

**Ad Hoc Police Practices Review Commission**  
**July 27, 2015 7:30PM**  
**Rooms 9/10, Fairfax County Government Center**

Meeting began at 7:30

Commissioners Present:

Bell, Kevin  
Caldwell, Lucy H.  
Cammarata, Joe  
Castrilli, Tony  
Clingan, Eric  
Cluck, Robert  
Culosi, Sal  
Diehl, Jim  
Dillard, Amy  
Earley, Pete  
Fitzgerald, Merni  
Ginwright, Shirley  
Hershman, Michael  
Kidwell, Ron  
Lovaas, John  
Niedzielski-Eichner, Phil  
Rohrer, Dave  
Ryan, Tom  
Simon, Marcus  
Steel, Jr., Adrian L.  
Stewart, Jeff  
Thompson, Tim  
Wallace, John

Commissioners Absent:

Aden, Hassan  
Beltrante, Nick  
Carruthers, Brad  
Corcoran, Sean  
Fried, Greg  
Hill, Joe  
Horan, Robert  
Johnson, Jack  
Kimm, Mary  
Kwon, Michael  
Reed, Gervais

Others in attendance:

Christian Klossner, Washington, DC Office of Police Complaints (DC Office); Board Member, National Association for Civilian Oversight of Law Enforcement (NACOLE)

Sharon Bulova

Minutes moved by Mr. Bell, multiply seconded, approved unanimously.

Mr. Klossner began his presentation on civilian oversight. [NOTE: Mr. Klossner's presentation is available on the Ad Hoc Police Practice Review Commission's website.] Mr. Klossner offered to meet with commissioners to give them a tour and help them understand the DC Office of Police Complaints.

Mr. Klossner said there are over 200 entities, and most large police departments have some form of civilian oversight. While many have been created in wake of crisis, he believes that will change and points to recommendation in President's Task Force on 21<sup>st</sup> Century Policing.

Mr. Klossner discussed his personal reasons for becoming an advocate for civilian oversight in order to build trust between police and the community.

Mr. Klossner said oversight is often created in an adversarial time (in wake of crisis) and it appears to be anti-police. NACOLE attempts to correct that by helping localities set expectations for oversight.

He said oversight is to protect from a few bad officers or policies that do not fulfill mission of police.

Mr. Klossner repeated his offer on behalf of NACOLE to assist in the Commission's work and the Board of Supervisors.

Questions:

Mr. Statter said 10-15 years ago there were problems with the DC Office. What has evolved?

Mr. Klossner said the office has been reconstituted and now the agency has an array of functions and works well. Caseload is an issue. Many places have gone to an auditor model to deal with large caseload of investigative body. He said the DCPD has always been cooperative and responsive. He has never subpoenaed them but has used the power for private security footage or to compel information from other agencies like WMATA. His office has issued 40 policy reports and they were adopted to some degree. Community outreach and mediation are also functions of his office.

Mr. Steel asked about what an auditor/panel combination would review...what would they review? Use of force, rudeness and everything in between.

Mr. Klossner said every office is different and it is up to the community to determine that. Their ought to be potential to access all kinds of complaint data – need to be encouraged and accepted and easy to file complaint. On data, patterns and trends need to be able to be detected. That could also be accomplished through robust public reporting by PD. You shouldn't have to wait for use of force to determine if there is a problem.

Mr. Steel asked if you're building trust, you should be able to review fuller range of complaints, right?

Mr. Klossner said it is a balance of community needs, what the Board of Supervisors feel is fiscally prudent, but he cannot drill down to specifics without a better understanding of Fairfax County government. He added the Commission is large and it is a robust undertaking. The Commission should consider what type of oversight the community needs.

Mr. Culosi asked how Klossner's officer interacts with criminal or administrative investigations?

Mr. Klossner said the DC process XX (8pm)

His office will conduct a preliminary investigation but required to send to U.S. Attorney's office for review if they determine it may be a criminal act.

On internal investigations, in DC a person has the option of filing with Complaints, PD or both and there is no interaction between the two except the Complaints office can review internal review for completeness.

Mr. Culosi asked about how they comply with Garrity?

Mr. Klossner said officer must participate and if they do not, they are referred for discipline. DC has a General Order that includes a table of penalties, including termination, for not cooperating with Complaints Office review. Officer can plead 5<sup>th</sup> XX and compelled statements cannot be used in prosecution.

Mr. Klossner will submit Attorney General's opinion on this topic.

Ms. Dillard said the Commission has considered an embedded model.

Mr. Klossner said there are two kinds – innate, they can participate all along; complaint driven.

Mr. Klingan confirmed other Virginia localities have oversight, and the difference in sizes between localities with oversight.

Mr. Lovaas asked how do you incorporate understanding of law enforcement.

Mr. Klossner said by definition oversight does not have police involvement. His office has members selected by the Chief of Police. Having involving can help eliminate barriers and assist in getting information. The larger field is opposed because police are inherently involved. But it is important to engage with police department. He added that an open line of communication with police union can be beneficial as well.

Mr. Hershman asked about Mr. Klossner's experience as an ADA in the Bronx. Did he prosecute policy? What resources did the office have to do that?

Mr. Klossner said he did not prosecute police while there. He said he wasn't sure exactly.

Mr. Hershman asked in dealing with other prosecutors, are there any general rules in what resources may or may not be used?

Mr. Klossner said he does not know.

Mr. Niedzielski-Eichner asked who is responsible for monitoring the collection and reporting of data by the DCPD?

Mr. Klossner said predominately the PD. His office does not have access to broad data police has. He relayed an experience with data on window-tint stops – predominately African-American and on one side of a "racial dividing line." The office did not declare a pattern, but asked the PD to respond. This is a limitation created by not having all the data.

Mr. Bell asked to explain how the Office fits in the city hierarchy.

Mr. Klossner said the executive director is hired and fired by complaints board; those are nominated by mayor and approved by council and staggered 3-year terms; mayor chooses chair. Mayor has authority over personnel in Office.

Mr. Bell asked if there are different structures of governance listed on NACOLE site.

Mr. Klossner said they posted links to most local pages. Detailed Agency Profiles are also available.

Mr. Bell said Virginia Beach is a city and has different authority from counties. Ms. Bulova added that Virginia has different laws than DC and Maryland.

Ms. Bulova asked who investigates police shootings.

Mr. Klossner said police department investigates and turns over to U.S. Attorney. If there is a complaint, his Office reviews as well.

Mr. Diehl said it would appear selection of members of civilian board is critical. He suggested the Commission review best practices on member selection.

Mr. Statter asked if the Office can get involved if no complaint; did either NACOLE or the Office ever take exception to FOIA exemption on body cameras in DC?

Mr. Klossner said he does not believe an official position was taken. On whether the Office can get involved without a complaint, they are generally out of it but perhaps the Chief or Mayor can get them involved – it hasn't happened and he doesn't believe it will. Some jurisdictions, like Chicago, have automatic involvement.

Mr. Earley asked about cost.

Mr. Klossner said it can range from one part-time salary and his office has 22.5 people and \$2.2 million budget.

Mr. Hershman asked if their findings have different materially from police findings.

Mr. Klossner said he could not answer.

Mr. Earley asked whether they have even done study on whether there has been a cost savings, as in from avoided lawsuits?

Mr. Klossner said a report from DC that there needed to be changes but the DCPD did not follow through and this led to a lawsuit. He added that if followed that can lead to fewer lawsuits.

Mr. Culosi asked what kind of complaint would you get when a victim is shot and there are no witnesses?

Mr. Klossner said bystander or family member could. If a minor, a parent could file a complaint.

An audience member asked if automatic review can be added to the Office's charter.

Mr. Klossner said that would be up to DC city council.

Audience member asked if the Office is privy to Brady review.

Mr. Klossner said the Office has broad access to what it deems relevant to investigation. If there is a relevant personnel record, they would be authorized to obtain them.

Another audience member stood to discuss Brady and read from a document describing Brady.

Mr. Stewart asked that if in jurisdictions with oversight, he assumes the public is positive but what has been the perspective of police?

Mr. Klossner said that varies largely based on political climate, police chief. Oversight is usually met with some resistance from officers and unions but over time at least some unions have not resisted. DC union does not agree with model of Office but supports oversight. He said oversight that assists law enforcement with understanding the law and supporting them can be positive. Mr. Klossner said there really isn't good data on what oversight works best – many variables. One way is to do a baseline survey and poll the public, adding a structure, and then surveying later.

Discussion moved to the presentation of the Recruitment, Diversity and Vetting Subcommittee.

Mr. Hershman said these are reports that will be voted on before going to Board of Supervisors.

Ms. Ginwright introduced subcommittee members in attendance not on commission – George Alber, Chio Stokes, Burnette Scarboro.

She said a media approach to marketing open position is too expensive.

On referral incentives, best practices show when an officer recommends someone they know, that person tends to complete the process and become an officer.

Ms. Ginwright described the Explorer and Cadet programs.

Ms. Ginwright discussed the Chief's Diversity Council and its role; the strategic plan as it relates to diverse hiring; and other community programs meant to engage community and talk about opportunities within the department.

On vetting: FCPD is in line with other jurisdictions on vetting; polygraphs and background checks are where FCPD lags – recommend increasing those resources and formalizing officer selection (via Police Executive Research Forum report).

On retention and attrition – competition with federal government with higher salaries and faster retirement; recommend providing more incentives such as take-home vehicles and dual career path (management vs. technical).

Mr. Niedzielski-Eichner asked about profile of ideal recruit and what FCPD has; what criteria is applied by department as it relates to psychological examination? Any context of culture, particularly use of force? He said his subcommittee (Use of Force) has discussed whether an officer may had a predisposition to using force.

Ms. Ginwright said the PERF report did in fact cover that aspect. She discussed the issue with Maj. Joe Hill and he said that anything that would reveal such a predisposition would come out in polygraph. Mr. Diehl asked about incentives to join FCPD/Explorer/Cadet – layers of repayment instead of a full refund – is she open to that change? He added that the notion of everyone serving the country in some way – military to librarian to assisting the disabled – could be another way to appeal to recruits. Ms. Ginwright said the Communities of Trust Committee is looking at the different opportunities in the County for those kinds of program. On the repayment, her subcommittee used the federal government's practice of requirement repayment of training if trainee leaves after receiving free training. Mr. Statter asked about diversity goal and commander's responsibility. Ms. Ginwright clarified the recommendation. Ms. Bulova said each district has a commander and that commander has a Citizens Advisory Council. As part of that, there should also be a recruitment and diversity mission at that level, she believes the recommendation is. She added that on the retention/attrition, it's local and federal governments that are our competition. Mr. Steel asked whether the Commission can see the data on the latest class. She will ask for that at Mr. Medford will distribute. Mr. Steel asked about vetting and screening – he is concerned the Commission does not know more about that. Mr. Hershman suggested the Commission ask for a presentation from FCPD on that issue. Mr. Steel agreed. Mr. Ryan said he will post documents online this week on this issue. Mr. Hershman added it is important to have a better understanding of the psychological process and whether there should be ongoing psychological evaluation throughout an officer's career. Mr. Niedzielski-Eichner mentioned the recruiting image on the FCPD page being an officer using a gun. George Becerra (member of multiple subcommittees) asked about performance evaluations and whether the chief is evaluated the same way commanders are. Ms. Bulova said she would consider that. Audience member asked about the attrition rate of 4.5% and whether there is a national average to compare it to. 4.5% seems low.

Ms. Fitzgerald presented the recommendations of the Communications Subcommittee. She said the report stresses a cultural change to create the predisposition to disclose. [NOTE: Ms. Fitzgerald read through the report of the subcommittee, which can be found on the Ad Hoc Commission's website].  
Questions:

Mr. Hershman said all subcommittees should feel free to continue to meet as the work of the Commission progresses.

Mr. Cammarata asked about process, and whether the Commission will vote on language in preambles and the individual recommendations. Mr. Hershman said not a vote on preamble but the Commission is open to suggested changes.

Mr. Cammarata said transparency is laudable. In the preamble, did FCPD members of subcommittee agree to language that precedes the first recommendation? Ms. Fitzgerald said there was no minority report and the question was specifically asked of the FCPD members if the language needed to change.

Mr. Cammarata clarified that the words "cases were mishandled...lowered level of service" did they agree to that? Did they agree that there is a crisis of confidence? Did they agree that they are paying lip service to idea of transparency? Did they agree they are providing dishonest communications?

Ms. Fitzgerald said she cannot speak for FCPD but the members of her subcommittee endorsed the report.

Mr. Cammarata said this is a real problem if they are admitting to the language he paraphrased.

Mr. Diehl pointed to the “timely communication” portion of the recommendations. Is that overstated? He believes so.

Ms. Fitzgerald said it is up to the chair how much of this goes to the full commission but this reflects the views of the subcommittee.

Mr. Statter said the only objection from FCPD was about when the name is released and all this language was before them.

Mr. Steel and Mr. Cammarata disagreed over the nature of Mr. Cammarata’s questions.

Mr. Hershman said not all language from all subcommittees will be included in final report. It is his intention that the subcommittee chairs will be present at the Board meeting to answer questions.

Mr. Simon asked if there are specific changes to VFOIA they should be included. There is a VFOIA Council that holds a legislative preview. On open data – a lot of VFOIA exemptions are around tactics and manuals, very specific. Recommendation is to make all department policies and procedures available on line – did this come up?

Ms. Fitzgerald said the subcommittee did not talk about specific exemptions and rejected an overall call for Board to call for legislative changes. On tactics, subcommittee did not delve into this specific topic. She added that similar efforts are successful elsewhere.

Mr. Cammarata said if FCPD in its communications was acting dishonestly, anyone doing that should be fired.

Mr. Statter said he doesn’t believe we ever used “dishonest” – Mr. Cammarata read the recommendation which said FCPD should begin using honest communication. Mr. Statter said there are examples of lacking transparency that could be considered on the line of being dishonest. He added there was a lack of transparency in the Geer case in particular. Mr. Cammarata repeating his view of the use of honest going forward means FCPD was dishonest previously.

Mr. Bell said he doesn’t want recommendations to be overwhelmed by the wordsmithing. He said the most important items are the recommendations that move the county out of what happened in the past.

Mr. Culosi asked if it is useful to identify the groups of things that cannot be released – for example internal affairs files. Ms. Fitzgerald said the subcommittee agrees. What the report refers to is when something is exempt from mandatory disclosure it should be released. Ms. Fitzgerald said there are very few things legally prohibited from disclosure.

Mr. Lovaas said the Commission is here because there is a lot of trouble over performance of FCPD and others. He said the Commission should not wordsmith the report.

Mr. Steel, on VFOIA, said the federal government requires a line-by-line judgment of fulfilling requests. The rest of the country seems to do a lot better job than Fairfax County and Virginia and perhaps it’s because of the number of exemptions.

Mr. Ryan said the police department recognizes it needs to get better on communication. New records management system may allow for easier and faster release of information. He added it is difficult to listen to the criticism levied by the commission but FCPD welcomes it and wants to get better.

Mr. Hershman said the most important work is the recommendations not the language behind the recommendations.

Mr. Stewart said dishonesty by omission is as bad as a blatant lie. Withholding information is being dishonest. As far as surprise or shock that an officer would support the “dishonest” wording should go out and go on a ride along and talk to an officer about what would make their job easier. He added there are a lot of frustrations felt by the rank-and-file about recent cases.

Audience member said if there is a commitment by FCPD, they should fulfill request of Barrie Masters to have the case files of the shooting of his son David Masters. She added that there needs to be reporting on FOIA requests, denials, fulfillments, time frame for processing, just as federal government is required to report to Justice Department.

Mr. Culosi said in 40 years the Commonwealth's Attorney hasn't indicted an officer – that doesn't mean they were wrong. But if citizens had access to the information the Commonwealth's Attorney used, trust would be stronger.

Mr. Becerra asked for a top 10 budget and policy recommendations, to rank the recommendations so county staff knows what the priorities of the community are.

Mr. Hershman said recommendation will go to the Board of Supervisors and then FCPD and the FCPD will bring the Board up to date on what FCPD is already doing and also what FCPD will need to implement others.

Ms. Bulova said the report is strongly worded but reflects the frustration she has heard over the past 2 years where the County has suffered from a lack of candor and enraged some of the community because they feel we haven't been transparent. That's not OK. Not just in the Geer case, but that's what brought it to a head. The County should be providing as much as possible without going outside the law. She says a good bit of the trust with the fantastic FCPD has been lost. We worked hard to build a great department but it has been damaged because of this. She added that National Night Out shows a lot of community support for police. She said the Board is looking forward to having Commission's report.

Mr. Statter said this doesn't just serve community but rank-and-file officers.

Mr. Hershman said next meeting is on August 17 and report will come from Mental Health and CIT. He asked Mr. Medford to arrange a member of FCPD to talk about vetting.

The September 14 meeting will be held at Walt Whitman Middle School. This meeting will include a public hearing, at the direction of the Board of Supervisors, and a report from the Use of Force Subcommittee.

Mr. Cammarata and Mr. Statter were not present at previous meeting and want that reflected in the minutes.

Meeting concluded at 10:01pm.

