

Police Civilian Review Panel

May 26, 2021

Conducted Electronically due to COVID-19 Pandemic

Public Forum Summary

Panel Members Present:¹

Cheri Belkowitz

Todd Cranford

Jimmy Bierman, Acting Chair

Frank Gallagher

Dirck Hargraves

Doug Kay

Shirley Norman-Taylor

William Ware

Others Present:

Col. Kevin Davis, Chief of Police

Anthony Guglielmi, Public Affairs Director

Peter Flynn, Assistant Director, Office of the Chief

Major Dean Lay, Internal Affairs Bureau

Anita McFadden, Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Lieutenant Camille Stewart, Internal Affairs Bureau

NOTE: The Panel's May 26 meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:00 p.m. and all Panel Members were present. Mr. Bierman welcomed everyone to the Panel's May 26, 2021, Public Forum and noted a few housekeeping rules.

Motions to Conduct Electronic Meeting: Mr. Bierman took roll call to verify a quorum of the Panel was present and to ensure each Panel Member's voice could be heard clearly. He asked each Panel Member to state their name and the location from which they were participating.

Ms. Belkowitz was present and participated from Fairfax Station, Virginia.

Mr. Bierman was present and participated from McLean, Virginia.

Mr. Cranford was present and participated from Fairfax, Virginia.

Mr. Gallagher was present and participated from Bethany Beach, Delaware.

¹ One Panel seat was vacant for this meeting.

Mr. Hargraves was present and participated from Kingstown, Virginia.

Mr. Kay was present and participated from Fairfax, Virginia.

Ms. Norman-Taylor was present and participated from Lorton, Virginia.

Mr. Ware was present and participated from Alexandria, Virginia.

Mr. Bierman moved that each member's voice may be adequately heard by each other member of this Panel. Mr. Hargraves seconded the motion and it carried unanimously.

Mr. Bierman moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. He further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 551 3209 as noted in the Public Meeting Notice. The motion was seconded by Mr. Hargraves, and it carried by unanimous vote.

Mr. Bierman moved that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Cranford seconded the motion and it carried by unanimous vote.

Public Forum Purpose and Structure

Mr. Bierman introduced the Police Civilian Review Panel and its purpose and authority. He said that the Panel, the Fairfax County Police Department (FCPD), and community members are aligned in their goals of improving public safety and carrying out public safety in a just and equitable manner. He reviewed the authority of the Panel and the scope of its jurisdiction. He emphasized that the Panel reviews investigations conducted by the FCPD's Internal Affairs Bureau (IAB) and that the Panel does not have investigative authority, subpoena power, nor disciplinary power. Mr. Bierman said the Panel makes recommendations on police department policies, practices, and training, and he referenced the Panel's Recommendation Matrix available on the website. Mr. Bierman then introduced new FCPD Chief Kevin Davis who began in Fairfax County on May 10 and previously served as Chief of Police in Baltimore and Anne Arundel County, Maryland.

Introductory Remarks by Police Chief Kevin Davis

Chief Davis thanked Mr. Bierman, the Panel, and those in attendance. The other representatives from the FCPD in the room with Chief Davis introduced themselves. Chief Davis said he served as Police Commissioner in the city of Baltimore from 2015-2018 and before that he served as Police Chief in Anne Arundel County, Maryland. He spent most of his career in Prince George's County, Maryland, where he started as a Patrol Officer and retired as Assistant

Police Chief. In Prince George's County he worked with the Citizen Complaint Oversight Panel (CCOP), a similar body to the Fairfax County Panel. He worked with a similar body in Baltimore, the Civilian Review Board. He said more eyes on the police are a good thing. Chief Davis said that the police, as a profession, deserve and merit scrutiny because they can do things others cannot do in this country, up to and including the use of deadly force, charging someone with a crime, and taking away their freedom. He said it was a solemn responsibility and he is open to community input, oversight, and recommendations. He agreed with Mr. Bierman's remarks that we are all aligned. He said he wants there to be courageous conversations internally in the department. He said his personal and professional growth was accelerated due to being a part of consent decrees in Baltimore. He said he looks forward to relationships with the Panel and everyone in attendance.

Panel Member Questions and Discussion with Chief Davis

Mr. Bierman said that the Panel has requested that it be fully staffed, including an executive director position who would have investigatory experience, would have monitoring authority into certain investigations, and who could draft reports and oversee administrative staff.

He asked would you support fully staffing the Panel and hiring an executive director who would be involved in such investigations? Chief Davis said that ultimately the Board of Supervisors is the entity that makes staffing decisions but that he is an advocate for having adequate resources and staff to do important work. The Commonwealth recently passed legislation to allow local jurisdictions to make decisions about police oversight. He said he knows the Board of Supervisors takes it seriously and will support the Board's decision.

Mr. Bierman said the Panel has asked for limited subpoena power to interview certain witnesses in certain investigations when they believe it is important to take independent investigatory action. He asked do you support giving the Panel some sort of investigatory authority? Chief Davis mentioned that Chicago has such a structure where their oversight body has subpoena power. He said that whichever direction the Board takes, he will support their decision wholeheartedly. He said there are existing models across the country that work.

Mr. Bierman mentioned that the Panel has a strong relationship with the IAB. He said the IAB investigations are strong, and the Panel continues to work with the IAB to improve. He said to the degree that the Panel can show its independence, the stronger and more effective its oversight can be.

Mr. Bierman said that the Panel can concur whether the investigation was complete, thorough, accurate, impartial, and objective. However, the Panel struggles with situations when it comes to a conclusion about the actual complaint. The Panel has requested the Board to empower it to make another finding: whether the investigation came to the correct conclusion. He asked do you support giving the Panel additional ability to come to conclusions about how investigations were conducted or make conclusions about the heart of complaints? Chief Davis said that the better the partnership, the more comprehensive and thorough your review, the

better you will be postured to impact change within the police department. He said he knows the Board wants to be a leader in this and he is confident that the Board will want to go in the direction that the community wants to go. He said he will embrace the changes and the FCPD will figure out a way forward with the Panel. Mr. Bierman thanked Chief Davis for his participation in the Forum and noted for the record that Chief Davis did not express clear opposition to the reforms proposed.

Ms. Belkowitz mentioned School Resource Officers (SROs) as a contentious issue and that Virginia is near number one in the school to prison pipeline. What proposals do you have to address this issue? What are your thoughts about additional trainings regarding dealing with people with autism or those with mental health issues? Chief Davis said he has had lots of experiences with SROs and remembers when they were first introduced in early 1990s. He said that over time, questions have been raised about whether having SROs in schools is consistent with what the community wants in an educational environment. He said the school to prison pipeline, and any data that supports it, is a concern of his. He said the FCPD is not interested in contributing to it and will take a cue from the community. If it is decided that SROs are inconsistent with our values, then the FCPD will follow the lead of the community.

Ms. Belkowitz asked what are your goals for training officers to deal with people with disabilities and implicit bias training? Chief Davis said that a few weeks ago the FCPD started procedural justice and implicit bias training, provided by a subject matter expert from the Center for Policing Equity. Commanders and select rank and file are attending the training and providing feedback to the trainer. He said that only the best officers should be placed in educational environments, those who have skills in community relationships, trust, de-escalation, and diffusion. He said SROs are not there to be in an enforcement role. Ms. Belkowitz said she was concerned some schools allow SROs to access Individualized Education Programs (IEP). Chief Davis said he will have a follow up conversation with Ms. Belkowitz on this topic. Major Lay said the Panel is welcome to attend the FCPD's implicit bias training.

Mr. Hargraves asked how do you balance supporting your officers with the tension of the community having different perceptions? If there was a young officer accused of misconduct how would you navigate that process in investigating that case and working with oversight? What can be done to weed out officer misconduct before cases have to be thrown out? Would you work with the National Organization of Black Law Enforcement Executives (NOBLE) for resources, recruitment, and outreach?

Chief Davis said he served as the keynote at NOBLE's conference when it was held in Baltimore and has had a longstanding relationship with individuals in the organization. He said they cannot wait for it but must take intentional actions for diversity to occur. He said that diversity does not exist as it should in the organization.

Chief Davis has talked to young officers at roll calls over his first three weeks. He said that they love the profession and the communities they serve, but have concerns about procedural

justice, due process, and fairness. He said that he tells officers that this is also what the community wants. He said the criminal justice system operates best when it has a redemptive mindset, which allows people to grow from missteps and mistakes. He said he will not hesitate to fire an officer that dishonors the profession and the badge. He said there are bright lines in terms of performance and conduct that do not belong in this profession. Chief Davis said that when officers enter the profession, there is no clear picture of who they are as a person. He mentioned the January 6 attack on the U.S. Capitol and said it has taught the profession. He said police departments need to do a better job at examining social media sites, and not just conduct background investigations. He said that departments need to be more proactive and seek information about employees. Chief Davis said that officers in Fairfax County do not want to be associated with an officer who is a racist, sexist, or mistreats someone in the community. He said that he will be meeting with a professor from Georgetown who has developed a police officer peer intervention training to consider whether the training could be used in Fairfax County. He said that the subtle and daily occurrences of indifference require intervention having to do with attitude, demeanor, language, and respect.

Mr. Hargraves said he was a former NAACP Branch President of Alexandria and was involved in ride alongs. He said he also has had an experience in Philadelphia when he was thrown to the ground by police. He said people of color do not want to grow up in fear.

Mr. Ware asked how do you understand sources of mistrust and contempt toward police by communities of color? Where do you think the authority of Panel can be expanded to mitigate those concerns? Can you share the amount of money budgeted to law enforcement priorities in the department versus budget for equity, training, and diversity efforts?

Chief Davis said that he is not a person of color, but he has served in the majority African-American jurisdictions of Prince George's County and Baltimore. He said he is aware that there are trust and legitimacy issues that have not yet been resolved, as he grew professionally under significant reform efforts. The two departments were under consent decrees because historically they engaged in unconstitutional policing practices in Black and Brown communities. He recognized that over half of arrests would never result in prosecutions, but those arrests still negatively impact the community. He referenced the Law Enforcement Assisted Diversion (LEAD) program that was implemented in Baltimore, which gave officers immediate discretion to not arrest someone who was in possession of a misdemeanor amount of narcotics and instead offer them wraparound services. He said he does not think we should incarcerate individuals with substance abuse issues or mental illness. He said the county will begin using a co-responding model, in which a mental health specialist responds with police officers and will ensure that dispatchers have diversion options before sending police.

Mr. Kay referenced his participation in the County's Ad Hoc Commission on Police Practices and the lack of transparency in the Geer shooting. He said many FOIA requests received by the department are refused on a discretionary basis. The Chief exercises his authority to withhold information he does not have to withhold. What is your position on the freedom of

information – will you withhold information on the same basis as before or take a fresh look into this?

Chief Davis said he will take a fresh look at FOIA. He offered to talk further about any previous requests in which the Panel thought discretion was inappropriately applied. He said he has experience previously with FOIA. He said there are times when investigatory integrity is important like with ongoing investigations but does not want to withhold something just because the Chief can. He said an explanation for withholding is important.

Ms. Norman-Taylor noted the lack of diversity in the room where the Chief was participating. She described herself as a parent of a young African-American man who is afraid when he is driving around the county. She said there are plenty of people in the county, specifically African-Americans, who are concerned about how the Chief will police in Fairfax County and how you will ensure officers do not make the same mistakes that you acknowledge making. She referred to a case reviewed by the Panel when a young African-American man was stopped by the police and suspected of doing something wrong, when he had not. She asked how do you go about reassuring a segment of the community?

Chief Davis said that he intends to enhance diversity in both the rank and file and within the command structure. He said that previously he had a cabinet, which reflected the community and was diverse in race, gender, and thought. He referenced his experience working with the group Mothers of Murdered Sons (MOMS). He said he makes sure to be grounded in others' experiences even though he does not have them himself. He has listened and served in Black and Brown communities for many years. He said when his record is examined in its entirety, he is proud to have contributed significantly to reform efforts in the jurisdictions he has served and to efforts emulated by other jurisdictions across the country. He said he wants to be a police chief that the community can be proud of and will continue to reach out and make himself available because he knows the criticisms come from a good place.

Mr. Gallagher stated that in the two years he has been on the Panel he has reviewed a number of cases investigated by the IAB. He said the reports are improving in thoroughness and completeness. He said the Panel appreciates the good work the IAB is doing.

Public Comment

Questions and comments were taken from the audience regarding civilian oversight in policing. A summary of questions, comments, and responses is provided below.

1. What is going to be different in regard to School Resource Officers (SROs) in schools? There are concerns about Black and Brown children being overpoliced and disproportionately disciplined. What about accountability?

Chief Davis said that as the County considers SROs and whether they transition away from them, the police department will take direction from the community. He said he

wants to hear personal experiences and review data in relation to the performance of SROs in schools. He said the FCPD is in the process of hiring a FCPD data manager.

2. The caller stated she was troubled by what happened in 2017 when Chief Davis, as Commissioner in Baltimore, locked down the Harlem Park neighborhood for six days in response to the killing of a police officer. What will happen here if there is a serious event like the shooting of an officer or an officer using deadly force? Will you turn over the investigation to an independent agency at the outset like the Virginia Attorney General or the Virginia Critical Response Team?

Chief Davis responded that leaders confronted with any unique or controversial situation should be willing to ask for outside help. In Baltimore he asked the director of the FBI to assume responsibility for the homicide investigation. He said that there was a double murder in the County today and he will be addressing the community in a press conference. He said he takes any loss of life seriously. Chief Davis said if there are facts and circumstances that convince him that he needs to ask another investigative entity to assist or take over, he will consider that and has demonstrated that.

3. The Panel has recommended that with bias investigations the police should analyze data of the officer's community contacts, stops, searches, and arrests. The Panel was informed that the department's data system needed to be upgraded to accomplish this. Do you support analyzing an officer's past community contacts in a thorough way for evidence of bias and racial bias complaints and implementing fully the Panel's recommendations? What kinds of evidence-based strategies could be implemented to prevent community contacts that result from the implicit bias of officers?

Chief Davis said the department has a request for proposals for a new records management system (RMS). He said the RMS affords us the opportunity to examine that type of data and IAB is already examining officers' previous encounters with the community, such as discretionary traffic and pedestrian stops. He said that direction was recently given to the IAB by the Panel to do that with a particular investigation. He said he wants to be able to identify misconduct proactively, and not just look back retrospectively at bad acts. With the new RMS, new hiring of a data manager, the department will analyze data daily and ensure discretionary encounters are not disproportionate in our community. He said diversity is underway and better in 2021 than in the past.

Chief Davis departed the meeting to attend a press conference. Mr. Bierman stated that participants could still make comments or ask questions of the Panel.

4. People Power Fairfax submitted data to Chief Davis showing a lack of meaningful discipline imposed by Internal Affairs when the issue is use of force, bias-based policing and prisoner safety. By contrast violations of equipment use is heavily disciplined. The Virginia General Assembly has given civilian review boards the authority to investigate

serious misconduct and make findings in these cases. While it is a Board of Supervisors decision, do you support giving the Panel disciplinary authority according to Virginia law and do you agree to abide by these decisions regardless of whether you agree with them?

Mr. Bierman stated that the legislation gives to option to the Board of Supervisors to allow oversight panels to engage in discipline. He said the critical issue is that the Panel has a lack of staffing and is a board of volunteers, which is not conducive to exercising full disciplinary authority. He said the question will be flagged for Chief Davis to respond in the future.

Mr. Ware stated his agreement that it is important to have staffing and resources to go along with expanded authority. He stated that it is important that the police department has external accountability.

5. What will Chief Davis do when civilian oversight is telling him one thing, but the union is demanding something else?

Mr. Bierman said this question will go on record for future discussions with the Chief.

6. The caller stated that he had previous law enforcement experience and that community policing is not new. He said that what is missing is the focus on the victims of crimes, who includes Blacks. He said that victims are often family members, and this is true for all races. He said that his experience with SROs is that they are outstanding and that they are often mentors to children. He said he has not heard of a problem with an SRO, except from other jurisdictions.

Mr. Bierman stated that no one has stated that they do not care about the victims of crimes. He said the Panel's focus is on reviewing complaints against the police. He said that a member of the Panel said there are instances when SROs can be helpful.

7. The caller, from ACLU People Power, said that getting disciplinary authority was a hard-fought victory by advocacy groups working on police reform. She is concerned that Fairfax County is focusing right now on getting limited investigatory authority. She does not understand what the Panel will do with investigatory authority if they cannot impose discipline. She stated they will support the Panel in getting resources. If the Board of Supervisors gives the Panel authority for either investigations or discipline, they have the fiduciary duty to provide the resources needed. She is concerned that the county is falling behind Alexandria.

What kind of input did you seek in making the recommendations in the Four-Year Review? She said that there could have been a public forum to get public support. She said that fundamentally it does nothing to have investigative authority and then issue an advisory opinion.

Mr. Bierman said that the Four-Year Review was conducted by the Panel. It was not developed with public input. He said they have already addressed the need for disciplinary authority, but the Panel can seek disciplinary options in future. He said there are plenty of oversight bodies that do not ultimately mete out discipline or consequences.

Mr. Hargraves stated the Panel takes input very seriously and that they are here to listen to areas where the Panel could do better.

8. The caller recommended that the Panel add their biographies to the webpage. He said there should be one Panel Member who has been arrested or with a similar perspective. Is there a form or a way that information can be given to individuals when they are arrested or charged on the process for making a complaint to the Panel? This form could be bilingual. He would also like to see metrics on complaints.

Mr. Bierman stated that the purpose of the Panel is to provide an independent avenue to make a complaint about an officer. Individuals can file directly with the Panel. They can find information on the website, or they can call the Independent Police Auditor's office and staff will take oral complaints. He said that the Panel's goal is to do more outreach to inform the community and stated that there was an action item change last year that allows the Panel to conduct more public forums like this one.

9. The caller, a resident and member of NAACP, suggested that the Panel include a representative of the NAACP or someone from a community that is underserved and underrepresented. She said this will provide the Panel with insight into interactions Black people have with the police department. She said that sometimes police are so well spoken that we forget that someone has a viable complaint. There are police officers who conduct themselves with dignity and respect, but there are some who learn the language and are able to skate by and get promoted.

Mr. Cranford stated that Panel does not select its own members and encouraged the caller to reach out to the Chairman of the Board of Supervisors, who makes appointments. He said that he agrees that the perspective of the Black community is important and that at least two of the Panel members are NAACP members.

10. The caller said she understands the need for outside auditing, but officers fear they cannot do their jobs or will make a mistake. She is concerned that there will be a mass exodus and the community will be in disarray. She said the County is investing money in auditing but is not investing money in officers, making them better at their jobs. She said that crime is growing and that new initiatives will drive crime higher.

Mr. Bierman stated that the Panel has concurred with the findings of the IAB in the vast majority of cases. He said that the Panel has been extremely fair and has commended officers who acted appropriately and when complaints were unfounded. He said there is

a process to weed out frivolous complaints, and to look at what was alleged and whether there is any evidence of wrongdoing. He said the Panel has the same goal as every police officer, which is a community that trusts the police. He said this will make things better for police officers in the county and lead to better outcomes.

The Public Forum adjourned at 8:51 p.m.