

**Ad Hoc Police Practices Review Commission
Use of Force Subcommittee
May 20, 2015, 7:00PM
Room 232, Fairfax County Government Center**

Subcommittee members present:

Joe Cammarata
Brad Carruthers
Sal Culosi
Mary Kimm
William Moncure
Phil Niedzielski-Eichner
Gervais Reed
Randy Sayles

Jodi Shlesinger
Michael Shumaker
Joe Smith
Adrian Steel
Ralph Cooper
George Becerra
Bernard Thompson

Subcommittee members not present:

Hassan Aden

Mr. Niedzielski-Eichner began the meeting by welcoming everyone and thanking the Subcommittee members and the members of the public for attending. He reviewed the proposed agenda and indicated that time will be made available at the end of the meeting for public comment.

He thanked Subcommittee members who had submitted questions for staff response. These will be forwarded to the County for answers. All "Q&As" will be circulated to the Subcommittee and will be posted on the Commission's website.

Niedzielski-Eichner asked that staff responses be provided at least 3-4 days before the next meeting to facilitate Subcommittee consideration.

Mr. Sayles moved and Mr. Moncure seconded a motion to make this a Subcommittee expectation. The motion passed without dissent.

Mr. Becerra moved and Mr. Carruthers seconded a motion to adopt the minutes of the May 6th meeting. Mr. Shumaker moved and Mr. Steel seconded a motion to amend the original motion and the minutes with specific edits. The amendment to revise the minutes was approved without dissent, as was the main motion.

Mr. Becerra called for each Subcommittee meeting to be recorded and videotaped. Mr. Niedzielski-Eichner indicated that rooms with A/V equipment are not always available, but that he will discuss with Mr. Medford.

Use of Force Work Plan

Mr. Niedzielski-Eichner presented a draft work plan for Subcommittee consideration (attached). He indicated the draft work plan was designed to assure that the Subcommittee completed its work in time to meet the Commission Chairman's charge of a final Subcommittee report on September 14, 2015.

Mr. Niedzielski-Eichner noted that he hopes the Police Executive Research Forum Report will be completed and available for the Subcommittee in time for a discussion June 3rd, but understands from the Deputy Police Chief Ryan that it is unlikely to be available until June 16th. He offered that maybe the Executive Summary could be made available before final report is ready.

Mr. Culosi asked, and it was confirmed by Deputy Chief Ryan that FCPD will have an opportunity to review and comment on the Report before it is final.

Mr. Niedzielski-Eichner brought the Subcommittee members attention to task #2 under the Policies and Practices activity relative to General Orders (GOs) and Standard Operating Procedures (SOPs). He emphasized the importance he placed on all Subcommittee members reviewing and understanding them, as they are collectively the framework within which officers are trained and held accountable.

Deputy Chief Ryan clarified that GOs are public information and that SOPs are internal FCPD operational documents. Since SOPs are tactical and situational in nature, they cannot be shared without compromising the Department's incident response capabilities. He did note that some SOPs might be releasable with redactions.

Mr. Cammarata asked for, and the Chairman concurred with, the Subcommittee receiving an index of all SOPs and memoranda that represent the "universe" of all documents that form the formal policy framework within which police officers are trained and are expected to perform. The index will provide the Subcommittee a broad awareness of what they address and so the Subcommittee can ask for ones they may want to see as pertinent to its charge. Mr. Cammarata asked, and the Chairman concurred, that the titles of all SOPs be listed by title and number.

Mr. Niedzielski-Eichner asked Deputy Chief Ryan to expedite the preparation of the SOP index.

Mr. Thompson asked that FCPD explain how training officers on the street informally instruct new officers on how they should interpret the GOs and SOPs.

FCPD representatives will respond at meetings or in writing, as pertinent, to Subcommittee questions on the intent and execution of the General Orders and SOPs.

Continuing with the review of the draft work plan, Mr. Niedzielski-Eichner contrasted the need for all Subcommittee members to have familiarity with the General Orders and SOPs with the tasks under the Benchmarking/"best practices" activity. Here he will make assignments to individual members to review the respective reports and report on them to the full Subcommittee, both in writing and verbally.

He requested that members send him an e-mail letting him know the reports they volunteer to review and report on for the Subcommittee. Each member given an assignment should provide a brief overview and observation on the topic, which will be circulated to Subcommittee members 3-4 days in advance.

Mr. Niedzielski-Eichner also noted in the work plan a reference to the Subcommittee hearing from external subject matter experts whose names were nominated at the previous meeting. He proposed that any such activity be scheduled for an additional meeting other than the Subcommittee's regular every-other week meeting.

Mr. Niedzielski-Eichner also pointed out dates in the draft work plan where the Subcommittee would generate preliminary observations and findings, rather than wait until the end to do so.

Finally, Mr. Niedzielski-Eichner noted that the Subcommittee will consider report drafts at its August 19th and 26th meeting, with the Aug. 26th version expected to be “near final,” having only technical editing to perform before it is final and conveyed to the Commission on September 14th.

Mr. Steel moved, and Mr. Moncure seconded, a motion that the proposed work plan be approved as presented by Mr. Niedzielski-Eichner and clarified by the Subcommittee. The motion was approved by the Subcommittee without dissent.

Mr. Niedzielski-Eichner then moved to the next agenda topic and introduced Deputy Chief for Administration Tom Ryan and he introduced Commander Dave Moyer (Operations Support) and Commander Randy Joyce (Special Ops – Oversees SWAT). He also introduced the upcoming Internal Affairs (IA) Commander in audience.

Deputy Chief Ryan then led a discussion with the Subcommittee of recent use of force incidents involving FCPD; data summarizing FCPD use of force interactions, officer involved shootings resulting in death or injury, and in-custody deaths from 2005 to 2015; and incidents in which SWAT teams, military-type equipment, and other high risk tactics were employed.

Deputy Chief Ryan referenced the “Internal Affairs Bureau 2013 Annual Statistical Report.” He noted further that FCPD averages 400 use-of-force cases per year, which includes the use of tasers and officers pointing guns. In that same average year, FCPD responded to 460,000 official calls for service and made 50,000 arrests.

He indicated that FCPD has collected and posted online comparisons of jurisdictions from around nation with officer involved shootings. Fairfax and Montgomery County, MD have both had 36 officer involved shootings since 2004. These numbers are comparable to similarly sized jurisdictions in the nation. He will post additional information on website. He noted that IA is working on synopsis of cases to provide to the Subcommittee.

Mr. Steel noted that it would be helpful to have details on IA cases that led to sanctions of police officers; alternatively, perhaps the Subcommittee could use a few cases that are closed as examples for committee. Mr. Becerra agreed that it would be helpful for the Subcommittee to be able to walk through of a couple of cases. Deputy Chief Ryan look into the request and pull together cases that can be released.

Deputy Chief Ryan indicated that there have been 62 officer-involved shootings since 1995, three per year on average. FCPD press releases for these 62 officer-involved shootings will be posted on the Commission’s website.

Ms. Kimm asked that for insight into what is released to media in comparison to what is actually known by FCPD. She also asked if the race of officer-involved shootings were maintained in the data base. Deputy Chief Ryan didn’t have that information, but did indicate that FCPD is committed to providing more detailed information earlier, to the extent possible.

Commander Moyer then gave an overview of SWAT. He noted that SWAT has 12 full time officers (2 supervisors, 10 officers). A “Supplemental Team” of 15 equally trained officers who are deployed for other purposes (3 supervisors, 12 officers) is available to SWAT should the situation call for an expanded response.

SWAT can be used for a variety of purposes, including administering search and arrest warrants, hostage/barricade incidents, armed robbery stakeouts, active shooter incidents, and VIP protection.

Commander Moyer explained how SWAT deployment takes place. He noted that it is FCPD’s practice to review use of SWAT on every case, in an effort to continuously improve performance. He also provided a *Risk Assessment Statistical Summary*, which illustrates the event types where advanced tactics were recommended and the FCPD entity recommending their use. Burglary, gang participation, and narcotics are examples.

The presentation elicited a number of questions from the Subcommittee:

- What has changed in SWAT cases over time, particularly since the Culosi case?
(A three step process and a threat assessment must be undertaken to receive approval for the use of SWAT; Commander Moyer also distributed hostage/barricade incident command chart.)
- Is there a decision-making flow chart that can be shared with the Subcommittee?
(No, but FCPD uses an six-page Risk Assessment and Mitigation Form was started in 2008 for internal use and is not publically available. An abbreviated draft one-page form has been designed for public dissemination and was distributed to the Subcommittee. This form will be incorporated into a GO.)
- Are there national benchmarks to compare FCPD SWAT use against?
(There are some; see the National Tactical Officers Association)
- How are negotiators and de-escalators used with SWAT?
(Almost all SWAT members are trained in crisis intervention and de-escalation techniques.)
- Are SWAT procedures written down and, if so, what form are they in?
(Yes, but as elements of different GO, for example 601 governing arrest procedures and 610.3 governing search warrants; some procedures, however, are also captured in police procedure memos. These memos usually exist as a bridge to a GO before it undergoes the change control process to incorporate the revisions specified in the memo.

This prompted reinforcement of the need for the Subcommittee to receive an index of the universe of policies and procedures that guide threat assessment and deployment of SWAT and other advanced tactics, as well as access to training materials, such as videos.)

Note: Commander Moyer indicated that FCPD is looking at pulling all of the pertinent provisions into one general order to consolidate the various provisions spread throughout the current GOs.

- Are there ever “warrantless searches?”
(No)
- What governs when a gun can be pointed or put in “ready gun” status?

(Deputy Chief Ryan indicated that the GO on deadly force governs.

Mr. Carruthers, in his role as training officer, also described the Cardinal Rules of Gun Safety:

1. Treat all weapons as if loaded
2. Never point firearm unless ready and willing to kill someone (likely to kill if you shoot someone directly at center mass, so must anticipate that someone could be killed if you shoot)
3. Never place finger on trigger unless ready to fire
4. Be sure of your target and what is beyond (who else could be hit, what's in the background)

Mr Carruthers also demonstrated "ready gun" officer training. He indicated that scientific studies underpin office training in this area. He indicated that the gun may be pointed when a reasonable person feels the life of the officer or another person is in danger, but the finger is straight, not on trigger. He also noted that distance from the target dictates where the gun is aimed; the closer in the lower the aim, to ensure officer always has target hands in sight. He indicated that officers receive 50 hours of training on gun handling and shooting, the highest in the Commonwealth and that FCPD has been asked by the Department of Criminal Justice Services to review the Commonwealth's procedures and requirements.)

- Is SWAT use information provided to the BOS (maybe at public safety committee)?
(Answer unclear)
- Are there parts of PD that have staffing shortages?
(No response offered)
- Is there a definition of barricade situation?
(Yes; copy requested)

Mr. Niedzielski-Eichner welcomed Ralph Cooper who is joining the Subcommittee.

Members of public were offered an opportunity to address the Subcommittee; those who spoke asked questions of the FCPD representatives.

Mr Niedzielski-Eichner encouraged Subcommittee members, as they conduct their individual exploration of policies, procedures, and best practices, to ask questions, preferably in writing. All answers will be documented and shared with the public via the website. He asked that written questions be conveyed to Clayton Medford, but to also copy him, as Subcommittee Chairman, on all such e-mails.

Mr Niedzielski-Eichner adjourned the meeting.

Meeting notes were taken by Claudia Arko of the County staff and Commissioner Adrian Steel; and the minutes were prepared by Subcommittee Chairman Niedzielski-Eichner.

Attachment: Subcommittee on Use of Force Approved Work Plan

Summary of Requests from Committee, as approved by Chairman Niedzielski-Eichner

1. Index of SOPs
2. Index of memos issuing orders (eventually incorporated into General Orders)
3. Use of Force training materials, including “ready gun” policies and protocols
4. Comprehensive SWAT policies and protocols, including assessment, approval and training materials and post-use review and debriefing
5. Table identifying the 62 OISs (including race of the “victim”) with a synopsis of the circumstances of each shooting, including the circumstances of the 8 shootings where administrative action was taken and the reasons for such action
6. IAB and CIB reports for high visibility OISs, including Salvatore Culosi, Jr. (2006), David Masters (2009), Nicholas Kaelber (2012), and James Bryant (2013)
7. Definition of “barricade” situation
8. Use of Force committee documents -- what its responsibilities are, when it meets, who is on it, and what actions it can take/recommend? (These may be provided in connection with the scheduled June 3 FCPD presentation on the UOF Committee)