



INDEPENDENT OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

Final Report and Recommendations

Jack Johnson, Chair

October 8, 2015

Executive Summary

The Fairfax County Board of Supervisors established an Ad Hoc Police Practices Review Commission on March 3, 2015. Commission Chairman Michael Hershman established five subcommittees to complete the Commission's work in the limited time before delivering a report to the Board of Supervisors by October 20, 2015.

The Independent Oversight and Investigations Subcommittee, chaired by Jack Johnson, is one of the five Commission subcommittees, with the others being Communications; Mental Health and Crisis Intervention Training; Recruitment, Diversity and Vetting; and Use of Force.

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

The **Scope of Work** for the Independent Oversight and Investigations Subcommittee, set in June, 2015, is as follows:

- I. Review current Fairfax County policies and practices on investigation of police involved shootings and use of deadly force, as well as critical incident response situations, including review of FCPD Internal Affairs Division policies and practices.
 - A. Policy on commencement of Internal Affairs investigation only after criminal process has ended.
 - B. Policy on not interviewing officers involved in a shooting until two days after the event.
 - C. Policy on FCPD responses to citizen complaints regarding use of force and allegations of misconduct.
 - D. Should there be a study of the community's attitudes toward the police force, perhaps with the help of George Mason University personnel (assuming no such study exists). If such a study exists, the results should be provided to this Subcommittee.
- II. Review of "best practices" for investigations of serious police-involved use of force and critical incident response situations to ensure transparency and accountability, including:
 - A. Review of "best practices" by police departments that are similar in size and demographics, and to the extent possible that can be determined, have a similar number of police involved shootings/use of deadly force.
 - B. Models different from current Fairfax County practice and procedures.
 1. Independent auditor with citizen/public involvement.
 2. Retention by the prosecutors of an independent investigator.
 - C. The use of an independent special prosecutor and/or investigative body in other jurisdictions and when such a prosecutor and/or investigator is used.
 - D. Review by the Fairfax County Board of Supervisors of police involved shootings and use of deadly force.
- III. Review of citizen oversight boards in other jurisdictions of similar size and demographics to evaluate whether such a board should be established in Fairfax County, including:
 - A. Should this review board be comprised of police officers and citizens to timely review all officer involved shootings and other serious incidents to identify and address as needed any administrative, supervisory, training, tactical or policy issues?
 - B. What conduct should such a board investigate (e.g., allegations of police abuse, misconduct, negligence, etc.)?

C. What investigative powers should such a board have (e.g., subpoena power, ability to interview individuals involved and witnesses)?

D. To which authority should such a board report (e.g., the Chief of Police and/or the Board of Supervisors)?

E. What weight (binding or advisory) should such a board's findings and recommendations have (e.g., recommendations as to discipline, and changes to policy and practice changes)?

F. What would the estimated annual costs be of such a board that would conduct these independent reviews and investigations?

IV. Based on the review of existing FCPD policies and practices and a review of the policies and practices of other jurisdictions and the cited publications and other resources, develop proposed recommendations for changes and/or next steps to the Board of Supervisors for consideration by the Commission.

The full Independent Oversight and Investigations Subcommittee met nine times, while several working groups held additional meetings. All meetings were open to the public, and public comments and statements were allowed. Minutes and other documents from Subcommittee meetings and research are available at the Independent Oversight and Investigations Subcommittee webpage

<http://www.fairfaxcounty.gov/policecommission/subcommittees/independent-oversight-investigations.htm>

Presentations by Commonwealth's Attorney Ray Morrogh, Deputy County Attorney Peter Andreoli and Chief of Police Edwin Roessler informed our research. Other presentations before the Subcommittee included Major Crimes Division Detective Chris Flanagan and Internal Affairs Bureau Commander, Major Michael Kline, as well as other IAB officials.

Individual members of the Subcommittee and three working groups engaged in extensive research about best practices and models of investigations and oversight around the nation. A list of resources consulted appears in Appendix A.

Members

Jack Johnson, Chair

Mr. Johnson is a Partner with the firm of PricewaterhouseCoopers, LLP (PwC) in the U.S. Public Sector Practice and leads the National Security Practice, which includes all elements of the US Department of Defense, NATO and other related entities. He is a nationally and internationally recognized expert with over 35 years experience in the areas of investigations, law enforcement, security and risk management and intelligence related matters. Mr. Johnson previously had served in a series of positions of increasing responsibility within the US Government, culminating in his appointment as a Deputy Assistant Director with the United States Secret Service, and as the first Chief Security Officer for the newly formed Department of Homeland Security.

George Becerra*

Mr. Becerra is a current 16-year federal employee and a Fairfax County resident since 1984. He has been an Economic Statistician and Operations Research Analyst for the Dept. of the Army (Dept. of Defense - Pentagon) and Dept. of Homeland Security (Immigration and Customs Enforcement - Headquarters). He is a Citizen Police Academy 2006 graduate and alumni member. Also a member of several civic and community organizations.

Bob Callahan*

Mr. Callahan retired from the Fairfax County Police Department in August, 2006 after 29 years of service. His assignments included supervisory and management positions in criminal investigations and internal affairs. Following his retirement from the FCPD, Mr. Callahan has held positions in public sector performance management and employee relations.

Sean Corcoran

Mr. Sean Corcoran is a member of the Fairfax County Police Department. He is a Detective in the Major Crimes Division. He also serves as the President of the Fairfax Coalition of Police Local 5000, International Union of Police Associations.

Sal Culosi

Mr. Culosi is a retired civil servant who was a member of the Senior Executive Service in the Department of Defense and has accrued over 45 years of experience as a Defense manager and analyst. His son, Salvatore J. Culosi, was an optometrist who was killed in 2006 by a FCPD SWAT team in the process of executing a document search, related to gambling, using an aggressive vehicle takedown process, which was reserved for high risk situations but was nonetheless employed even after FCPD SWAT official risk assessment judged him to be low risk.

Sara-Ann Determan*

Ms. Determan is a retired lawyer; Fairfax County resident for 46 years; former President D. C. Bar; former chair of DC Area ACLU, Lawyers' Committee for Civil Rights and Urban Affairs, Washington Area Ronald McDonald House, Lake Barcroft Association, and Lake Barcroft Watershed Improvement District; American Bar Association activist; founding member National Partnership for Women and Families; member and former trustee, Unitarian Universalist Church of Arlington.

Amy Dillard

J. Amy Dillard is an Associate Professor of Law at the University of Baltimore School of Law where she teaches criminal law and constitutional criminal procedure. She is an active member of the Virginia Bar who had a first career as Deputy Public Defender for the City of Alexandria, Virginia. Professor Dillard

recently served, at the invitation of the Police Commissioner, on an Independent Review Panel, which assessed the facts surrounding a death-in-custody of a suspect and subsequent investigation by the Baltimore City Police Department.

Ben Getto*

Mr. Getto is a Senior Associate in Booz Allen Hamilton's federal energy consulting business. A former federal employee at the Treasury and Energy Departments, Mr. Getto most recently served as Deputy Chief of Staff to the Secretary of Energy with a portfolio that included agency-wide programmatic, policy and communications oversight.

Marc Harrold*

Robert Horan, Jr.

Robert F. Horan, Jr. served more than 40 years as the Commonwealth's Attorney of the County of Fairfax and the City of Fairfax. He was appointed in 1967 and was re-elected every four years until retiring in September 2007. He is an avid trial lawyer and prosecuted jury trials every year he was in office.

Mary Kimm

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

Michael Kwon

Mr. Kwon has been living in Fairfax County since 1977 and has served in numerous community service organizations including United Way, Mason District Council of Civic Associations, and Fairfax County Human Rights Commission, as well as being active in the Korean-American community where he currently serves as the chairman of the Korean American Society of Virginia. For his community service, he was honored as the 2003 Citizen of the Year by the Annandale Chamber of Commerce and 2011 Lord Fairfax by the Board of Supervisors. For his work in Korean unification issues, he received a presidential commendation from the president of the Republic of Korea.

John Lovaas

John Lovaas is a retired U.S. AID Senior Foreign Service Officer and a former Assistant to the Publisher of the Connection Newspapers. He and his wife Fran Lovaas have lived in Reston since his retirement and now reside at Lake Anne. He is active in the Reston community, having served as President of the Reston Citizens Association, the Alliance for a Better Community and the Washington Plaza Cluster Association; and as a member of the boards of the Reston Association and the Reston Community Center. He has worked in Reston community television as the Host and Producer of Reston Impact, a public affairs program, since 2001. Also, he authors a biweekly column and occasional OpEds in metro area community newspapers. In 1998, Mr. Lovaas founded the Reston Farmers Market, sponsored by the Fairfax County Park Authority and now co-managed by himself and Mrs. Lovaas.

Robert Sarvis*

Mr. Sarvis is an attorney, businessman, politician and software developer. While attending law school, he was the co-founder and editor-in-chief of the NYU Journal of Law & Liberty; he also clerked for Judge E. Grady Jolly on the U.S. Court of Appeals for the Fifth Circuit. In addition, he has been a

software developer, being named by Google as a Grand Prize Winner for their Android Development challenge.

Adrian L. Steel, Jr.

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

Jeff Stewart*

Mr. Stewart is Chief Executive Officer of WeatherTite Inc. and has been a Fairfax County resident for over 30 years. He witnessed the shooting death of his close friend John Geer by a Fairfax County police officer on Aug. 29, 2013.

David Stover*

A career United States Park Police (USPP) Officer, David Stover retired as Deputy Chief in 2008. During his 35 years on the force, Mr. Stover served in several USPP law enforcement capacities and administrative positions, including Major in charge of the Office of Professional Responsibility (OPR), a position that oversaw the Internal Affairs Unit and Audits and Evaluations. In the OPR, Mr. Stover was charged with reviewing officer as well as civilian misconduct and issuing appropriate discipline. In cases that met the threshold for removal from the force he made recommendations to the Chief.

John Wallace

Detective John A. Wallace began his career with the Fairfax County Police Department in 1986 and has worked in patrol, Organized Crime and Narcotics, DEA Task Force, Sex Crimes, Cold Case and Homicide. Detective Wallace received a Bachelor of Applied Science in Human Resource Management and Leadership from University of Richmond in 2008. Detective Wallace has been the President of the Fairfax County Police Association for the past three years. The mission of the Fairfax County Police Association is one of a benevolent organization.

* Subcommittee members who are not also members of the full Commission.

Introduction

The Ad Hoc Commission was formed in response to growing concerns about the lack of accountability and transparency of law enforcement in Fairfax County. By reviewing police practices and policies and taking action now, such as those being recommended here and by other subcommittees, our community can improve an already solid police force and build a framework to recognize and address future challenges.

Independent investigation, oversight and civilian participation in reviewing police use of force, officer involved shootings and citizen complaints can play a vital role in maintaining Fairfax County Police Department's reputation as being one of the very best law enforcement organizations in the nation.

The work of the Independent Oversight and Investigations Subcommittee benefitted from a growing body of experience, including the Police Executive Research Forum (PERF) Review of the Fairfax County Police Department's use of force policies, the President's Task Force on 21st Century Policing and the work of the National Association for Civilian Oversight of Law Enforcement (NACOLE). We researched oversight models in use around the country and their experiences to date. We consulted with a member of the NACOLE Board of Directors, who was also a guest speaker before the Ad Hoc Commission.

Our recommendations for the Fairfax County model focus on three areas: 1) strengthening the independent investigative capacity available to the Commonwealth's Attorney in cases of officer involved shootings, in-custody deaths, or cases involving death or serious injury; 2) establishing an Independent Police Auditor to review investigations of officer involved shootings, in-custody deaths and death or serious injury cases conducted by the Internal Affairs Bureau of the FCPD and use of force investigations by IAB; and, 3) establishing a Civilian Review Panel to respond to community concerns or complaints about alleged incidents of abuse of authority by the FCPD.

"Strong, independent oversight builds legitimacy and trust through increased transparency and accountability to the public. There is growing recognition of oversight's important role in today's professional policing. The President's Task Force on 21st Century Policing recommends establishing civilian oversight to strengthen trust with the community."

"Oversight is a process, and like policing, it is complex. There are more than 200 oversight entities across the United States. No two are exactly alike. There are civilian review boards, monitors, police auditors, and inspectors general, among other models. Citizen review is not an advocate for the community or for the police. This impartiality allows oversight to bring stakeholders together to work collaboratively and proactively to help make policing more effective and responsive to the community."

"By fostering accountability through independent investigations or auditing of police misconduct complaints, oversight can also identify needed changes in police practices and training, and provide a meaningful voice or forum for the public. Effective oversight leads to more effective policing. An investment in oversight is an investment in the police."

Source: National Association for Civilian Oversight of Law Enforcement

This approach to oversight will provide for public confidence in investigations of use of force incidents that result in serious injury or death, including officer involved shootings through the Independent Police Auditor, as well as a powerful mechanism to address community concerns through increased citizen involvement.

Independent Oversight and Investigations Subcommittee

Final Report

October 8, 2015

This Subcommittee did not begin its review and deliberations with a preconceived belief in the need for independent oversight, but rather through research, presentations and discussion, concluded that the best model for Fairfax County includes retaining the current investigative structure but with added checks and balances in accordance with national best practices to provide for public trust.

All of the Subcommittee's recommendations are made unanimously. Early in the process, the Subcommittee determined that, if any recommendation were not unanimous, we would forward both majority and minority recommendations. However, we were able to reach full consensus on the recommendations contained here.

We also recommend that the charter for the Independent Oversight and Investigations Subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to follow up on open issues that may remain going forward and to support and assist implementation of any of the recommendations for which IOI Subcommittee participation would be beneficial.

FINDINGS AND RECOMMENDATIONS

Part 1: Investigations and Prosecution

It is of critical importance to building and maintaining public trust and confidence in a community's police department that the criminal and administrative investigations of officer involved shootings (OIS's) and other police use of force incidents in which an individual is fatally or seriously injured are perceived to be, and are in fact, thorough, accurate, objective and impartial. In most jurisdictions, as in Fairfax County, these investigations are conducted by members of the police department in which the officer involved in the shooting is a member. In Fairfax County, the Major Crimes Division (MCD) of the FCPD Criminal Investigation Bureau (CIB) conducts the criminal investigations of OIS's involving FCPD officers while the FCPD Internal Affairs Bureau (IAB) conducts the corresponding administrative investigations.

The Commonwealth's Attorney for Fairfax County makes the decision to charge in an OIS based on the FCPD investigations and oversees any prosecution that may arise. Both the FCPD and the Commonwealth's Attorney indicate that they will recuse themselves if there is a conflict of interest and will refer the OIS investigation and prosecution to the police department and Commonwealth's Attorney in a neighboring jurisdiction.

After considering the information obtained and reviewing practices in other jurisdictions, we recommend that the current investigative and prosecutorial practices should continue.

Given this recommendation, the Subcommittee considered models of independent auditors and civilian review boards that will be discussed in subsequent sections. We also call for the addition of two independent experienced investigators to the staff of the Commonwealth's Attorney's office to provide an independent view of OIS's or serious use of force, and ensure that the MCD investigation addresses any questions or leads identified by the Commonwealth's Attorney.

Some question whether investigators who are members of the same police department as the officer being investigated can objectively and fairly investigate "one of their own." Those expressing such concerns do not generally question the integrity or professionalism of the investigators. Rather, they see a potential inherent subjective bias that may color the outcome of a given investigation. In like fashion, others question whether a prosecutor who has a close and often long term relationship with a police department and who works on a daily basis with the department can objectively and fairly make a determination to bring criminal charges against an officer who is involved in a shooting which has led to the death of or serious injury to an individual. In reality, across the nation at other major law enforcement agencies up to and including the US Department of Justice, the investigations are in fact conducted internally and in many instances are successfully prosecuted by organizations that have long standing relationships with those law enforcement organizations.

Some jurisdictions have addressed these concerns by arranging for the criminal investigations of OIS's involving their police officers to be conducted by investigators from a neighboring jurisdiction on either an ad hoc or permanent basis. Others have considered the establishment of a regional task force of criminal investigators which would investigate OIS's, with the task force investigator(s) from the involved police department recused. Similar arrangements between prosecutors have been proposed or adopted to provide for the decision to charge and the prosecution of OIS's to be undertaken by a prosecutor from a neighboring jurisdiction.

Our Subcommittee considered these various alternatives. We heard directly from FCPD Major Crimes Division and Internal Affairs Bureau concerning their investigations of OIS's. Commonwealth's Attorney for Fairfax County Raymond Morrogh, spoke to us concerning prosecution of OIS's. We also reviewed a limited number of documents from past investigations of OIS's (including the 2013 John Geer fatal shooting) conducted by Major Crimes Division and spoke with individuals familiar with those investigations. After considering the information obtained and reviewing practices in other jurisdictions (such as the recently reported investigation and prosecution agreements between Montgomery and Howard Counties in Maryland), we determined that the current investigative practices should continue. Mr. Morrogh indicated that he has never had any dissatisfaction about the criminal investigations conducted by MCD and noted that any questions or requests for further investigation have been promptly resolved. In addition, Fairfax County's criminal investigative resources are among the best, if not the best in Virginia, and the MCD investigators are very experienced. As for the prosecutions, Mr. Morrogh expressed his view that, absent a conflict of interest, the Commonwealth's Attorney should make the decision to charge and prosecute OIS's that occur in Fairfax County since that is the duty which the Commonwealth's Attorney is elected and legislatively mandated to perform. Both Mr. Morrogh and his predecessor, Mr. Robert Horan, cited instances where they had charged and successfully prosecuted Fairfax County Police officers for a variety of criminal incidents over the years. During those internal police investigations and subsequent prosecutions, Messrs. Morrogh and Horan advised that the performance of the Fairfax County Police Department and Internal Affairs Bureau was complete, thorough and above reproach.

While we have recommended that the current investigative and prosecutorial practices continue, we have included in our recommendations language which proposes that the Chief of Police and the Commonwealth's Attorney affirmatively consider whether in each OIS the criminal investigation and/or the decision to charge and prosecute should be conducted by criminal investigators and/or the Commonwealth's Attorney of a neighboring jurisdiction, respectively. By doing so, a measure of protection against the concerns raised relating to actual or perceived bias will become part of the process in each OIS.

In addition to recommending that the FCPD and the Commonwealth's Attorney affirmatively consider the referral of each OIS, we are recommending that two independent experienced investigators be added to the staff of the Commonwealth's Attorney's office. These investigators would report to, and be used at the discretion of, the Commonwealth's Attorney in connection with criminal investigations of OIS's. By participating in OIS investigations, the two Commonwealth's Attorney investigators will provide an independent view of the OIS and help to ensure that the MCD investigation is timely, comprehensive, and addresses any issues that the Commonwealth's Attorney believes need to be resolved.

We also addressed several procedural aspects of OIS investigations as directed by the Subcommittee charter. First, a concern was raised that IAB investigations are not initiated until the MCD criminal investigation is completed and a decision to charge made by the Commonwealth's Attorney. We learned that IAB effectively conducts a parallel investigation alongside the MCD investigations. IAB is, however, limited in its ability to interview the officer(s) involved by the U.S. Supreme Court decision in *Garrity v. New Jersey* in order to protect the officer's Constitutional rights. IAB cannot therefore take a compelled interview of the officer until the criminal process is complete. Given those considerations, we have recommended that an IAB OIS investigation be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.

Second, we heard that the MCD interviews of the officer(s) involved in an OIS were being delayed by an informal “waiting period” of up to 48 hours. The purpose for any such delay was reported to us to be that experience and certain studies indicate that more complete and accurate information is obtained if interviews are delayed until after a person who is involved in or witnesses an event such as an OIS has had one or two sleep cycles. In recognition of that input, but with concerns about the perception of differing treatment of police officers and civilians involved in an OIS (including the subject), we recommend that the right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be “questioned at a reasonable time and place” should continue to be preserved. However, the questioning should commence as soon as reasonably possible, under all of the relevant facts and circumstances, as determined by the Commonwealth’s Attorney in consultation with the Chief of the FCPD without a specified waiting period.

Third, given that there may be a delay in the questioning of the officer(s) involved in or witnessing an OIS, and to ensure the integrity of the investigation, we have recommended that the current FCPD practice of issuing what is called a “confidentiality order” be formally adopted. Such an order requires all involved officers to abstain from speaking to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation, and to abstain from speaking to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

Finally, in order to provide the public with an understanding of the investigative process, the time-lines of the investigation, and the basis for the Commonwealth’s Attorney’s decision, we have recommended that the Commonwealth’s Attorney issue timely and comprehensive public reports on the criminal investigations of OIS’s when no criminal charges are filed. We recommend that the reports describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth’s Attorney, and the basis for the conclusions reached by the Commonwealth’s Attorney. Mr. Morrogh’s September 2015 report on his conclusion that no crime was committed in the in-custody death of inmate Natasha McKenna is an example of such a report. We learned that the Commonwealth’s Attorney for the City of Alexandria issues such reports. We believe that similar reports by the Fairfax County Commonwealth’s Attorney on future OIS’s would greatly enhance the public’s understanding of, and confidence and trust in, the investigative and prosecutorial processes and the resulting decisions.

Recommendations: Investigations

1. Criminal investigations of Fairfax County law enforcement officers involved in shootings, in-custody deaths, and any use of force incident in which an individual is killed or seriously injured as defined in General Order 540.1 (“Death or Serious Injury Cases” or “Cases”) should continue to be conducted by the Major Crimes Division (“MCD”) of the FCPD. An exception to this policy would occur when the Chief of Police, in consultation with the Commonwealth’s Attorney, determines that the criminal investigation of a particular incident should be conducted by criminal investigators from another Northern Virginia jurisdiction police department or from the Virginia State Police, by agreement with that jurisdiction or with the State Police.
2. Funds should be appropriated to the Commonwealth’s Attorney’s office to allow for the fulltime employment of two (2) independent experienced criminal investigators who will report to and be used at the discretion of the Commonwealth’s Attorney in connection with criminal investigations of Death or Serious Injury Cases and other investigations within the scope of the responsibilities of the Independent Police Auditor.

- a. Such investigators shall participate in MCD criminal investigations of Cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting.
 - b. The Independent Police Auditor shall monitor MCD criminal investigations of Cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor.
3. FCPD Internal Affairs Bureau ("IAB") investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.
4. The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of the FCPD.
5. All FCPD officers shall be required to abstain from speaking (i) to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or (ii) to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

Recommendations: Prosecution

6. The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a Death or Serious Injury Case, or other case within the scope of the responsibilities of the Independent Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by the Commonwealth's Attorney of another Virginia jurisdiction by agreement with that jurisdiction.
7. The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving Death or Serious Injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney.

Part 2: Independent Review

In addition to the recommendations outlined above, and for the same reasons of building and maintaining public trust in FCPD and its officers in a period of general loss of public confidence in many institutions, our Subcommittee also recommends the creation of an Office of Independent Police Auditor and a Civilian Review Panel, appointed by the Board of Supervisors.

The Independent Auditor would report directly to the Board of Supervisors and would provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings.. The Civilian Review Panel would respond to community concerns or complaints about alleged incidents of abuse of authority by FCPD.

While the Subcommittee finds no evidence that there are serious or widespread issues of FCPD personnel abusing their authority in use of force incidents, we did hear from individuals who felt that their complaints about abuse of authority were not taken seriously. "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community," according to the President's Task Force on 21st Century Policing (May 2005 http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf). "Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

While the Subcommittee has set forth proposed time periods for the issuance of reports on a case, it is not the intention of the Subcommittee to unnecessarily prolong investigations and review. Accordingly, it would be appropriate to study and coordinate the timing of review and reports by the Office of the Independent Police Auditor and by the Civilian Review Panel during implementation. This research should include review of policies and practices on coordination of investigation, review and discipline in other jurisdictions that have implemented independent review, and could be an appropriate task under the recommended extended charter of this Subcommittee.

Office of Independent Police Auditor

We believe that the Auditor's involvement in and review of IAB's investigations, together with mandatory public reporting, will ensure that the investigations are thorough, accurate, objective and impartial, and that the public can have confidence in the results of IAB's investigations. In order to ensure that the Auditor can fully fulfill his/her responsibilities, we have recommended that the Auditor should have full access to both the MCD criminal investigative files as well as the complete IAB files.

We also recommend that the Auditor have the authority to interview any Fairfax County employee (including FCPD personnel) and receive any documents or other materials in the possession of the FCPD or other Fairfax County offices and departments in carrying out his/her responsibilities. Based on our interviews with National Association for Civilian Oversight of Law Enforcement representatives, this authority is critical to the effective functioning of an independent police auditor.

To ensure the independence of the Auditor, in both perception and reality, we recommend that the person selected shall have relevant experience but shall not have been a Fairfax County employee. The Auditor's office should be both administratively and physically apart from the office of the FCPD.

We recommend that the Auditor will have the following primary functions:

- Participate in and monitor all IAB investigations of Fairfax County law enforcement officer involved shootings, in-custody deaths, and use of force cases in which an individual is killed or seriously injured; to seek further IAB investigation or to perform such further investigation if the Auditor determines that the IAB investigation was deficient; to issue a public report with respect to each reviewed investigation; and to consult with the FCPD Chief of Police concerning any disagreement with the IAB results or conclusions and, if no agreement between the Chief and the Auditor is reached after such consultation, report such disagreement to the Chairman of the Board of Supervisors. The Chief of the FCPD should issue a public statement that sets forth the bases for the Chief's decisions (which are final) in all cases as to which the Auditor disagrees.
- Review quarterly FCPD reports on the disposition of complaints of other cases of alleged police misconduct to ensure proper and timely FCPD responses.
- Make public recommendations concerning revisions of FCPD policies, training and practices based on the Auditor's reviews.
- Make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and, if established, at the request of the Civilian Review Panel, to meet with the Panel for further review of the Auditor's report and work.
- In order to address concerns that our Subcommittee heard expressed, we recommend that an individual may file a complaint of serious law enforcement use of force for investigation with either the FCPD or the Auditor. In that event the complaint is filed with the Auditor, it would immediately be forwarded to the FCPD for investigation.

Recommendations: Office of Independent Police Auditor

8. The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor").
 - a. The Auditor shall be appointed by and report directly to the Board of Supervisors.
 - b. The Auditor shall have experience in, *inter alia*, public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.
 - c. The Auditor shall review (i) all investigations of Death or Serious Injury Cases conducted by the IAB;; and (ii) all UOF investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor.
 - d. The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.
 - e. The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.
 - f. The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.
9. The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.

- a. The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.
10. If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.
11. Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.
12. The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.
13. An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a Death or Serious Injury Case, the use of force, or the death of an individual with the FCPD for investigation.
 - a. The citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, who will report on the disposition of the complaint within 30 days.
14. If the Auditor disagrees with the results or conclusions of the IAB in Death or Serious Injury Cases, the Auditor shall advise the FCPD Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.
15. The Auditor shall make public recommendations to the FCPD Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.
16. The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.
17. Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.

Civilian Review Panel

With the recommendation for an Independent Auditor to review and assess FCPD investigations into OIS and use of force incidents that involve serious injury or death, this Subcommittee recommends the establishment of a Civilian Review Panel to respond to community concerns or complaints about alleged FCPD incidents of abuse of authority.

While some feel that the superior quality of our police department is fair argument against the need for civilian oversight, police departments and certainly one of the finest departments in the nation should welcome the scrutiny of their practices and procedures by the public they serve and protect. The recommendations related to creation of a Civilian Review Panel by this Subcommittee are intended not as an intrusion but as an opportunity to provide additional transparency and visibility, while building police and community relations.

The review of the various resource materials which the Subcommittee undertook established that some form civilian review is a national best practice. The list of the largest police departments in the country which Christian Klossner of National Association for Civilian Oversight of Law Enforcement (NACOLE) prepared for us showed that all but a handful have some sort of independent review, with many of those involving civilian review.

Civilian Review Panels offer a method of public involvement in accountability that is external to the department. This independence from the agency or the sworn chain of command that it seeks to hold accountable allows it to address a wide range of concerns without any actual or perceived bias, and to ensure that policing is responsive to the needs of the community.

The experiences from other communities with civilian oversight have shown that strong, independent oversight builds legitimacy and public trust through increased police transparency and accountability to the public served. Oversight provides a meaningful voice or forum for the public and forms a crucial bridge between the public and the police. Increased transparency, trust, and communication between the police and the public can lead to greater community cooperation in achieving the ultimate goal of decreased crime and increased public safety.

This Subcommittee recommends establishing a Civilian Review Panel to review FCPD's investigations of alleged FCPD misconduct. The Panel would not review the cases of serious use of force that are referred to the Independent Auditor. The Board of Supervisors would appoint seven panel members to three year terms, with the ability to serve two consecutive terms. We recommend that the Panel be authorized to retain a criminal investigative consultant.

Our recommendations allow for any individual to file a complaint with the Panel requesting a review of the FCPD investigation of an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The panel would not review incidents being reviewed by the Independent Auditor. The Panel will define "Abuse of authority" and "serious misconduct" and may include the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other bases; the reckless endangerment of a detainee or person in custody; and violations of Fairfax County or FCPD policies or procedures.

The Panel will issue a public report at the end of its review of each FCPD investigation. The Panel would meet with the Auditor periodically at the Panel's request concerning the findings and conclusions of the Auditor as to serious use of force cases so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to policy and practices changes that may be warranted. The

Panel could also hold periodic public forums around the county to gather information and suggestions about the FCPD, public perceptions and recommendations for policy and procedure, involving other police advisory committees and members of the Board of Supervisors as appropriate.

Recommendations: Civilian Review Panel

18. Fairfax County shall establish a Civilian Review Panel (“Panel”) to review civilian complaints concerning alleged FCPD misconduct.
 - a. Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
 - b. The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel’s responsibilities.
 - c. Factors to be considered in appointing Panel members include, *inter alia*, community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).
 - d. The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.
19. An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged “abuse of authority” or “serious misconduct” by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.
 - a. “Abuse of authority” and “serious misconduct” shall be defined by the Panel and may include, *inter alia*, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other bases; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
 - b. The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.
 - c. Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.
20. Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.
 - a. The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the panel.
 - b. Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not

taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

21. The Panel review of the investigation shall be completed and a public report issued within sixty (60) days of the filing of a request for review.
 - a. If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
22. The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.
23. The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.

Follow Up

24. Fairfax County should establish an Ad Hoc Police Practices Review Commission every five (5) years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.

Appendix

Citizen Review of Police: Approaches and Implementation (Finn, Peter; March 2001, *U.S. Department of Justice, Office of Justice Programs, National Institute of Justice*)

<https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>

Models of Civilian Oversight in the United States: Similarities, Differences, Expectations and Resources (Quinn, Sue; National Association for Civilian Oversight of Law Enforcement)

<https://nacole.org/resources/models-of-civilian-oversight-in-the-united-states-similarities-differences-expectations-and-resources/>

Review of National Police Oversight Models for the Eugene Police Commission (February 2005; Police Assessment Resource Center)

<http://nacole.org/wp-content/uploads/Review-of-National-Police-Oversight-Models-Feb.-2005.pdf>

Examples of Civilian Oversight

Virginia Beach

- Investigation Review Panel (IRP) <http://www.vbgov.com/government/departments/human-resources/pages/investigation-review-panel.aspx>
- Policy <http://www.vbgov.com/government/departments/human-resources/IRP/IRP%20Policy%202012%20rev.pdf>
- Resolution Establishing IRP <http://www.vbgov.com/government/departments/human-resources/IRP/1991%20Resolution.pdf>

Washington, DC

- Office of Police Complaints <http://policecomplaints.dc.gov/>
- Regulations http://policecomplaints.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/occr_regulations.pdf

Prince George's County, MD

- Citizen Complaint Oversight Panel <http://www.princegeorgescountymd.gov/sites/ExecutiveBranch/About/BoardsCommissions/Pages/Citizen-Complaint-Oversight-Panel.aspx>
- 2013 Annual Report http://www.princegeorgescountymd.gov/sites/ExecutiveBranch/About/BoardsCommissions/Documents/CCOP/EB_Annual_Report_FY13.pdf

Charlotte-Mecklenberg County, NC

<http://charmeck.org/city/charlotte/CRC/PCR/Pages/PoliceComplaintReview.aspx>

San Diego County, CA <http://www.sandiego.gov/citizensreviewboard/about/index.shtml>

Fairfax County Police Department. *General Order 301 – Internal Investigations*. Fairfax County Police Department, 1 Jan. 2013. Web. <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>

National Association for Civilian Oversight of Law Enforcement. *Letter to Nicholas Beltrante, Executive Director, Virginia Citizens Coalition for Police Accountability*. 27 May 2015. Web.

<http://www.fairfaxcounty.gov/policecommission/materials/nacole-oversight.pdf>

Independent Oversight and Investigations Subcommittee

Final Report

October 8, 2015

Survey Samples:

Fairfax County Police Department. *Community Relations Survey*. 4 Sept. 2014. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/draft-of-community-police-sept8-2014.pdf>

Lum, Cynthia, Linda Merola, Julie Willis, Breannae Cave. *License Plate Reader Technology: Impact Evaluation and Community Assessment*. Center for Evidence-Based Crime Policy, George Mason University. Sept. 2010. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/lpr-final-report-submitted-to-spawar.pdf>

Fairfax County Police Department. *Community Survey*. April 2009. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/community-survey-april-2009.pdf>

Fairfax County Police Department. *Sully Station Chantilly Mews Surveys*. 2004. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-chantilly-mews-2004-survey.pdf> 2005. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-chantilly-mews-2005-survey.pdf>

Fairfax County Police Department. *Sully Station Sunset Knolls Surveys*. 2005. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-sunset-knolls-2005-survey.pdf> 2006. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-sunset-knolls-2006-survey.pdf>

Fairfax County Police Department. *Standard Operating Procedure 04-010 – Wellness Program*. 1 April 2007. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sop-04-010-wellness-program.pdf>

Fairfax County Police Department. *General Order 331 – Restricted Duty*. 1 April 2013. Web.

<http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/040113restrictedduty331.pdf>

Fairfax County Police Department. *General Order 430.4 – Incident Support Services*. 1 April 2014.

Web. <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/4304061015.pdf>

Fairfax County Police Department. *Organizational chart on Incident Support Services*, n.d. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/iss-chart-2.pdf>

Fairfax County Police Department. *Additional chart on Incident Support Services*, n.d. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/iss-chart-i.pdf>

Fairfax County. *Special Psychological Services Group Contract*. 14 March 2012. Web

http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/special_psychological_services_group_contract.pdf

Independent Oversight and Investigations Subcommittee

Final Report

October 8, 2015

Fairfax County Police Department. *Applicant and Fitness for Duty Examinations*, n.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/applicant-and-fitness-for-duty-examinations.pdf>

Fairfax County Police Department. *Employee Assistance Program Memorandum*. 1 June 2014. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/county-eap-memo.pdf>

Fairfax County Police Department. *Brief Overview of Support Groups*, n.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/employee-support-groups.pdf>

Fairfax County. *Medical Status Form*. Jan. 2014. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/medical-status-report.pdf>

Fairfax County Police Department. *Family Resource Manual*. 27 August 2008. Web. http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/family_resource_manual.pdf

Hill, Andy (Capt.), Lt. Justin Palenscar. *Internal Affairs Bureau Presentation*. Fairfax County Police Department, n.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/internal-affairs-briefing-june16.pdf>

International Association of Chiefs of Police. *Critical Incident Stress Management: Paper*. July 2011. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/critical-incident-stress-paper.pdf>

International Association of Chiefs of Police. *Critical Incident Stress Management: Model Policy*. July 2011. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/critical-incident-stress-policy.pdf>

International Association of Chiefs of Police. *Officer-Involved Shootings, In-Custody Deaths, and Serious Uses of Force: Paper*. May 2012. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/officer-involved-shooting-paper.pdf>

International Association of Chiefs of Police. *Officer-Involved Shootings, In-Custody Deaths, and Serious Uses of Force: Model Policy*. May 2012. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/officer-involved-shooting-policy.pdf>

AELE. *Administrative Investigations of Police Shootings and Other Critical Incidents: Officer Statements and Use of Force Reports*. June 2008. Web (two parts). <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/admin-investigations-part1.pdf>; <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/admin-investigations-part2.pdf>

National Association for Civilian Oversight of Law Enforcement. *Briefing on Police Practices and Use of Force*. 19 June 2015. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/nacole-police-practices-use-of-force.pdf>

Independent Oversight and Investigations Subcommittee

Final Report

October 8, 2015

Attard, Barbara, Kathryn Olson. *Overview of Civilian Oversight of Law Enforcement in the U.S.*, National Association for Civilian Oversight of Law Enforcement. N.d. Web.

<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/oversight-us-law-enforcement.pdf>

Fairfax County Police Department. *Notice of Administrative Investigation for Sworn Employees*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sworn-notice.pdf>

Fairfax County Police Department. *Notice of Administrative Investigation for Non-Sworn Employees*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/non-sworn-admin-notice.pdf>

Fairfax County Police Department. *Notice of Order of Confidentiality*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/confidentiality-order.pdf>

Fairfax County Police Department. *Confidentiality Order Rescission*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/confidentiality-order-rescission.pdf>

Fairfax County Police Department. *General Order 001: Ethics and Integrity*. 3 Oct. 2013. Web. <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/001.pdf>

Sengel, S. Randolph *Report of Investigation: Police Involved Shooting of Taft Sellers*. Alexandria Commonwealth's Attorney 18 Feb. 2013. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/alexandria-sellers-report.pdf>