



Ad Hoc Committee to Study Police Oversight

January 28, 2004

The Ad Hoc Committee to Study Police Oversight met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on January 28, 2004 at 4:05 p.m.

COMMITTEE PRESENT

Dennis Kavanaugh, Chairman
Lynda Bailey
Henry Castillo, Jr.
Sharon Corea
Linda Flick
Graciela Herrera
Michael Hughes
Kevin Kotsur
Phil Lowry
Patrick Pomeroy
Ken Salas
Mary Lou St. Cyr
Janie Thom
Claudia Walters

COMMITTEE ABSENT

None

STAFF PRESENT

Mike Hutchinson
Chief Dennis Donna
Eric Norenberg
Mary Berumen

(Chairman Kavanaugh excused Committeemember Kotsur from the beginning of the meeting. He arrived at 4:38 p.m.)

1. Welcome and Introduction – Chairperson Kavanaugh.

Chairman Kavanaugh welcomed Mike Campbell as the newest member of the Committee who was appointed to fill the vacancy left by the passing of former Vice Mayor Jerry Boyd.

2. Discuss and consider plans for citizen input.

Special Assistant to the City Manager Eric Norenberg addressed the members of the Committee relative to this agenda item. He reported that the Committeemembers have been provided two documents including a revised timeline of the Committee's meeting schedule and also proposed dates for Town Hall meetings to solicit citizen input regarding Police/community relations and to recommend actions to strengthen that relationship. He explained that the dates for the May meetings are incorrect and should be modified to reflect the 12th and the 26th. Mr. Norenberg highlighted the draft timeline and encouraged the Committeemembers to e-mail him

if they have suggestions relative to staff providing additional research and/or presentations during the Committee's tenure.

Mr. Norenberg noted that in reference to the citizen input process, staff is proposing Town Hall meetings on February 24th and 27th which would be resident focused, and a third meeting on March 10th wherein members of the Police Department could meet with the Committee. He reported that staff is also proposing that the meetings be supported by a professional facilitator; that members of the Ad Hoc Committee serve as recorders at the individuals tables; that a list of standard questions be used for discussion purposes at each table and event; and that the highlights of the responses be reported back to the entire group at the conclusion of each meeting.

Chairman Kavanaugh clarified that staff is not requesting that each member of the Committee attend all three Town Hall meetings, but rather encouraging everyone to attend at least one event and to serve as a table host or discussion leader.

Mr. Norenberg stated that pending Committee approval of the questions that will be used during the Town Hall meetings, it is staff's proposal that those questions will be the basis of an Internet web survey. He noted that this would enable citizens who are unable to attend one of the Town Hall meetings to complete the survey and offer their input as well. Mr. Norenberg commented that the web survey responses would be added to a database so they can be reproduced for the benefit of the Committeemembers. He added that towards the end of the process, the Committee will consider offering focus groups, targeting specific constituencies in the community, an opportunity to assess the Committee's draft proposals designed to improve and strengthen Police/community relations in the City of Mesa.

Mr. Norenberg advised that he and Diversity Program Director Mary Berumen are requesting feedback from the Committeemembers regarding the above-referenced proposals and will continue to work on these matters between now and the February 11th meeting.

Discussion ensued relative to the fact that staff has identified a series of open-ended questions designed to provoke discussion at the Town Hall meetings; that the Committeemembers are encouraged to contact Mr. Norenberg or Ms. Berumen if they have additional questions that they would like to be included in the process; that the Committee will review the questions and narrow down the list to a reasonable number so they can be completed in a limited amount of time at the Town Hall meetings; and that the input from the Town Hall meetings will provide the Committee with further direction relative to potential goals that the new members may wish to accomplish.

Chairman Kavanaugh stated that it is the consensus of the Committee that staff proceed with the development of the proposed timeline.

3. Hear and discuss presentations on investigation processes and procedures related to officer use of force.

Police Chief Dennis Donna welcomed the members of the Committee to the meeting and stated that the presentation would focus on the processes that the Mesa Police Department uses when an officer-involved shooting occurs, as well as the checks and balances built into the system to ensure that a thorough investigation is conducted. He explained that in addition, the Committee

would also learn how the Department's investigative staff responds to such cases, the manner in which they are investigated, the tools available to examine the facts of the case, and the product that is expected of staff at the conclusion of the case. Chief Donna stated that presentations would also be made by representatives from the Maricopa County Attorney's Office and the Medical Examiner's Office to discuss their roles in an officer-involved shooting as well. He added that during the second part of the presentation, staff would provide the Committee with information regarding an internal affairs investigation (a separate and distinct aspect of the inquiry into an officer's use of force), the internal complaint process, and the manner in which a complaint is adjudicated.

Chief Donna introduced the individuals who would be making the presentations including Police Department staff members Lieutenant Greg Hargis, Sergeant Michael Collins and Commander Mike Dvorak; Mark Faull, Special Assistant to the Maricopa County Attorney; and Dr. Philip Keen, Chief Medical Examiner for Maricopa County.

Lieutenant Hargis reported that his and Sergeant Collins' presentation would address the role of the Criminal Investigation Division (CID) relative to the investigation of officer-involved use of deadly force incidents, the Major Incident Response Team (MIRT), investigation procedures and a statistical comparison.

Lieutenant Hargis explained that like the Mesa Police Department, CID is accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA), and is responsible for conducting follow-up investigations that require time and/or expertise beyond the preliminary investigation conducted by the Patrol Division. He advised that this also includes CID investigations of officer-involved use of deadly force and other criminal matters that may pertain to members of the Department. Lieutenant Hargis commented that CID's mission, when it responds to a call for assistance, is to interview witnesses, collect, document and preserve evidence and arrange for laboratory testing. He noted that the Mesa Police Department's Crime Lab, which is certified by the American Society of Crime Laboratory Directors (ASCLD), performs examinations on ballistics, projectile trajectory, and DNA and fingerprints analysis. He added that whenever analyses are required that are beyond the ability of the in-house Crime Lab, the Department requests the assistance of the Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) crime laboratories. Lieutenant Hargis commented that at the conclusion of CID's investigation, the results are sent to the Maricopa County Attorney's Office for review.

Information was provided relative to a crime scene diagram; the fact that MIRT is comprised of three squads from the Persons Crimes Section (Homicide, Robbery and Violent Crimes); that when the team responds to an officer-involved use of deadly force incident, each officer provides specific expertise and experience from one of the three areas; that in such cases, the Homicide detectives are assigned as case agents; that the call-out rotation of the three squads minimizes the possibility that the same detectives investigate all shootings; that the basic MIRT response is that a Patrol Supervisor will contact the on-call Detective Sergeant, that MIRT responds at the crime scene, investigators are briefed by the Patrol Supervisor, a Lead Investigator is assigned, and witness interviews, canvass interviews and hospital investigations are conducted.

Sergeant Collins reported that once the MIRT team has responded to a crime scene, it is crucial to establish the inner and outer perimeter for crime scene management (documenting and

collecting evidence). He noted that investigating a crime scene can be a lengthy process and that oftentimes streets can be blocked off for a number of hours. Sergeant Collins stated that in an officer-involved shooting incident, a walk-through is conducted by the Lead Investigator with the officer/officers involved in the incident, a Senior Investigator is assigned to the case, and through the investigative process, at times search warrants are required to be written and/or a consent form signed. He added that search warrants often take up to two hours to prepare and present in front of a judge.

Further information was provided relative to the fact that the Mesa Police Department will call other essential officials to the scene to assist in the investigation (Maricopa County Attorney's Office, Office of the Medical Examiner, the FBI, Forensic Services personnel, DPS and any independent laboratories and investigators); request services from internal resources such as Special Investigations Detectives (undercover agents) and the Gang Unit; utilize different forms or procedures within the department such as "Hot Sheet" information that is distributed to various divisions within the Department; notify next of kin; attempt to locate suspects; complete intelligence work; compile a profile packet on the suspect; utilize the Law Enforcement Justice Information System (LEJIS); release information to the media; organize follow-up on leads, and update the Command staff on the status of the case.

Sergeant Collins displayed graphics in the Council Chambers depicting a comparison between Mesa and local municipalities and Mesa and various cities nationwide relative to officer-involved shootings. (2000 U.S. Census data and the first three quarters only of 2003.) He noted that using such statistics, the City of Mesa had five officer-involved shootings in 2003, one additional shooting in the fourth quarter, and two incidents which resulted in fatalities.

Discussion ensued relative to the time-consuming process involved in the writing of search warrants; the Supreme Court recognized exceptions to the search warrant rule; the criteria to be followed in order for an officer to search an individual; the next of kin notification process; that in 1993, the City of Mesa became the 186th agency in the nation to receive national accreditation; that the City engages in a reassessment process every three years to maintain its accreditation; and that in 2002, Mesa had two fatalities related to officer-involved shootings, and five fatalities in 2001.

Mr. Faull addressed the members of the Committee and explained that although he serves in many capacities with the Maricopa County Attorney's Office, the role most relevant to this Committee is as Chairman of the Maricopa County Shooting Review Board (now known as the Officer Deadly Force Incident Review Board). He explained that it is the policy of the County Attorney's Office to review all shootings involving law enforcement officers within Maricopa County. He stated that additionally, his office reviews all incidents where action has been taken by a Police department that may have caused the death of an individual.

Mr. Faull briefly highlighted the review process undertaken by the County Attorney's Office relative to a use of force incident as follows:

- A representative of the County Attorney's Office arrives at the scene of the incident, establishes contact at the command level and receives an initial briefing regarding the incident. The County Attorney's Office works as a cooperative team with the Police Department; however, the Shooting Review Board and ultimately County Attorney Rick

Romley will render a decision on whether the officer's actions were legally justified under the Criminal Code of the State of Arizona.

- A Lead Investigator (Case Agent) is selected and a dialogue begins between the County Attorney's Office and the Department at that time.
- Walk-through of the crime scene. This is a voluntary act by the officer involved in the incident. (It is important to note that the administrative investigation of the officer's action is a separate investigation from the criminal investigation.) The officer is afforded the opportunity to obtain legal counsel, if desired, prior to the walk-through. In attendance at the walk-through are the Lead Investigator, the Crime Scene Investigator, the County Attorney's representative and the officer and his counsel.

Additional information was provided relative to the fact that the Fraternal Order of Police (FOP) and other associations, as a benefit of membership, provide legal counsel for officers involved in a use of force incident; the Mesa Police Department has its own legal counsel that does not represent the officers; that police officers involved in use of force incidents are generally not read their Miranda rights; that professional cooperation exists between the County Attorney's Office and various police agencies to ensure an effective and thorough analysis and investigation.

- A paralegal in the County Attorney's Office reviews all the materials relative to the officer-involved shooting that have been forwarded by the Police Department to ensure that the County Attorney's Office has the necessary documentation to complete its analysis of the case.
- The Chairman of the Shooting Review Board reviews the material and prepares a five-page summary focusing on the shooting itself. The summary is distributed to the members of the Board prior to their first meeting.
- The Shooting Review Board consists of County Attorney Rick Romley; Chairman of the Review Board; Criminal Division Trial Division Chiefs; the Chief Investigator for the County Attorney's Office; Homicide Bureau Chief; and three Special Assistants to the County Attorney. The Investigating Detective is invited to conduct the presentation and all Boardmembers are free to ask questions and request additional investigation prior to making a decision on whether the shooting was justified under Arizona law. The Board forwards its decision on to the County Attorney.
- If the County Attorney's Office decides to file a complaint, which is at the sole discretion of the County Attorney, the case is assigned to a Homicide prosecutor or Special Investigations prosecutor. If a determination is made not to prosecute, a letter is sent to the Police Chief advising him that the County Attorney's Office finds no criminal liability on the part of the officer. The letter may also suggest training deficiencies in certain areas which need to be addressed by the Department.

(Committeemember Thom left the meeting at 5:10 p.m.)

In response to a question from Committeemember Hughes, Mr. Faull clarified that in his opinion, the existence of a citizen review board in a community does not seem to impact positively or negatively the manner in which officer-involved shootings are investigated.

In response to a question from City Manager Mike Hutchinson regarding the County Attorney's Office's policy to release information to the public relative to an officer-involved shooting, Mr. Faull explained that Arizona has one of the most liberal public records laws in the United States

and that there is virtually no protection for investigative information. He commented that in general, all information is released promptly with the exception of information that if disseminated to the public would have the potential to impact the availability or quality of the evidence that is still being gathered.

Chairman Kavanaugh thanked Mr. Faull for his informative presentation.

Dr. Philip E. Keen addressed the members of the Committee and provided a brief overview of the role of the Maricopa County Medical Examiner's Office. He reported that his office conducts independent inquiries into all unnatural deaths; determines what, if any, injuries are present; the mechanism of injury; and the cause and manner of death. He commented that per Arizona statutes, every county in the State is required to have an independent Medical Examiner, however, not all counties have the financial resources to fill such a position. He stated that not only does the Maricopa County Medical Examiner's Office provide services throughout the County and various rural counties, but on occasion it also reviews cases for the Bureau of Indian Affairs (BIA) and the FBI. He highlighted examples of deadly force including shootings, inappropriately applied chokeholds and fights/scuffles which although they may not initially be intended to constitute deadly force, could ultimately result in an individual's death.

Dr. Keen provided a brief description of entrance and exit wounds as a result of a gunshot and described the various characteristics of each type of wound. He explained that entry wounds may be more symmetrical, have soot or powder and abrasion cuts and that exit wounds appear more irregular, tend to be larger, may have abrasion cuts if they are shored, and have the absence of soot or powder. Dr. Keen commented that in examining a wound, clothing could be an intervening target to absorb the features of the powder. He added that on the basis of his examination, he could determine a contact wound, an immediate range wound, and the trajectory of the bullet, including the angle, distance, path, and intermediate targets.

Dr. Keen noted that all cases that are investigated by the Medical Examiner's Office are public records and that they cannot be sealed except by Court order. He added that when his office has completed its work on a case, the investigative agencies are notified that the records will be released in ten days.

Information was provided relative to the fact that the Maricopa County Medical Examiner's Office is an independent entity from the County Attorney's Office; the accreditation process for the Medical Examiner's Office; and that the Medical Examiner's Office is sometimes called upon to consult on cases where an individual has been injured but not killed, and a lawsuit has been subsequently filed by the victim.

Chairman Kavanaugh advised the Committee that because of time constraints, Commander Dvorak's presentation would be postponed until the February 11th meeting.

In response to a series of concerns expressed by Committeemember Lowry, Mr. Faull assured the Committee that the current method of investigating officer involved use of deadly force incidents has checks and balances built into the system to ensure that the three agencies represented here tonight perform their duties to the highest standard of integrity and professionalism.

Additional discussion ensued relative to the current role of technology in crime investigation and conflicts of interest.

Committeemember Bailey expressed appreciation for the informative presentation and commented that she is pleased to know that cooperation exists between the Mesa Police Department, the County Attorney's Office and the Medical Examiner's Office in the investigation process.

4. Items from Citizens Present.

Bill Everson, a representative of the Mesa Fraternal Order of Police (FOP), addressed the members of the Committee. He stated that with regard to the internal affairs investigation presentation, which has been postponed until the February 11th meeting, he urged the Committeemembers to consider the issue of citizens who file false complaints against police officers. Mr. Everson noted that if a person files false charges against an officer and it can be proven that that citizen was lying, he would like to see that individual charged with a crime.

Chairman Kavanaugh voiced appreciation to the members of the Committee for their patience and participation, especially in light of the fact that the meeting ran longer than scheduled.

5. Adjournment.

Without objection, the Ad Hoc Committee to Study Police Oversight Meeting adjourned at 6:15 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Ad Hoc Committee to Study Police Oversight meeting of the City of Mesa, Arizona, held on the 28th day of January 2004. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK