

Police Civilian Review Panel

June 2, 2022

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:

Jimmy Bierman

Cheri Belkowitz

Bryon Garner

Dirck Hargraves, Chair

William Ware

Janell Wolfe

Panel Members Joined Remotely:

Todd Cranford, Fairfax

Celeste Peterson, Centreville

Others Present:

Captain Laitinen, Internal Affairs Bureau

Rachelle Ramirez, OIPA

Steven Richardson, Executive Director, PCRCP

2nd Lt. Saafoori, Internal Affairs Bureau

2nd Lt. Tim Forrest, Internal Affairs Bureau

Richard Schott, Independent Police Auditor

Dre'Ana Whitfield, PCRCP

The Panel's business meeting was called to order at 7:05 p.m. Mr. Hargraves, Chairman, welcomed everyone to the Panel's June 2, 2022 meeting. Mr. Hargraves took a roll call to verify a quorum of the Panel was present. Everyone present in Conference Room 232 stated their name and their position. Two Panel members joined remotely and stated the location from which they participated.

Approval of Agenda: Mr. Bierman moved to amend the Panel's agenda. He suggested that the Executive Director's report be added to the agenda after the approval of the May 5, 2022 draft meeting summary. Mr. Garner seconded the motion. Ms. Belkowitz suggested it be added as a recurring agenda item at III. The motion carried with a unanimous vote.

Approval of June 2, 2022 Draft Meeting Summary: Mr. Bierman moved the approval of the Panel's May 5, 2022, draft meeting summary. Mr. Garner seconded the motion, and it carried with a unanimous vote.

Executive Director's Report: Mr. Richardson outlined three items in the Executive Director's report. He informed the Panel that the County Attorney has approved Bynum and Jenkins law firm as the new independent counsel for the Police Civilian Review Panel and the Office of the Independent Police Auditor. Mr. Richardson informed the Panel that on June 6, he and Major Billeb will be visiting each station house to begin structuring future station house reviews. Lastly, he informed the Panel that they are members of the National Association for Civilian Oversight of Law Enforcement. Each Panel member will begin receiving correspondence about training and other opportunities.

Mr. Hargraves informed the Panel that he will be meeting with the Executive Director to discuss community outreach.

Mr. Hargraves explained his vision for the Panel, he expressed that he wanted the Panel to be the best in class for community oversight.

Ms. Belkowitz informed the Panel that she connected Brook Wright with the head of transition services for Fairfax County Public Schools. She stated that there will be an open house experience for high school students. She explained that the employment and transition representatives from Fairfax County Public Schools will be conducting a use of force workshop day for students. She further explained that the employment and transition representatives will hand pick students who may be interested in law enforcement. Ms. Belkowitz expressed her happiness with students being matched with possible career opportunities.

Review Meeting for CRP-22-06:

Mr. Bierman explained the rules of the review meeting session to the Panel members. He stated that the Panel does not discuss police tactics, nor does it refer to any police officers by name in public. He noted that the Panel does not quote directly from internal interviews with officers.

Mr. Hargraves explained the Panel's review meeting process, he said that the Panel does not take testimonies. He further explained the purpose of the Panel to the complainant. He stated that the Panel reviews the investigation of the IAB to see if it was complete, accurate, thorough, impartial, and objective. He further explained that the Panel can either concur with the IAB's disposition of the case or send the investigation back to IAB for additional investigation. Mr. Hargraves further explained the subcommittee process.

Mr. Hargraves provided an overview of the subject complaint. He stated that the complainant was delivering packages for Amazon in McLean, Virginia. The complainant parked in a space that was labeled as reserved space. While parking in the reserved space, another driver pulled beside the complainant. They asked the individual whether she was parked in their parking space and did not receive a response from the driver. The individual asked the complainant if she was going to move her vehicle. The complainant moved her vehicle and proceeded to the apartment building elevator to deliver the packages. The complainant looked behind her and observed the alleged perpetrator with a handgun. The complainant felt uncomfortable and scared and retreated to her vehicle. The complainant called her mother, and the mother called the FCPD expressing her concern. The FCPD arrived 21 minutes later. The complainant described her experience to the FCPD. The complainant identified the alleged perpetrator's vehicle. The FCPD ran the alleged perpetrator's tags and found that the individual had a concealed carry permit. The FCPD located the alleged perpetrator's residence. The alleged perpetrator was dressed in blue jeans and a dark shirt. The alleged perpetrator invited the FCPD inside. The alleged perpetrator expressed that it must have been a misunderstanding and that he did not speak to the complainant. The alleged perpetrator expressed that he had just come from the gym and that he had on sweats. The alleged perpetrator claimed while in his sweats he cannot put the handgun in his waistband because it would have been baggy. The alleged perpetrator affirmed that he did not point the handgun at the complainant and that it was just in his hand.

Mr. Hargraves noted that the interaction of the officers with the complainant and their interaction with the alleged perpetrator was slightly different. Mr. Hargraves stated that in both interactions the FCPD officers were polite, but the interaction with the alleged perpetrator was more familiar. After the FCPD spoke to the alleged perpetrator, the FCPD officers concluded that there was very little evidence that rose to the level of criminality.

Ms. Wolfe noted that the alleged perpetrator insisted that the handgun was in a holster and the complainant claimed that the gun was not in a holster.

Mr. Ware noted that after the complainant observed the alleged perpetrator with the handgun in his hand, she encountered a FedEx driver who witnessed the incident. The complainant asked the additional driver if she should be concerned. The additional driver told the complainant not to be concerned.

Complainant Statement:

The co-complainant, who is the complainant's mother, was present at the meeting and provided a statement. She stated that her daughter Facetimed her and told her that a white man pulled a gun on her. The mother expressed that the complainant was afraid. The mother called the FCPD and stated that she gave as much information as she could. The co-complainant further provided details about the incident. It was the complainant's first day at Amazon. The complainant was parked in a reserved space to deliver packages. The co-complainant noted that the complainant was not familiar with the Northern Virginia area. When the complainant parked in the reserved space, the alleged perpetrator asked the complainant to get out of the space. While looking back the complainant saw the alleged perpetrator with a handgun. The complainant turned around to go back because she was afraid.

The co-complainant expressed that she was shocked that no one called her or the complainant after the incident. The co-complainant said that she had to call FCPD to receive further information. The co-complainant said when she finally spoke to the FCPD, the officer said that they spoke with the alleged perpetrator and did not feel that a crime was committed. The FCPD said that the alleged perpetrator brandished the gun and had a concealed carry permit. The co-complainant said the alleged perpetrator does not have the right to intimidate people, especially a young Black female. The co-complainant asked the FCPD for the alleged perpetrator's name so that she can press charges and file a civil suit. The FCPD would not give the alleged perpetrator's information to the co-complainant.

The complainant said that had she been a White female and the alleged perpetrator Black, the incident would have been handled differently. The co-complainant said that she wants to get justice for her daughter.

Complainant Questioning:

Mr. Ware said understanding the limits of the Panel's authority, he asked what would you like to see come from this process? The co-complainant said better training for the officers and the alleged perpetrator's information to file a civil complaint. The co-complainant expressed she wants to protect her daughter and other African Americans who want to work in Virginia from a law that says you have the right to carry. The co-complainant said that the FCPD did not call her or the daughter back regarding the incident. She expressed that, that is a red flag. The co-complainant said she wants the FCPD to go

back over the case and reevaluate what went wrong, and why it went wrong, require classes, and hold officers accountable.

Ms. Wolfe asked if the complainant received the FCPD's disposition letter. The co-complainant answered affirmatively. Ms. Wolfe asked the co-complainant had she talked to her daughter a lot about what happened since the incident? The co-complainant said not a lot.

Ms. Wolfe asked the co-complainant had she asked her daughter exactly what words were exchanged between her and the alleged perpetrator? The co-complainant said she did not. The co-complainant explained that only the information that was given to her daughter was what she knew. The co-complainant said that is why she asked the FCPD for the body camera footage or to hear the audio.

Ms. Wolfe asked the co-complainant from talking with her daughter, that there is no doubt that the alleged perpetrator had the handgun in his hand and not in a holster? The co-complainant said there was no doubt.

Ms. Wolfe asked the co-complainant do you know the distance between the alleged perpetrator holding the handgun and when your daughter decided to turn around and leave? The co-complainant said she did not know.

Ms. Wolfe asked was there anything in the disposition letter that struck you as not accurate? She said she did not notice anything. The co-complainant expressed it seemed like the old buddy system and that the letter was a form letter and not personable.

Ms. Wolfe asked did the co-complainant read the case cited in the disposition letter? The co-complainant said no.

Ms. Wolfe asked does her daughter still work at Amazon? The co-complainant said no, not since that day.

Mr. Bierman asked were you ever given the opportunity by the IAB or by FCPD to view the body camera footage? The co-complainant said that she requested the footage and never received any information back.

Mr. Bierman asked if the police officer had called you later that night, and contacted your daughter or you, and had said we went and approached the suspect, he explained to us that he was holding the gun in a holster, he showed the holster and said he was holding it to his side, and his wife who was there told us the same thing, the additional driver was mentioned and will be followed up with and we will get back to you. Would that have been an appropriate response? The co-complainant said she cannot answer what-if questions on something that did not happen.

Mr. Bierman described another scenario involving a White complainant and a Black perpetrator and asked would that have been an appropriate police interaction or an inappropriate police interaction? The co-complainant said that she doubts that it would have happened that way. She expressed that if the races were reversed and the alleged perpetrator was a Black man it would have been handled differently. The co-complainant said she cannot offer recommendations on the spot but could make a list.

Ms. Wolfe asked do you think your daughter's age or sex had anything to do with what happened besides the racism part? The co-complainant said she does.

Mr. Hargraves thanked the co-complainant for her participation in the Panel's process.

FCPD Statement:

Captain Laitinen from the IAB introduced Second Lieutenant Saafoori. Lt. Saafoori provided a summary of the facts of the case and the investigation. He explained that in the summary the mother is identified as the complainant, and the daughter is referred to as the complainant's daughter. The complainant in her email to the Panel stated that the suspect produced a gun when he confronted her daughter about her parking in his assigned parking spot and reiterated this to the 911 call taker. The complainant's daughter stated to the 911 call taker that she had a conversation with the parking space owner and then continued to deliver her Amazon packages after moving her van. Shortly thereafter she walked into the elevator at the same time as the man in the parking lot and saw that he had a gun down by his side along with other items. The complainant's daughter said to the 911 call taker that the alleged perpetrator did not really pull his gun on me, he just has it in his hand while he was behind me. The complainant's daughter informed the FCPD that the individual with the firearm never pointed it at her. The complainant's daughter made an excuse that she forgot something to avoid going up the elevator with the suspect. The complainant expressed that the alleged perpetrator probably had something against her since she had parked in his spot. Lt. Saafoori listed the following complaints from the complainant and her daughter: the officer did not properly perform his duties by not placing the suspect under arrest; after the investigation, the officer did not follow up with the complainant as promised; the officer would have treated her differently if she were a White woman in a Black neighborhood; and the officers took a long time to arrive on the scene.

The FCPD did not believe that probable cause existed to make an arrest. Lt. Saafoori said that he proffered the facts to the Commonwealth's Attorney's Office, and they also determined that no crime occurred and would not attempt to prosecute such a case. Lt. Saafoori further provided the statement, he read that the Virginia case law defines brandishing as the suspect to have acted in an ostentatious, shameful, or aggressive manner, none of which were observed or described by anyone involved. Immediately after the investigation, the officer attempted to call the complainant's daughter, however, the phone call went to voicemail. The officer did not leave a message with the intention to call the complainant back on his next shift, which would be the following day. Before the officer's next shift, the complainant called the FCPD to inquire about the results of the event. The officer's supervisor told him that he would handle the call and the officer believed his supervisor would perform the follow-up. Therefore the officer never attempted another phone call. The officer's supervisor incorrectly advised the complainant on multiple parts of the criminal investigation and the deficiencies were addressed by providing additional training. Lt. Saafoori said that regarding the allegations of bias, no evidence was found that race was a factor. He said, regarding the allegation of slow police response, the complainant called 911 at 4:34 p.m., the 911 call taker created an event 3 minutes later. The primary officer was handling a different event in the area. The officer cleared the event he was handling 10 minutes after the complaint was created and 13 minutes after the complainant originally called 911. The officer was dispatched 43 seconds after he cleared the other event and arrived on the scene at 4:58 p.m. The response time of the officer was 10 minutes and 18 seconds. It took another 6 minutes and 57 seconds

before the officer located the complainant's daughter, who had continued to deliver packages in the same location.

FCPD Questioning:

Mr. Hargraves asked if Virginia code §18.2-282 regarding pointing, holding, or brandishing a firearm was being cited? Lt. Saafoori replied affirmatively. Mr. Hargraves read from the code.

Mr. Hargraves asked if the complainant was unreasonable in their fear of having a negative interaction with an older white male who was holding a gun behind her. He asked was there a contention that it did not rise to the level of being reasonable fear as the code would indicate? Captain Laitinen said that he cannot comment on the relevance of the details of the code but that the officers did not find probable cause based on the facts.

Ms. Belkowitz referred to related case law and that it is based on the belief or fear of the victim. She asked if the IAB understands that the complainant was very afraid and that it is not the intent of the individual holding the weapon, but the feeling of the person on the other end? Captain Laitinen said that based on the officer's perception of the facts at the time, and speaking with both parties, the officer did not feel that there was probable cause for an arrest.

Ms. Belkowitz asked did the officers ask the complainant if she was afraid? Lt. Saafoori stated that he does not recall and would have to review the BWC footage. She referenced the requirements in the code regarding pointing, holding, or brandishing a firearm.

Ms. Belkowitz asked is it your understanding that the alleged perpetrator was holding the weapon and that the complainant stated she was afraid? Lt. Saafoori replied affirmatively.

Mr. Hargraves asked what does it look like for the FCPD to proffer some information to the Commonwealth's Attorney? Captain Laitinen said that he provided all the information that is in the report after the entire investigation was complete.

Ms. Wolfe asked when you spoke to the Assistant Commonwealth's Attorney, did you tell her that the victim was afraid? Lt. Saafoori said that it was not in his report that the complainant was afraid

Ms. Wolfe asked does that change how you would present it to the Assistant Commonwealth's Attorney? Lt. Saafoori said that he can proffer the facts of the complainant's fear if that is what the complainant stated to the officers. Lt. Saafoori said that he would have to review the body worn camera footage. Mr. Bierman said he recalled the complainant saying that she was afraid and spooked. Mr. Bierman said he thinks the officers should have considered the objective reasonableness of the fear. He stated that it could have been helpful to find and interview the other delivery driver.

He said that the officer's supervisor called and told the complainant's mother that there was no brandishing, which is not correct, and shut down the investigation before there was an attempt to contact other witnesses on the scene. There was an attempt the next day to locate the delivery driver.

Mr. Bierman asked what additional training and what sort of reprimand happened for the supervisor in this case? Captain Laitinen said that he is not sure what additional training was required and cannot disclose information regarding the discipline of the supervisor.

Mr. Richardson asked if IAB investigates the matter or just the complaint that came to IAB? Captain Laitinen summarized the internal investigation process and said that IAB handles the adherence to internal policy and procedures and the performance of duty. Mr. Richardson asked if IAB can refer criminal matters back to the station? Captain Laitinen explained that criminal investigations would be referred to the appropriate person such as an officer or a detective.

Lt. Saafoori stated that as part of his investigation he determined that the camera in the elevator was not operational. He said that he was told it was a dummy camera and not meant to record.

Ms. Wolfe asked did the alleged perpetrator know that there was a dummy camera at the apartment complex? Lt. Saafoori said that he did not know. Ms. Wolfe said the alleged perpetrator told the FCPD to go check the camera. Ms. Belkowitz said there was confusing statements made about the camera.

Mr. Garner asked if they could walk him through the procedure for when an officer contacts someone who has a concealed carry permit? Lt. Forrest explained that it depends on the situation but generally they want to verify they have the permit and its valid.

Mr. Garner asked would it be a missed opportunity for an investigation, if one of the officers, in this case, did not ask for the concealed carry permit? Lt. Forrest said in this case the alleged preparator was not carrying the firearm concealed. Captain Laitinen noted that Virginia is an open-carry state.

Ms. Peterson's question was inaudible. Mr. Hargraves restated the question. He asked is it standard procedure to allow an alleged perpetrator who has a gun to disappear into his residence to retrieve a gun to show the officers? Captain Laitinen answered that it depends on a number of variables, including where the officers are, how many there are, and how they are positioned. He said every officer has to make their own judgement based on their training and experience.

Mr. Cranford made a comment that he believed that the complainant was fearful. He said the complainants fear is relevant and important, it is not dispositive. He said other factors need to be considered.

Ms. Belkowitz asked Captain Saafoori when he spoke with the Commonwealth's Attorney was that about holding the weapon under Virginia code §18.2-282 or was he referring to Virginia code §19.2-81 about brandishing? Lt. Saafoori said that he referred to Virginia code §18.2-282. Lt. Saafoori said that everything that is in the report was explained to the prosecutor.

Ms. Belkowitz asked that it was not in terms of getting an arrest at the time versus approaching a magistrate? Lt. Saafoori said no, it was solely about whether there was probable cause to make an arrest.

Ms. Belkowitz asked was there a reason why the arrest statistics were not included in the report? Captain Laitinen explained that statistics are pulled in cases of traffic stops or if an arrest is made on an individual that makes a complaint of bias. Lt. Forrest further explained that the code section requires that the FCPD captures that information for arrests, subject stops, and traffic stops. Mr. Bierman stated that if there is an allegation of bias it is helpful to look at statistics of the officer to see if there are anomalies to suggest bias. He said the Panel previously advised the IAB that it would like these statistics provided for all bias allegations, along with open-source investigation results, such as social media. Mr.

Hargraves said it would be interesting to see if the officer has a record of arresting Blacks for brandishing or not.

Ms. Belkowitz asked if the officers tried to locate the delivery driver or mailman and if the witness was interviewed? Lt. Saafoori said the witness was not. He explained that when the officers attempted to locate the witness, they could not figure out who was in the area without a truck number. Ms. Belkowitz said that the rental office said they didn't know the driver but the alleged perpetrator said he was outside talking to the mailman and knew his name.

Ms. Belkowitz asked if there is a reason why the wife was not interviewed about what she observed? Lt. Saafoori stated that would be something to ask the officers and referenced spousal protection. Ms. Belkowitz said she can voluntarily say what she observed.

Ms. Belkowitz asked what happened with the video footage from Amazon? Lt. Saafoori said that he called multiple times and was not able to receive a response.

Ms. Belkowitz asked if a waist holster and a belly holster were the same? Captain Laitinen explained that there are various holsters and cannot explain what the alleged preparator may be referring to in the report. Discussion ensued on the type of holster the alleged perpetrator may have used. Ms. Peterson said that they may be able to determine the type of holster based on the body worn camera footage.

Mr. Bierman asked should the officer have left a voicemail when he called to follow up with the complainant the night of? Captain Laitinen said that it would have been ideal and it would have helped the complainant understand who was calling and why. He said the officer choose not to because he was going to call on his next shift.

Mr. Bierman asked if it is standard operational procedure to leave a voicemail or is it left up to the officer? Captain Laitinen said that it is up to the officer and the individual situation.

Mr. Bierman stated the investigation included that there were mistakes made by the supervisor in informing the complainant about the investigation but that there was not an interview of the supervisor. Mr. Bierman asked why the supervisor was not considered part of the complaint that this was not handled properly by the police? Lt. Saafoori said that the entire conversation was recorded so there was no need to interview the supervisor about what was said.

Mr. Bierman asked if the supervising officer sent the officer back to ask about the delivery driver before talking to the complainant or after? Lt. Saafoori stated that he does not know. He explained that he only has the date of when the officer went back to talk to the property manager.

Mr. Bierman asked if the IAB in its investigations ever asks the officers, what if the races were reversed? Captain Laitinen said that is not a standard question. He said that every case is different. Captain Laitinen said that the IAB can certainly look at an individual scenario and see based on the facts if that is an appropriate question.

Mr. Ware asked how can fear, a critical piece of information included in the code and the case law, be overlooked in the interactions between the officers and the complainant, and between the IAB and the Commonwealth's Attorney? Captain Laitinen said that they take every situation and look at the totality of the entire event. He said that he cannot speak to the mindset of the officer, but that, they must look

at facts and what can be proved. He further explained that they have to take an objective look at the situation and decide if there is probable cause for arrest.

Mr. Garner asked why would the officers make the statement about the alleged perpetrator carrying the firearm oddly if Virginia is an open-carry state? One officer suggested that he could have placed it in his gym bag. Captain Laitinen said he cannot say why the officers made the statement.

Mr. Garner asked with the alleged perpetrator carrying the firearm in an unorthodox way behind a woman in an elevator, should that require further questioning? Captain Laitinen said it certainly could. Mr. Garner said this would speak to her fear. Captain Laitinen expressed agreement.

Ms. Belkowitz said what are the statistics for how quickly the dispatch office usually dispatches an officer? Captain Laitinen explained that the Department of Public Safety Communications is independent of the police department. He further explained that it depends on the number of officers available at a particular time.

Panel Deliberations:

Mr. Bierman stated that the Panel cannot mete out discipline. He said the Panel has three options: It can concur with the findings and that the investigation was complete, thorough, impartial, accurate and objective. It can send the investigation back to the IAB for additional investigation. Or it can inform the Board of Supervisors that the investigation was incomplete, or not supported, and request further consideration by the Chief and the Board of Supervisors. He said the Panel has only used the third option after the second option of requesting additional investigation.

Mr. Bierman said that this was a tough case to determine how to respond. He said he does not want to fault the officers for not being aggressive enough. He said it could be a teachable moment to consider what would have happened had the races of the roles been reversed. He said there are other factors to consider regarding objective reasonableness. He said the delivery driver who said to the complainant that there is nothing to be afraid of should have been interviewed. He said there was lack of follow up by officers and the follow up by the supervisor officer happened without the benefit of full investigation. He said when there is an allegation of bias, the Panel would like to see the officer's statistics. He said the investigation was not complete and would like to provide recommendations. One recommendation is that the FCPD leave a message with the complainant to include a call back number.

Ms. Wolfe said this is a straightforward investigation. She said she appreciated Sgt. Saffoori's comment that it was not investigated from a standpoint of the fear experienced by the complainant. She said that the officers did not know the brandishing statute or the case law behind it, and she said the interpretation of brandishing was inaccurate. She said that holding a weapon, regardless of whether it was pointed at someone, is considered brandishing. She said it was not investigated properly or accurately.

Mr. Ware said he concurred mostly with Ms. Wolfe's comments. He said we was troubled by the oversight of fear and the difference in treatment between the complainant and the alleged perpetrator. He said as a subcommittee member he was initially satisfied with the investigation but is now thinking about the implications of the discrimination. He said he does not know if further investigation will result in a different outcome but that the issues raised justify requesting additional investigation.

Mr. Garner thanked the IAB for their hard work but stated that there were some questions that were not fully addressed. He recommends returning it to IAB for further investigation.

Ms. Belkowitz said that the investigation had too many loose ends that she would like to see wrapped up. She said it was helpful to learn that IAB contacted Amazon but it did not provide the footage. She expressed that they could have identified the mailman. She said that they looked at brandishing but not that the statute included holding and inducing fear.

Ms. Peterson stated that she agreed it should go back for further investigation. She said that everyone has biases, sometimes unknowingly. She recommended that someone of color be added to IAB investigations in cases where someone is complaining about being treated differently based on their race. She referenced her experiences working with youth and said that training would raise the trust level. She said the officer never looked the complainant in eye but was writing. She said she applauds the composure of the complainant's mother.

Executive Director Richardson said that it would be germane to the overall outcome if there was a revisiting of the original complainants' description of the individuals and whether that lines up with the testimony of the alleged perpetrator, specifically what the alleged perpetrator and the woman with him were wearing. He said allegations of bias are nuanced and that the FCPD does not want it to appear they are overlooking something. He said wherever possible an extra step can be taken that will be helpful and give comfort to the community member.

Mr. Bierman said we need to be clear about what the Panel does and how to effectuate what Mr. Richardson is describing. Mr. Bierman said it would be a recommendation that there is a consideration of the case, or reopening of the case, and that is something that the Panel has never done. He said he thinks it is not in the Panel's purview and that it is not in their role to consider whether something should have been prosecuted. He said one recommendation is that the supervisor should have reviewed the BWC footage before determining there was nothing to see here. Mr. Bierman said the Panel should determine the exact questions it wants answered as part of additional investigation.

Mr. Hargraves reviewed the purpose and authority of the Panel. He said what is the Panel doing to enhance legitimacy and increase trust between the community and the FCPD. He said that the Panel takes allegations of racial bias seriously. He said the use of the term colorblindness is concerning. He said he agrees the fear element was discounted and that fear and pain is part of the Black community's lived experience. Mr. Hargraves said that when fear and pain are dismissed it raises questions about how equitable the system is. He said he believes the FCPD is trying to do the right thing. He said while the officer was polite and respectful to the complainant, it was obvious that the interaction was different from the interaction with the alleged perpetrator. He suggested that Panel members sit in on the FCPD's implicit bias training so they are informed. He said that we are asking the police to do so many things all the while we are living in more armed society. He said that if people are being threatened, there needs to be a way to address it.

Mr. Bierman said the Panel should identify the specific questions we want the FCPD to investigate further, but that it can wait to define its recommendations in this case. He suggested that the investigation include arrest and stop statistics that have been included in previous investigations into bias allegations that went before the Panel.

Mr. Garner said he would like to see defined the difference between pointing, holding, and brandishing in VA code. Mr. Bierman said previously the Panel asked the FCPD to consult with the Commonwealth Attorney's office to better outline the proper interpretation of the code. Ms. Belkowitz said the law has changed and the cases in the file may have referenced the earlier cases before holding was added. Discussion ensued on the appropriate case law to reference.

Mr. Bierman summarized that the Panel is asking, where an investigation is reliant on certain case law interpretation, that the IAB consult an attorney outside of IAB.

Ms. Belkowitz stated her concerns that the FCPD will be limited in conducting further investigation when so much time has passed. Discussion ensued on what the alleged perpetrator was wearing and whether the Panel has authority to comment on the initial criminal investigation versus the IAB's administrative investigation of the complaint. Mr. Richardson said that IAB can send it back to the district station for further investigation into the criminal matter. Mr. Bierman said the Panel's purpose is not to second guess the results of FCPD's investigations.

Mr. Bierman said that IAB should get an independent legal analysis of holding and whether the approach taken was proper to determine whether someone was holding in a way that was objectively reasonably scary. He said the Panel may want to recommend that IAB consider whether or not there is need for further investigation of the underlying events, but this would be highly unorthodox. Mr. Richardson concurred that IAB could send it back but would not be the entity to investigate whether a crime was committed.

Mr. Hargraves asked the FCPD if there was an SOP that says they are not allowed to give out information to a community member who wants to go to a magistrate about another community member? Lt. Forrest said there was not an SOP, but that an officer can provide the community member with a case number to take to the magistrate. Lt. Saffoori said the officer was seen on the BWC footage telling the complainant that she can go to the magistrate with the case number and that he also told the complainant in a follow up interview.

Mr. Bierman moved that the case be sent back to IAB for additional investigation and that it include an investigation of the arrest and stop statistics of officers involved, a legal analysis regarding situations in which guns are held but not brandished, and an additional complete investigation of the behavior of the supervising officer who provided incorrect information before an investigation into the complaint had been completed. Mr. Garner seconded the motion.

Mr. Hargraves suggested that it be addressed in FCPD implicit bias training how complaints of bias are flagged and taken by diverse community members in a way where they believe they are taken seriously and being treated with respect. He said the complainant articulated fear and that element was completely missed, and he thinks there was a bias element to that.

Mr. Bierman restated the recommendation that the Panel would like the IAB to investigate whether the fear of the complainant was adequately considered by the officers in this case. He said this goes hand in hand with the request for legal analysis. He said recommendations on changes to FCPD training or procedures can come later after the additional investigation is complete. Mr. Hargraves agreed that the recommendation about training can be teased out later.

Ms. Belkowitz and Ms. Wolfe asked about the timeframe for the additional investigation. Mr. Bierman said the timeframe is up to the IAB and that, in a previous case, the additional investigation took months, however this was during the pandemic. Mr. Bierman said a letter will be sent from the Panel's Chair to the FCPD outlining its request for further investigation.

Mr. Bierman restated the motion that the Panel requests additional investigation, including but not limited to, the arrest and stop statistics of the officers involved, a legal analysis of how to approach a claim of holding a weapon in a threatening manner, consideration of whether the fear of the complainant was adequately considered by the officers involved, and a formal consideration of the actions taken by the supervisor in this incident.

Mr. Hargraves requested to add: was implicit bias considered in whether the fear of the complainant was adequately considered?

Mr. Richardson asked about including looking at the original complaint. Mr. Bierman said that would be considered as a recommendation at a later time.

Mr. Bierman amended the motion to include consideration of whether the fear of the complainant was adequately considered by the officers involved and he said he would add a fifth element– consideration of whether the officers involved adequately approached the situation with knowledge and consideration of implicit bias.

Mr. Hargraves said he was comfortable with the motion as stated. Mr. Hargraves called the question and the motion carried with a vote of seven, with Mr. Cranford abstaining.

Mr. Richardson said the Panel should consider a recommendation that the original criminal complaint be re-investigated, specifically that the perpetrator purposefully threatened the complainant. He asked whether that would be of interest to the Panel. Mr. Bierman said he did not think it was an appropriate role of the Panel. He said it while unsatisfying, opening and closing investigations is not in the Panel's purview. He said they could go to the Board of Supervisors and ask for an Action Item change, but he thinks it opens a box. Ms. Belkowitz stated that it is possible the police department discovers there is an error in this case but that she does not believe the Panel has the authority to recommend that the FCPD reopen a criminal case. Mr. Bierman agreed and read from the Bylaws that the Panel can only make recommendations on police policies, practices, and procedures.

Mr. Hargraves asked whether any Panel members wanted to make motion to recommend the FCPD reopen the criminal investigation if appropriate. No such motion was made.

Mr. Hargraves reminded Panel members of the Panel's meeting schedule and asked them to notify him or staff if they need technology assistance with access to their County accounts.

Ms. Belkowitz moved to adjourn the meeting. Mr. Bierman seconded the motion, and it carried unanimously.

The meeting adjourned at 10:10 p.m.

Next meeting: The Panel's next business meeting is July 7, 2022 at 7:00 p.m.