



Challenges Remain for Police Reform

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Oct. 8 will be the second anniversary of the 2015 release of the Ad Hoc Police Practices Review Commission Final Report. The catalyst for the Ad Hoc Commission's formation by the Fairfax County Board of Supervisors was the August 2013 shooting death of John Geer. The commission was charged with assessing the Police Department's performance against national best practices.

The commission made more than 200 recommendations for transforming an excellent Police Department into one that is "best in class" and for strengthening the public's trust and confidence in the department.

I served as commission member and as the chairman of Use of Force Subcommittee. I am also a member of a loosely configured Implementation Committee, a group of former commission members dedicated to helping to see that our recommendations are effectively implemented.

I commend both the Board of Supervisors (BOS) and Police Department for their progress implementing the commission's recommendations. Significant reforms are underway that when fully realized will generate increased accountability and public confidence. Major reforms already in place include:

- forming the Office of the Independent Police Auditor to determine the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of death or serious injury cases.
- convening a Civilian Review Panel to review civilian complaints regarding "abuse of authority" or "serious misconduct" by a police officer;
- creating "Diversion First," which offers alternatives to incarceration for people with mental illness or developmental disabilities; and
- recrafting the Use of Force General Order to enshrine sanctity of human life as an organizing principle, with de-escalation as the strategy of first resort when confronted with a threat rather than the use of deadly force.

While much has been accomplished, more work is needed. For example, the commission advocated in strong terms for information-sharing reform to promote timeliness, completeness and transparency. In this regard, a revised Police Department Communication Policy is still in process.

The commission also called for all officers to be outfitted with body worn cameras, contingent on the enactment of laws, policies and procedures that protect individual privacy. These cameras are to complement the dashboard cameras now mounted in each Fairfax patrol vehicle.

While a potential aid to criminal prosecution, the body-worn camera's equally important contribution is to foster greater transparency and the accountability of all parties during the interactions of the police with the public. As the American Civil Liberties Union noted in an October 2014 report, body-worn cameras "[have] the potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse."

While the county leadership has committed to deploying this technology, its approach has been appropriately methodical. Key considerations are operational, privacy, data security and cost. For example, the supervisors have approved a pilot project that will deploy cameras in two of the county's nine magisterial districts and the department is currently evaluating proposals from prospective suppliers.

This pilot project needs to generate answers to following questions, among others: the county needs to establish when cameras will be running and how will the public know the cameras are on? When can biometric technology – such as facial recognition – be used? How will the video footage be secured from hackers? Who will have access to the data and under what procedures?

How will the massive amount of video data be stored and for how long? As the county understands and appreciates, the cost of deploying body-worn cameras is not in the cameras themselves, but the storage of the massive amount of data that is generated. As reported by the Center for Digital Government and Government Technology magazine, "When it comes to [body-worn cameras], data storage is the 800-pound gorilla in the room. Video ... is a data hog."

This reality generates cost-driven data-retention policy considerations. How long should non-evidentiary video be maintained? Some police departments say it should be 60-90 days, others say less or more. With regard to evidentiary data used in criminal prosecutions, the Virginia Commonwealth requires that evidence be stored for 99 years.

Finally, who controls access to the data? This question is becoming an increasingly significant issue nationally. Protecting evidence chain-of-custody for purposes of criminal prosecution is a necessary but not sufficient role to warrant the cost and the data protection risks inherent in the deployment of body-worn cameras. The real return-on-investment is the potential for influencing the behavior, through greater transparency and accountability, of all parties in a law-enforcement engagement.

The drive to use this technology is inexorable. A recent CATO Institute/YouGov poll found that 92 percent of the public supports the use of body-worn cameras. Implicit in this level of support

are high public expectations that this technology will make a difference in law enforcement practices. Heightened expectations alone should give our policymakers pause, particularly when we know that no technology deployment is free of all mistakes and errors. The only thing worse in today's context than not collecting the data during a controversial use-of-force incident, is for the public to learn that video data under the Police Department's control is missing.

We should therefore challenge the assumption that video-camera data must be maintained under the sole access control of the Police Department. Options that should be given explicit consideration by the Board of Supervisors, Police Department and Commonwealth's Attorney include assigning video data access control to the Independent Police Auditor or alternatively assigning this role to a board composed of the Police Chief, Independent Auditor and Commonwealth's Attorney.

On this second anniversary of the Ad Hoc Policy Review Commission Report, the county and Police Department have many accomplishments to be proud of with regard to implementing the commission's recommendations.

Quality-driven change is hard; some changes are especially difficult. Body-worn camera deployment is one that requires careful study and diligent attention to complex legal and operational details. I commend the county for taking the appropriate measured response to meeting this recommendation and, especially with regard the matter of access to video data, challenge the conventional wisdom that access control to such data must be under the sole purview of the Police Department.