted department-wide policy improvements designed to prevent officers from engaging in the same behavior in the future. Furthermore, the FCPD made clear that a failure to report such behavior observed by officers would result in a violation of FCPD regulations. Indeed, the Complainant praised the FCPD for its candid explanation at the Review Meeting and expressed satisfaction with the exhaustive investigation. Panel Members pointed out at the conclusion of its Review Meeting that the investigation was an excellent example of how investigations should be conducted and reviewed. The Panel concurred with the findings of the investigation, but also offered several more policy recommendations for the FCPD to consider. With respect to CRP-20-19 and CRP-20-27, the system worked, and the Panel is encouraged by that success.

Panel Opportunities

Before describing the challenges the Panel faced during its first four years, it is worth noting that there were major changes in Virginia state law during the Panel's fourth year, and with them opportunities. Specifically, during a Special Session of the Virginia legislature called largely in response to the George Floyd homicide, the General Assembly passed, and the Governor later signed, SB5035 and HB5055. This bill takes effect on July 1, 2021 and empowers local jurisdictions like Fairfax County to create civilian review boards with investigatory power, the ability to subpoena witnesses, and the ability to impose discipline.

The Board of Supervisors has not indicated one way or another which, if any, of these potential changes it wishes to implement, but certain members of the Board of Supervisors have expressed interest in examining whether to broaden the Panel's authority. Thus, the Four-Year Review is operating at a time when the Panel has potential to be reformed or changed.

It is also worth noting that Chief Roessler will be retiring at the beginning of February. Chief Roessler has been the Chief of Police throughout the tenure of the Panel. The Panel has come to understand Chief Roessler as an important partner in its work. A new Police Chief will require the Panel to cultivate a new relationship and the Panel stands ready to continue its strong working relationship with the FCPD and with Chief Roessler's replacement.

Panel Challenges

The Panel faced major challenges in its first Four Years. These challenges, as outlined below, are divided into the following two categories: (1) internal/administrative challenges; and (2) external/substantive challenges. A common theme runs through all these challenges though: the Panel as currently structured and constituted struggles to maintain its independence from the FCPD (and is,

indeed, in some ways rather dependent on the FCPD), and thus struggles to make a bigger impact on community trust. The challenges facing the Panel call for actions that increase the Panel's independence in fact and in perception.

Internal/Administrative Challenges

As the Panel began its primary task of reviewing investigations, certain procedural and administrative hurdles to conducting Panel Business became readily apparent.

First, the Panel's job has been made more difficult by the Panel Members inability to remotely review Investigation Reports. The Panel is cognizant of the importance of maintaining the confidentiality of these files and ensuring that they are properly handled. The Panel is also aware that these files include personnel records, names of confidential informants, names of victims and witnesses, and other confidential information that must be protected under state FOIA regulations, and that the Chief of Police, in his discretion, has justified not providing the records electronically due to these concerns.

However, Panel Members are all volunteers, and many have full-time jobs. For every file review, Panel Members must make appointments and travel to the IAB office at Police Headquarters to read the investigative file. The normal working hours for the IAB office are from 9:00am to 5:30pm. While the IAB has expressed some willingness to allow appointments outside of regular hours, it has treated these as special requests (and indeed it requires the IAB to devote more resources to cover evening or weekend appointments). Panel Members typically take time off from work to go to the Fairfax location and to spend many hours reviewing files. Panel Members must get everything done while they are there. Handwritten (or sometimes typed) notes are all that Panel Members can leave with, but they cannot refer back to the file itself on their own time when preparing for Panel Meetings or writing review reports. These circumstances are a great hardship to the Panel Members and are not conducive to the sort of thorough review and analysis of investigations expected of the Panel. At times Panel Members have disagreed to certain facts stated in an Investigation Report, but they are sometimes unable to resolve the issue in real time during meetings because Panel Members cannot access the file without making another appointment.

This problem was made even more acute by the global pandemic. While most offices and workplaces shut down and moved to a work-from-home policy, Panel Members still needed to go into the IAB office to review Investigation Reports. Again, these logistical obstacles seem unnecessary and unreasonable under the circumstances.

As reflected in the meeting minutes of the past four years, the Panel has repeatedly raised this issue, before and after the start of the pandemic. Panel Members work hard and are happy to do so (this Four-Year Review alone is the product of hundreds of volunteer hours), but having to review files in person, during business hours, is a significant burden to place on volunteers, especially those who are not retired. In an interview with one member of the Panel for this Four-Year Review, he questioned whether the Panel could continue on its trajectory without limiting Panel Membership to retired individuals.

Second, as the Panel started to receive more Complaints and its workload grew, it became clear that the Panel needs to find a fair and expeditious way of disposing of clearly frivolous complaints. There is broad consensus on the Panel that it should not review Complaints where there is no evidence to support the allegations. Reviewing such cases also adds to the substantial backlog of Complaints that the Panel must review.

While the Panel has created a subcommittee process to streamline jurisdictional decisions, there is still some uncertainty about when the Panel should undertake a review of an investigation. The Panel initially defined its jurisdiction broadly and reviewed all investigations if the Complainant alleged serious misconduct or abuse of authority by an officer. As the Panel gained more experience, it began to define its jurisdiction more narrowly by looking beyond the allegations to determine if there was any evidence in the Investigation Report to support the allegation. However, subcommittee members sometimes had difficulty separating jurisdictional determinations (scope of review) from its standard of review (*i.e.*, whether the investigation was complete, thorough, accurate, objective and impartial). Worse still, the Panel Bylaws as written only explicitly provide for a subcommittee to consider the former and do not permit a subcommittee to consider the latter.

In the last subcommittee meeting of the year, Chair Doane outlined a process for subcommittees to follow in its jurisdictional determinations. First, the subcommittee must consider the allegations contained in the Complaint. Does the Complaint allege serious misconduct or abuse of authority by an officer? If it does, then the subcommittee must consider whether there was any evidence in the Investigation Report to support the allegations. If there was any “scintilla” of evidence, the panel must review the investigation. If there was no evidence, the subcommittee may recommend to the full Panel that it not review the investigation. This prophylactic interpretation of the Bylaws should be codified to ensure that all Complaints are considered in the same manner. To further ensure fairness, the Panel may want to consider requiring that if a subcommittee votes to not recommend a review of an investigation, the vote should be unanimous.

Third, the Panel needs an Executive Director (ED), who would be a full-time employee of the county, to assist the Panel with processing Complaints, reviewing investigative files, drafting reports, supervising administrative staff, and managing all of the Panel’s activities. The Panel has been blessed with great administrative support from the Office of the Independent Police Auditor, but the Panel needs additional help and the Office of the Independent Police Auditor is itself very busy as well. The Executive Director should have the same status as the Independent Police Auditor and report directly to the Board of Supervisors. The ED should supervise one administrative staff person, who would assist in processing complaints and other administrative matters. As the responsibilities of the Panel have increased over time, the need for an ED is imperative. The Chair and Vice Chair can no longer invest the time it takes to run the Panel on a day-to-day basis. This task has become a full-time job requiring a professional with experience in oversight or in conducting investigations. It would be helpful to have an ED who can help Panel Members, especially new Panel Members, learn how to review investigative files and better understand what to look for in complex Investigation Reports. An ED would also be helpful in interfacing with the FCPD and with conducting outreach to the community. Of course, if the Panel takes on an investigative role, it would be necessary to rely on an ED and other professional staff to undertake those additional responsibilities.

Fourth, the Panel has recognized the importance of having independent legal counsel. Not only does the Panel need to ensure that it is receiving advice from an independent counselor; but also, as the Panel has asserted its independence and endeavored to demonstrate to the public that it is detached from the FCPD, it operated for years with counsel chosen by the very party (the County Attorney) that represents the FCPD in most instances. Recently, this process changed and the Panel chose its attorney. The Panel must be independent in all possible respects – including in the hiring, retention and payment of its attorney – in order to succeed in its mission.

External/Substantive Challenges

The Panel has contended with a number of external/substantive challenges during its four years. Specifically, as evidenced largely from the few public meetings for comment it has held, the community is neither generally aware of the work of the Panel nor does it appear to consider the Panel a force for change in the FCPD. Indeed, for those who are familiar with the Panel, many unfortunately consider its limited authority as a hindrance to providing accountability in the FCPD.

Individual Complainants are often confused as to what the Panel can do and what it cannot do. As often becomes clear at review meetings, Complainants have little knowledge of and frankly do not care exactly how their Complaints are investigated. A finding by the Panel that an Investigation Report is thorough, complete, accurate, objective, and impartial means very little to the average Complainant. What they seek is a fair shake when they have problems with the FCPD. That requires more than simply an investigation of the investigators. Some Complainants have been clear that they think that the fact that their Complaint is being investigated by coworkers of the officer complained about renders the investigation *incapable* of being “objective and impartial.” *See, e.g.*, March 3, 2020 Meeting Minutes (Complainant’s Presentation).

This issue goes well beyond the satisfaction of individual complainants. During public meetings and outreach events, members of the community have questioned how the Panel can be truly independent if it is reliant on the FCPD for all of its information regarding every incident. The Panel cannot be seen as simply an arm of the FCPD and still provide the oversight necessary to increase community trust in and the legitimacy of the police department.

Second, the Panel is limited in what it can do and say in its findings. The Panel is able to concur with the FCPD investigation, advise the Board of Supervisors that the FCPD findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief, or advise the Board that, in the Panel’s judgment, the investigation is incomplete and recommend additional investigation. The Panel can also request further investigation by the FCPD without notifying the Board. Often these particular findings are confusing to community members. Many have asked why the Panel cannot just reject an investigation finding.

Panel Members also differ among themselves as to whether an investigation is complete and thorough. The Panel does not have specific definitions for “complete,” “thorough,” “accurate,” “objective,” and “impartial. Does “complete” mean that every avenue should be investigated, (*i.e.*, every *possible* witness should be interviewed), or does it mean that the investigation was “substantially complete?” How thorough is “thorough?” Further, how can one be sure that the investigation is “impartial” or “objective?” Isn’t that determination somewhat subjective? And with respect to “accurate,” is that simply a determination of whether the IAB was right or wrong—and what if the IAB’s investigation *is* defensible but the Panel Member simply disagrees with the conclusion? Does that mean that the investigation was inaccurate?

Moreover, using these standards when reviewing an Investigation Report is made even more difficult when the only information in front of the Panel has been provided by the FCPD. If the Panel only sees what the IAB has done, can it say that the Investigation was “complete” or “incomplete?” Again, concluding that the investigation was “thorough” is also difficult when you have no opportunity to probe potential investigative approaches that were not undertaken.

As a result of these definitional issues, the Panel has often been forced to engage in a form of triage, trying to figure out what is “complete enough” or “accurate enough”. The Panel has been open in deliberations on the question of whether it is worth it to ask for more investigation without any

assurance of a changed outcome. As one Panel Member asked during an interview: What can the Panel do where it does not believe that sending the investigation back for further investigation would add any value?

While the Panel does not have specific definitions for the words of its concurrence, one thing seems clear about them either combined or in isolation: they may appear to some in the community that the Panel is rubberstamping IAB actions. If the Panel had additional leeway to respond to investigations in its own voice, it would be much better equipped to demonstrate that it has taken Complaints seriously and done *more* than the IAB. The Panel's more detailed Review Reports have been a positive development. However, leeway for the Panel to offer a greater variety of conclusions would be a positive development as well.

Third, an obvious implication of the first two challenges is that in order for the Panel to fulfill its mission, it needs some limited investigatory authority. Being wholly reliant on the FCPD leaves the Panel unable to directly separate itself from the work of the FCPD and thus provide the oversight necessary to fulfill its mission. Several options exist and have been tested by other police oversight bodies around the country for many years. For instance, either the Panel or a Panel Executive Director could interview key witnesses, which would require the Panel to have some limited subpoena power. The Panel could hire its own independent investigator to operate outside of the IAB structure. Or the Panel could even be empowered to conduct the entire investigation on its own (this is the broadest and most radical option, and the Panel *does not* make this recommendation, *see* Four-Year Review Panel Recommendations, *supra*).

Another option short of granting the Panel investigatory authority, is to allow the Panel to monitor certain investigations. This would be similar to the authority given to the IPA in use of force investigations. For example, the Panel's Executive Director could observe interviews and have access to data and other investigative material as it is being analyzed. During the investigation, the ED could suggest additional areas of investigation. For instance, the Panel has requested additional investigation in several Complaints of racial bias; providing the ED with monitoring ability could ensure that the investigation is more systematic before it even reaches the Panel.

Yet another option is that the Panel could create procedures – in consultation with the FCPD or on its own – to standardize investigations and Investigation Reports. The Panel could exercise some limited “investigatory” power by creating requirements for IAB Investigation Reports in advance. These could be developed given what the Panel has seen in prior investigations. And, indeed, this is what the Panel already does through its recommendations. Again, the Panel has repeatedly made recommendations for how the IAB should investigate Complaints concerning racial bias. Perhaps it is time for the Panel to make clear in advance what steps are necessary for an Investigation Report to meet its standards of completeness and thoroughness.

Fourth, whether or not the Panel is given investigatory power and no matter how large or how small that investigatory power is, the Panel must do a better job of outreach to the FCPD itself. The Panel is not and should be seen as an enemy by FCPD officers. Independent does not mean antagonistic. Absolutely crucial to the success of the Panel is that it can work with the FCPD. And in truth, the Panel's goals and the FCPD's goals directly align. Indeed, a purpose of the Panel is to enhance police legitimacy through transparency. We are confident that FCPD officers recognize that their jobs are easier with improved community trust.

The Panel has worked hard to improve its relationship with FCPD leadership, but it needs to go farther. Just as the Panel conducts outreach to the broader community, it needs to conduct outreach

to the rank and file. The Panel needs to know and understand how the FCPD rank and file perceives its business and the rank and file need to know the members of the Panel.

Fifth, little evidence exists that many Fairfax residents are even aware of the Panel's existence. This is not for lack of trying. Members of the Panel have met with numerous community groups. But this simply has not gone far enough. The Panel needs to find ways to be more creative in its outreach efforts in the future. It has appeared on local access television, for instance, but perhaps the Panel needs to be thinking bigger.

Sixth, and related to what was discussed above, as the volume of Complaints grows and the Panel becomes more experienced, the Panel needs to find ways to better systematize its review. It needs to create the "objective" and "impartial" criteria so that the IAB understands what is necessary for an Investigation Report to be sufficient to pass muster.

Finally, the Panel still struggles with the question of training. The Panel needs to develop standardized training procedures for all new members and a standard training schedule with requirements for training to be completed each year by every Panel Member. These standards should be made public.

DRAFT

SPECIFIC RECOMMENDATIONS

- 1) **The Panel should be empowered to hire a full-time Executive Director (ED) with some investigatory experience.** The Panel needs a full-time, dedicated staff member to handle administrative aspects of the Panel and assist the Panel in its reviews, Review Reports, and Annual Reports. The ED ideally should be an individual with some investigatory experience. The ED should also have access to the Investigation Reports and be authorized to draft Review Reports and other reports. The ED should also help organize and assist the Panel in its public outreach opportunities. Like the Independent Police Auditor, the ED should report directly to the Board of Supervisors and supervise administrative staff that assists the Panel.
- 2) **The Panel's Executive Director should be authorized to monitor FCPD investigations of racial bias or profiling from the onset of the investigation, whether or not an initial complaint has been filed with the Panel.** During such monitoring, the ED may observe interviews and have access to evidence. The ED may suggest that the FCPD conduct additional interviews or further inquiries and data analysis during the investigation. Such monitoring would be consistent with that afforded by the Board of Supervisors to the IPA.
- 3) **The Panel should be given electronic access to redacted Investigation Reports.** A new policy should be adopted by the Board of Supervisors, in consultation with the County Attorney and the FCPD, that allows Panel Members to have electronic access to redacted Investigation Reports. The Panel is cognizant that the Chief of Police is the custodian of FCPD records, and that he has rejected similar Panel requests in the past. However, there is no legal impediment barring the Chief from heeding the Panel's reasonable request. Panel Members simply must be able to conveniently review investigative files outside of normal business hours and outside of a police station. A compromise proposal would be to allow the FCPD to redact all personnel information on records provided electronically and require Panel Members to appear in person at police headquarters to review unredacted versions. Panel Members would still be under the obligation not to disclose privileged information. Providing electronic access ensures: (1) greater accessibility and participation of community members who may not have the resources to volunteer on a Board and travel regularly to the FCPD headquarters and (2) ensures the safety of all parties involved by reducing in person encounters during a pandemic and post-pandemic environment.
- 4) **The Panel should codify in its bylaws a "summary judgment"-like process for disposing of frivolous complaints at the Subcommittee level.** At a minimum, the Bylaws should reflect that the Subcommittee must find the Complaint to be objectively qualified for review. Toward that end, the Panel should formally adopt a four-step process for initial reviews of complaints, and this process must be explicitly stated in amendments to the Bylaws. First, the Subcommittee should determine whether the allegations of the complaint constitute allegations of a serious misconduct or an abuse of authority. Second, if yes, the Subcommittee should determine whether the Investigation Report reveals *any* observable substantiation of the allegations of serious misconduct or an abuse of authority in the complaint. This should be an exacting standard and a sufficiently high bar to avoid the early disposition of nonfrivolous complaints. Further, this should apply only to the allegations that meet the threshold of serious misconduct or an abuse of authority. If there is *any* observable substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should recommend that the full Panel take up review. Third, if the Subcommittee finds no substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should consider whether there is *any* reason to believe that the Investigation Report

is not complete, thorough, accurate, objective, and impartial. Finally, the Subcommittee should present its findings to the entire Panel for a vote as to whether the Panel should review the Complaint. Thus, there is always a failsafe in that the Panel must make the ultimate determination whether or not to undertake a review.¹⁸

- 5) **The Panel should be authorized, at its discretion, to conduct a review of a completed FCPD investigation of an initial complaint concerning racial bias or profiling without first receiving a Request for Review from the Complainant.** Complaints concerning racial bias seemingly are of particular importance to county residents and thus should all be treated as ripe for independent oversight.
- 6) **The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses.** Without full professionalization of the Panel, it cannot be a fully investigatory body. But the Panel would be well-served by having some investigatory powers that allow it to take investigative action wholly independently from the IAB. One idea is to grant the Panel through the Executive Director the ability to conduct witness interviews (and by extension to grant the Panel some subpoena power) but limit the number of interviews that the Panel undertakes. Moreover, such interviews would be discretionary – if the Panel is confident that the Investigation Report as compiled meets its standards, it need not go forward with additional investigation. If the Panel is allowed to choose to conduct its own interview of the Complainant and up to three key witnesses free of IAB involvement, the Panel can demonstrate its independence to the community and to the Complainants themselves, many of whom are skeptical that a wholly police-driven investigation can truly be impartial and objective
- 7) **The Panel's Options for its Review Findings should be expanded and modified.** The Panel should be given five options:
 - a. The Panel can concur with the findings of the IAB and confirm that the conclusions of the Investigation Report are correct, and that the Investigation was sufficiently thorough, impartial, and objective so as to allow for the conclusion made.
 - b. The Panel can request additional investigation from the IAB.
 - c. The Panel can request the opportunity to conduct its own additional investigation, including interviewing the Complainant and up to three key witnesses using its limited subpoena power.
 - d. The Panel can inform the Board of Supervisors that in the opinion of the Panel, the conclusions of the Investigation Report are incorrect and/or that the investigation is insufficiently thorough, impartial, and objective. so as to allow for an alternative conclusion.
 - e. The Panel can inform the Board of Supervisors about how it would have resolved the investigation and recommend that the Board of Supervisors take certain remedial actions.

¹⁸ Alternatively, the Board of Supervisors could revisit the Action Item and provide the authority to individual Panelists on a rotating basis to make summary determinations (based on an established criteria). This would allow the Panel as a whole to ensure timeliness in its disposition of complaints.

- 8) **The Panel should create specific definitions for the terms “correct,” “thorough,” “impartial,” and “objective” that are well defined and understood in the same manner by all members of the Panel.** The specific definitions should be added to the Panel’s Bylaws upon approval by the Board of Supervisors.
- 9) **The Panel should invite rank-and-file FCPD officers to a forum (or to multiple forums) where FCPD officers can ask Panel Members questions and make comments.** The Panel should commit to increasing its interactions with the FCPD rank-and-file and should make itself available for meetings with officers present to ask questions and make comments at least once a year.
- 10) **The Panel should commit to twice-a-year public forums (or more) where members of the public can ask Panel Members questions and make comments.** The Panel should commit to increasing its community outreach opportunities and conducting at least two public forums each year. The Panel should make an effort to have at least one of these public forums covered by the press.
- 11) **The Panel should have an annual training session conducted by the FCPD in which the Panel learns about FCPD policies and procedures.** The content of the training should be developed in consultation with the FCPD.

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ACKNOWLEDGEMENTS

The Panel wishes to thank the many individuals who have helped to make the Panel successful over the last four years. First, the work of the Panel Members who have served since the Panel's inception deserve recognition for their substantial time commitment to the work. *See Appendix J (Panelist Biographies)*. A special thanks goes to the inaugural Panel, who wrote the Panel's Bylaws and implemented the vision for the Panel that was set forth in the Action Item adopted by the Board of Supervisors. The Inaugural Panel Members were: Hansel Aguilar, Kathleen Davis-Siudut, Steve Descano, Hollye Doane, Douglas Kay, Randy Sayles, Jean Senseman, Adrian Steel, and Rhonda VanLowe.

Of those inaugural Panel Members, a special recognition goes to Adrian Steel and Randy Sayles. Mr. Steel's passion for the Panel pre-dated its creation. As a member of the Ad-hoc Commission that recommended the establishment of the Panel, he helped form the Panel's structure and mission. Then he steered the Panel through its first year as chairman. Even though he has left the Panel, he remains ever the visionary, regularly prodding Panel Members to always be transparent and listen to the concerns of the community.

Mr. Sayles also served on the Ad-hoc Commission and was in many ways the conscience of the early Panel. He brought a unique perspective as a former Marine, law enforcement officer, and a person of color who had personally experienced the pain of racial bias in an encounter with a police officer. Sadly, Mr. Sayles passed away in 2019, but his time on the Panel left a lasting legacy.

As the years passed, new members of the Panel contributed their unique talents: Colonel Gregory Gadson, Anna Northcutt, Robert Cluck, Shirley Norman-Taylor, James Bierman, Frank Gallagher and Sris Sriskandarajah. A special thank you to Mr. Bierman, who undertook the effort to research and draft much of this Four-Year-Review, and to Mr. Aguilar who assisted in the drafting and the interviews with Panel Members. The history compiled for this review will serve the Panel and others interested in its work for years to come.

Special thanks also go to the four chairpersons who have led the Panel over the last four years: Chairs Steel, VanLowe, Kay and Doane. Each of these Chairs faced challenges that were unique to their tenures. Chair VanLowe successfully crafted the necessary procedures that the Panel depends upon to conduct its daily business. Chair Kay successfully advocated for changes to the Action Item that allows the Panel more freedom to discuss and report on the details of police investigations. Chair Doane confronted the dual challenges of reviewing investigations and conducting public outreach during a pandemic, and at a time when police oversight and accountability were central topics in a nationwide conversation on race and policing.

The Panel could not have conducted any of its business if it hadn't had the administrative support of the Office of the Independent Police Auditor. Independent Police Auditor Richard Schott has been both a friend and supervisor to the administrative staff that handles the day-to-day work of the Panel. Gentry Anderson performed admirably, not only handling the processing of complaints, subcommittee meetings, panel review meetings, and freedom of information requests, but also going "beyond the call" to help Panel Members with computer problems and to serve as a reservoir of knowledge regarding the procedures of the Panel. And truthfully, this Four-Year Review was largely dependent on Ms. Anderson's detailed meeting minutes. Rachele Ramirez has capably stepped in to provide support to the Panel in the wake of Ms. Anderson's departure, juggling both her responsibilities

to the Independent Police Auditor and now to the Panel. She has performed both duties while working from home during the pandemic.

The Panel could also not do its job without the cooperation of the FCPD, and particularly the Internal Affairs Bureau. A special thank you goes to Lt. Col. Gun Lee, who was head of the IAB during the Panel's first year. His support during this formative time was critical to the Panel's success. Chief Roessler's support of civilian oversight has also been extremely important to the Panel's success, and the Panel owes him a debt of gratitude. Special thank yous are also appropriate for Major Gervais Reed, Major Matt Owens, Major Tonny Kim, Captain Alan Hanson and Major Dean Lay, all of whom have led the IAB admirably throughout the history of the Panel.

The on-going support of the Board of Supervisors has also been critical. Chairman Sharon Bulova and Supervisor John Cook deserve special recognition for their strong commitment to the Panel, even when there were voices in the county and state that advised against the establishment of civilian oversight of police. Their leadership and confidence in the Panel's ability to learn from its mistakes saw the Panel through some difficult challenges. The current Board of Supervisors also deserves recognition for their support and willingness to listen to the Panel's needs and make needed changes. The support of Chairman McKay and Supervisor Lusk has been unwavering.

Lastly, the Panel thanks the community for supporting the Panel's work. Without the support of the various stakeholder groups and community members, the Panel could not be effective. During the last year when racial tensions in the community were high, the Panel's interaction with leaders in the Fairfax NAACP, ACLU People Power Fairfax, and many other groups helped provide the Panel with the insights it needed to better review investigations and make policy recommendations. Listening to the community is one of the most important functions of the Panel.

APPENDICES

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